

# Owner/Contractor Agreements and Choosing the Right One for Your Project

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# Presenter



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The American Institute  
of Architects

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# Learning Objectives

- 1) Learn about the new AIA Sustainable Projects documents and issues of interest to contractors working on sustainable projects.
- 2) Become familiar with the various project delivery models and the AIA's owner/contractor agreement(s) that correspond with each.
- 3) Understand the contractual relationships between the various construction parties that define the responsibility, authority and expectations of each.
- 4) Explore contractual issues of interest to contractors related to each delivery model.



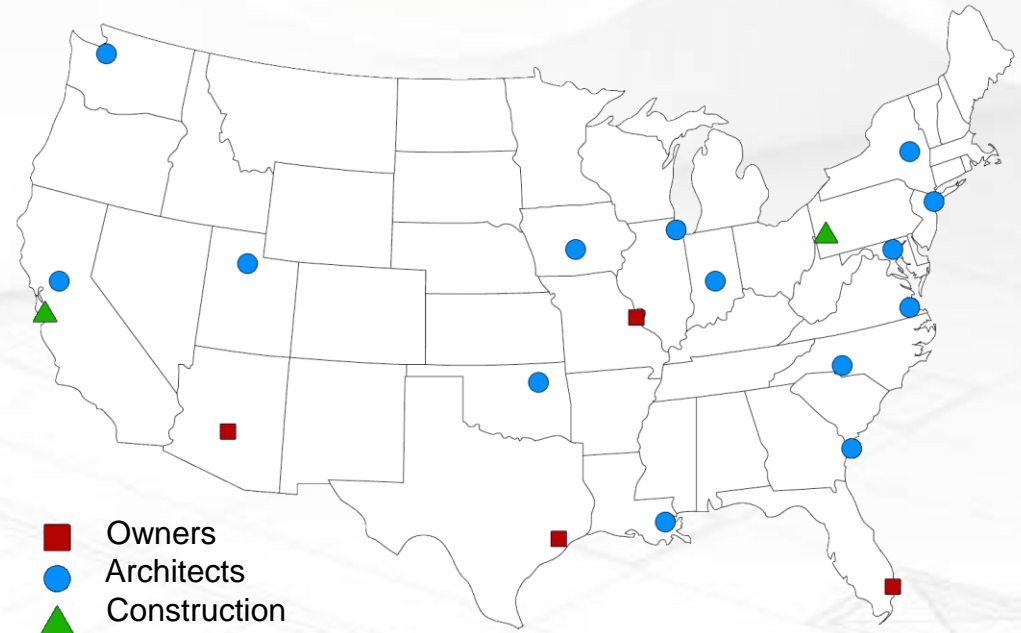
# **AIA's Document Drafting Process**

# History

- Standard form documents since 1888
- Uniform Contract
- Always a consensus process
- First General Conditions 1911
- First Owner/Architect agreement 1917
- Now, over 120 agreements and forms

# Document Creation

- Documents Committee and AIA staff
- 20 to 30 volunteer AIA members
- Ten-year commitment
- Revise documents on a ten-year cycle





# Drafting Process

- Seek comments from industry
- Review/incorporate legal decisions
- Investigate impact of industry practices
- Draft and revise documents
- Solicit and review feedback on drafts



# Goals

- Standardized documents for national use
- Alternate to custom-drafted documents
- Balanced and fair—equitable risk allocation
- Subject to uniform legal interpretations
- Conform to common and statutory law
- Clearly define duties and responsibilities
- Reflect industry practices

# Industry Organizations

- AIA Knowledge Communities
- American Bar Association Forum, Div. 2, 3 and 12
- Associated Builders and Contractors
- American College of Construction Lawyers
- American Specialty Contractors
- American Subcontractors Association
- Commercial Owners Assoc. of America
- Council of American Structural Engineers
- National Association of State Facilities Administrators

# Families and Series

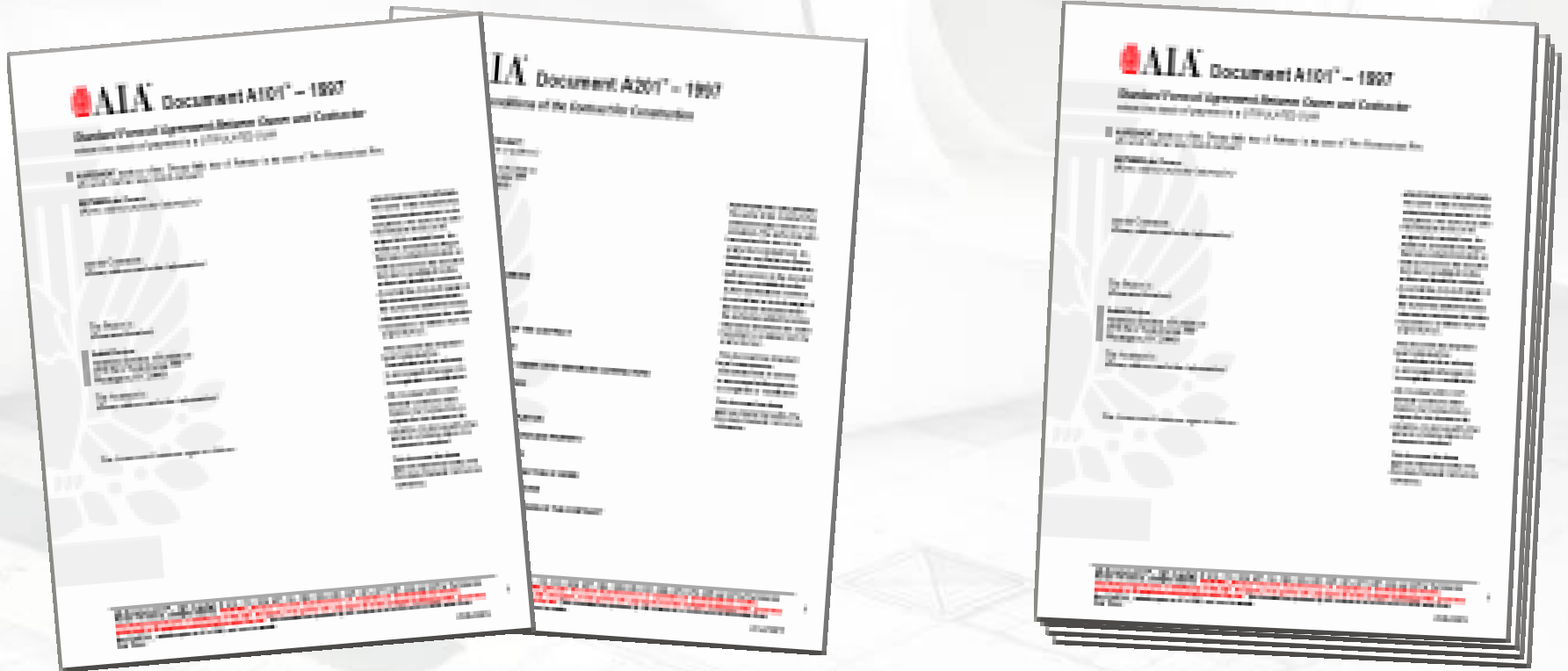
- **Family:**
  - Conventional (A201)
  - Design-Build
  - Small Project
  - CM-Adviser
  - CM-Constructor
  - Interiors
  - International
  - Integrated Project Delivery
  - Digital Practice
  - Forms
- **Series:**
  - A Owner/Contractor  
A101
  - B Owner/Architect  
B101
  - C Other Agreements
  - D Miscellaneous
  - E Exhibits
  - G Contract Administration forms



**Conventional  
(A201) Family:  
Design-Bid-  
Build**

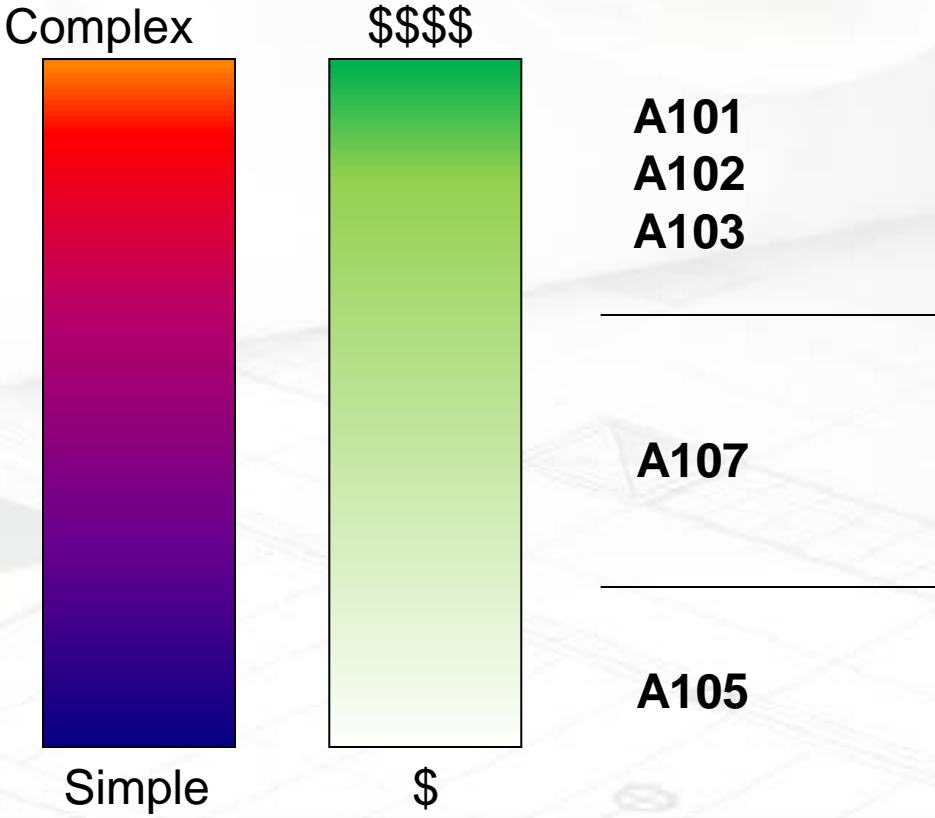
# Conventional (A201)

- Owner retains architect
- Architect and its consultants prepare drawings and specifications
- Architect assists owner in obtaining bids/proposals
- Owner awards contract to lowest responsive bidder/negotiates price
- Contractor and surety obligated to owner for bid, performance and payment bonds
- Contractor and subcontractors build the Work



**Agreement  
A101, A102, A103 + General  
Conditions  
A201 = Construction  
Contract**

# Project Size and Complexity

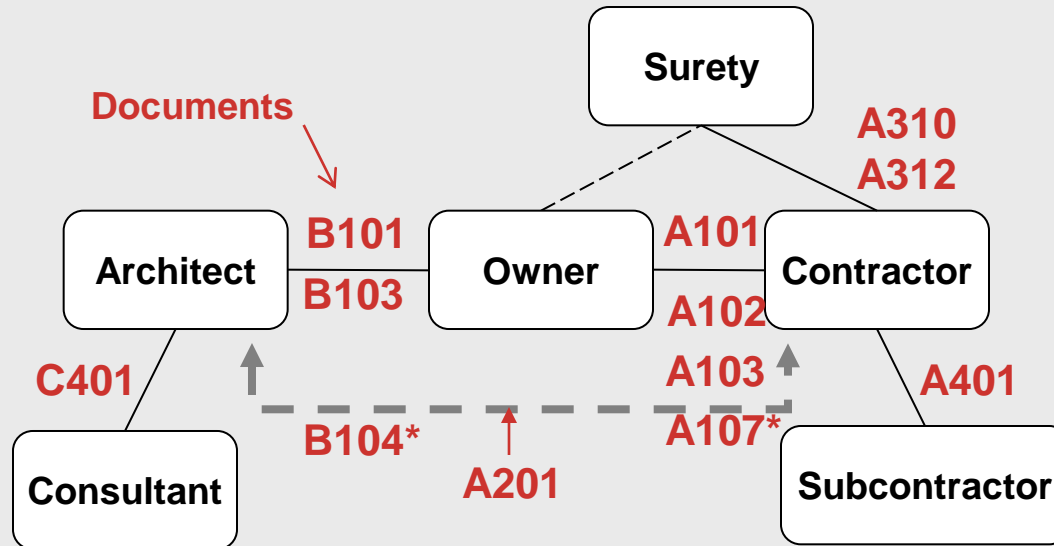




# 2007 Owner/Contractor Agreements

- **A101** Stipulated Sum
- **A102** Cost of the Work + Contractor's Fee with a Guaranteed Maximum Price (formerly A111)
- **A103** Cost of the Work + Contractor's Fee w/o a Guaranteed Maximum Price (formerly A114)
- **A107** Three payment types, includes Abbreviated General Provisions
- **A105** Stipulated Sum, includes very Abbreviated General Provisions

# Conventional (A201)



*\*B104 and A107 are in the A201 family because the abbreviated General Conditions in A107 are based on A201. If C401 and A401 are used with B104 and A107, appropriate modifications should be made with the assistance of insurance and legal counsel.*

# A101, A102, A103

- Use A201-2007 as the General Conditions
- Owner & Contractor may designate a third party Initial Decision Maker
- Binding dispute resolution check box selection
- Fill point for including a digital data protocol exhibit



# Dispute Resolution Checkbox

## § 6.2 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, General Conditions of the Contract for Construction, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing . . . the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007, General Conditions of the Contract for Construction
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

# A102:Guaranteed Maximum Price (GMP)

- Contractor assumes the risk that the cost of the work, including its fee, will not exceed a guaranteed amount
- GMPs often provided before drawings are complete </= 60% CDs
- GMP contracts always have contingencies
- Often have shared savings clauses
- Always have audit clauses

# A107-2007

## AIA<sup>®</sup> Document A107™ – 2007

*Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_  
*(In words, indicate day, month and year)*

BETWEEN the Owner:  
*(Name, address and other information)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

and the Contractor:  
*(Name, address and other information)*

for the following Project:  
*(Name, location and detailed description)*

The Architect:  
*(Name, address and other information)*

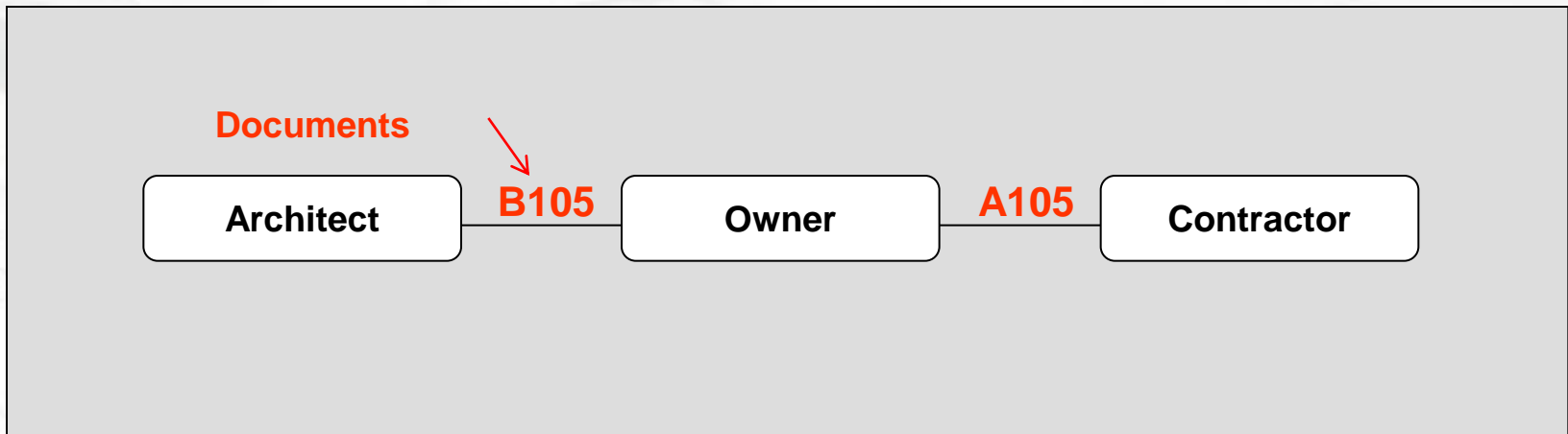
The Owner and Contractor agree as follows:

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# Small Projects

- Suitable for residential or small commercial projects and other projects of relatively low cost and brief duration.
- These documents (B105 & A105) are in effect conventional Design-Bid-Build documents (B101 & A101/A201) “stripped down” to essentials
- These feature use of Stipulated Sum and Integrated General Conditions



# A105-2007

 **Document A105™ - 2007**

*Standard Form of Agreement Between Owner and Contractor for a Small Project  
where the Basis of Payment is a STIPULATED SUM*

This AGREEMENT is made:  
(Date)

BETWEEN the Owner:

This document has important  
legal consequences.  
Consultation with an attorney  
is encouraged with respect to  
its completion or modification.

and the Contractor

for the following Project:

The Architect is:

The Owner and Contractor agree as follows:

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A silhouette of a traditional windmill stands against a vibrant sunset sky. The sun is a large, bright yellow circle positioned in the upper center. The windmill's four lattice-like sails are visible, extending horizontally and vertically. The foreground shows a dark, flat landscape with some sparse vegetation.

# **Sustainable Design and Construction**

# D503–2013

- Discusses sustainable design and construction issues including:
  - Certification Systems, codes and legislation
  - New risks and responsibilities for industry stakeholders
  - Provides background information on changes included in the Sustainable Projects documents

# AIA Sustainable Projects Documents

## **AIA® Document A101™ – 2007 SP**

*Standard Form of Agreement Between Owner and Contractor, for use on a Sustainable Project where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_  
(In words, indicate day, month and year)

BETWEEN the Owner:  
(Name, legal status, address and other information)

and the Contractor:  
(Name, legal status, address and other information)

for the following Project:  
(Name, location and detailed description)

The Architect:  
(Name, legal status, address and other information)

## **AIA® Document A201™ – 2007 SP**

*General Conditions of the Contract for Construction, for use on a Sustainable Project*

for the following  
(Name and location)

THE OWNER:  
(Name, legal status, address and other information)

THE ARCHITECT:  
(Name, legal status, address and other information)

### TABLE OF ARTICLES

- |   |                     |
|---|---------------------|
| 1 | GENERAL CONDITIONS  |
| 2 | OWNER'S OBLIGATIONS |

## **AIA® Document A401™ – 2007 SP**

*Standard Form of Agreement Between Contractor and Subcontractor, for use on a Sustainable Project*

AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_  
(In words, indicate day, month and year)

BETWEEN the Contractor:  
(Name, legal status, address and other information)

and the Subcontractor:  
(Name, legal status, address and other information)

The Contractor has made a contract for  
dated:

## **AIA® Document B101™ – 2007 SP**

*Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project*

AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

and the Architect:  
(Name, legal status, address and other information)

for the following Project:  
(Name, location and detailed description)

## **AIA® Document C401™ – 2007 SP**

*Standard Form of Agreement Between Architect and Consultant, for use on a Sustainable Project*

AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month and year.)

BETWEEN the Consultant's client identified as the Architect:  
(Name, legal status, address and other information)

and the Consultant:  
(Name, legal status, address and other information)

Consultant's discipline:

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has deleted or omitted from the original AIA text. This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

# Process Described in the Sustainable Projects Documents

The Sustainable Projects documents provide a process for successful completion of a Sustainable Project through:

- Special Definitions
- Allocation of Risks and Responsibilities
- Scope of Architect's Services for Sustainable Projects
- A fully integrated scope of documents for a design-bid-build project including Owner/Architect, Owner/Contractor, Contractor/Subcontractor and Architect/Consultant agreements

# Special Definitions in A201-2007 SP

- Sustainable Objective
- Sustainable Measure
- Sustainability Plan
- Sustainability Certification
- Sustainability Documentation
- Certifying Authority





**Design-Build**

# Design-Build

- Owner contracts with a design-builder
- Design-Builder designs and constructs the project
  - Design-Builder may be a developer or single purpose entity (design and construction in one shop), or
  - Design-Build may be Contractor-led or Architect-led
- Design-Builders are often contractors

# AIA Design-Build Family

1. A141-2014, Owner/Design-Builder
2. C141-2014, Owner/Consultant
3. B143-2014, Design-Builder/Architect
4. A142-2014, Design-Builder/Contractor
5. A441-2014, Contractor/Subcontractor
6. C441-2014, Architect/Consultant

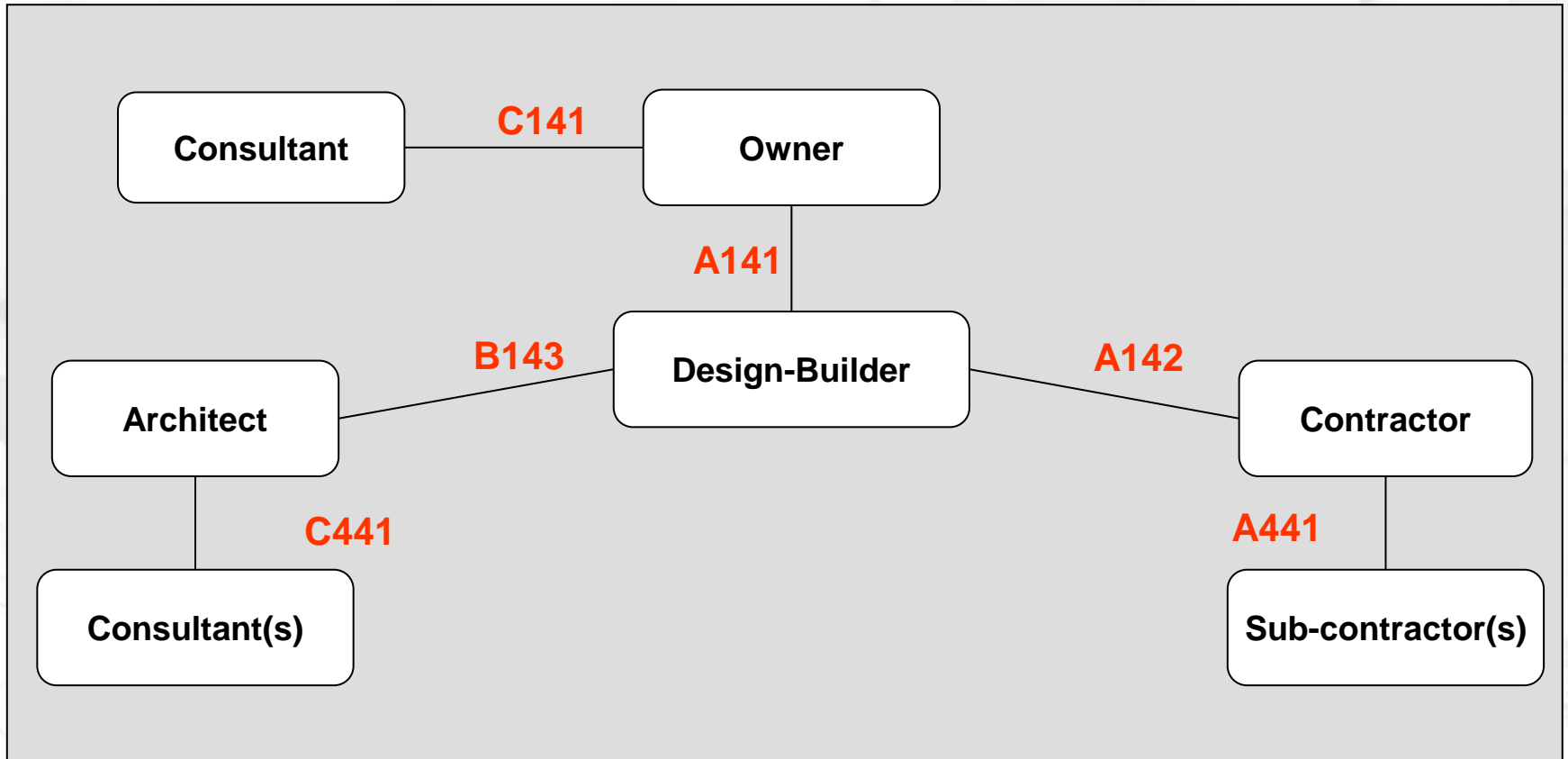


# Flexible

- Not Architect-led OR Contractor-led.
- Design-Builder can be an Architect, a Contractor, a Developer, Single Purpose Entity, etc.
- Document exhibits may be substituted
- Services selected from a menu



# AIA Design-Build



# Construction Management



# Industry Feedback

- Input solicited from:
  - CMAA
  - ABC
  - ABA, Division 12



# Construction Manager (CM) Documents

- Two types of CM delivery:
  - Construction Manager as Adviser (CMA)
  - Construction Manager as Constructor (CMc)
    - CMA and CMc provide similar Design Phase Services

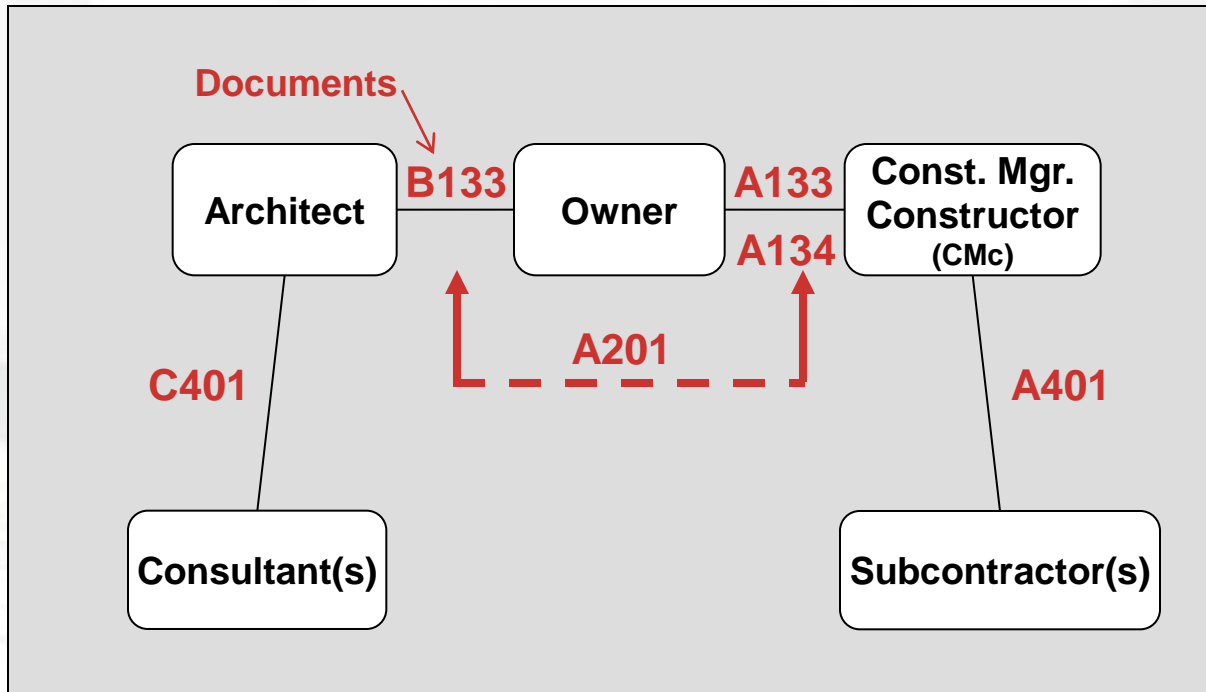
# Construction Manager (CM): Design Phase

- Owner retains Architect
- Owner retains Construction Manager as adviser/constructor
- Architect and its consultants prepare drawings and specifications
- CM provides cost estimating, scheduling and constructability review
- CMa prepares bid packages

# Construction Manager as Constructor (CMc): Construction Phase

- CMc bids the work to subcontractors
- CMc enters into contracts with subcontractors
- CMc assumes role of Contractor under A201
  - Cost of the work plus fee with GMP
    - (A133–2009)
  - Cost of the work plus fee without GMP
    - (A134–2009)

# 2009 AIA Construction Manager as Constructor (CMc)

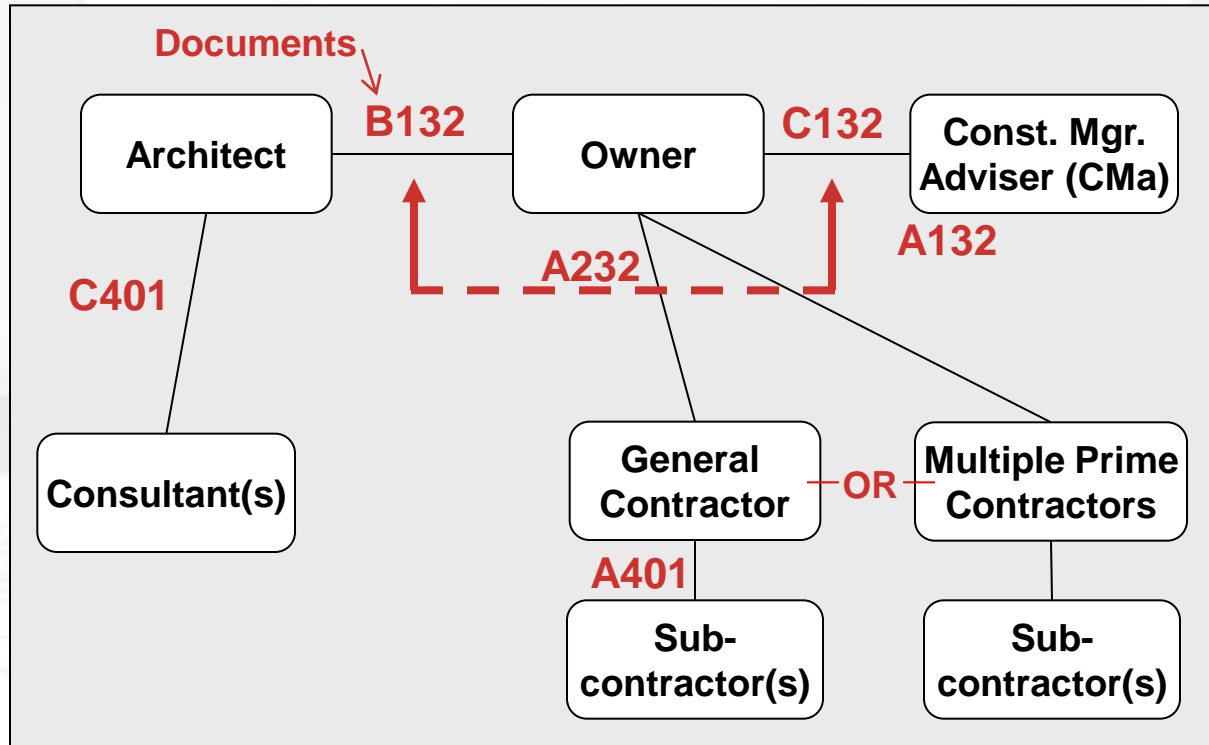




# Construction Manager as Adviser (CMa): Construction Phase

- CMa assists owner in bidding the drawings and specifications
- Owner enters into contract with general contractor, or contracts with multiple prime contractors
  - For multiple primes, CMa uses Project Application for Payment
- CMa coordinates contracts on Owner's behalf
- Contractor(s) and subcontractors build the work

# 2009 AIA Construction Manager as Adviser (CMa)



# C132–2009: Owner/Construction Manager as Adviser

## Overview

- CM provides cost estimates, project scheduling, constructability review
- CM prepares bid packages and establishes bidder interest
- Fill points for CM's insurance coverages
- CM prepares a Construction Management Plan
- On-site project administration
- CM's monthly report contains specific information (listed)
- One year walk-through by CM in basic services
- Architect and CMa share contract administration responsibilities

# A132 (A101CMa)

## Owner/Contractor Agreement

- Overview
  - A101CMa–1992 as base document
  - Updated to conform to A101–2007 and A201–2007
  - Implements A107 format for payment; can be stipulated sum or cost of the work plus fee with or without GMP

# Integrated Project Delivery



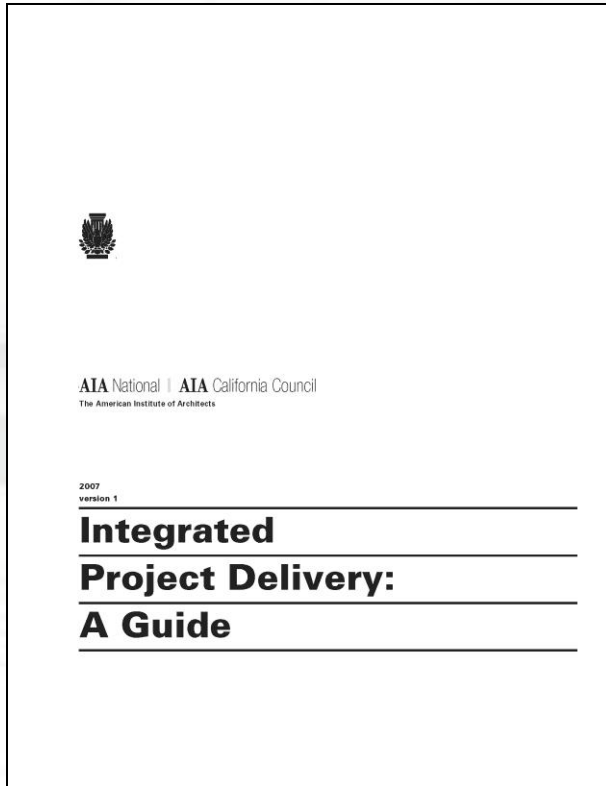
# What is IPD?

Integrated Project Delivery (IPD) is a project delivery approach that:

- Integrates people, systems, business structures and practices into one collaborative process
- Harnesses talents and insights of all participants through all phases of design, fabrication, and construction
- Shares risk and reward to optimize project results, increase value to the owner, reduce waste, and maximize efficiency



# IPD Guide Describes Principles



- Jointly drafted by AIA National and AIA California Council
- Sets forth broad principles relating to Integrated Project Delivery
- Describes how to set up and deliver an integrated project
- Evaluates how existing delivery models can be improved with principles of integrated practice
- Free document on Reference Materials page

# AIA Built on the IPD Principles

The AIA Contract Documents developed three types of agreements for IPD:

## Transitional Forms

- Slight evolution from current, more familiar GMP-based contract with pre-construction services
- Easy to implement

## SPE – Full Integration

- New paradigm, unique Single Purpose Entity (Limited Liability Company)
- All for one, one for all

## Multi-Party Agreement

- Blends Transitional and SPE
- Parties use one agreement (but not an LLC)
- Responsibilities outlined in General Conditions
- SPE Tools & Protocols



# Construction Administration and Project Management Forms



# Construction Administration and Project Management Forms

- Contractor's Qualification Statement (A305)
- Change Orders (G701)
- Construction Change Directive (G714)
- Applications for Payment (G702/G703)
- Transmittal Sheet (G810)
- Project Data (G808)
- Certificates of Substantial Completion (G704)

# 2010: ACD led industry wide effort to update bond forms

## **A310–2010**, Bid Bond

(Formerly A310-1970)

## **A312–2010**, Performance Bond

(Formerly A312-1984)

## **A312–2010**, Payment Bond

(Formerly A312-1984)

- Bond language used by majority of the industry
- Worked with key contractor, surety, owner, legal, organizations
- Updated language
- Revised a few provisions to make more flexible in key circumstances

# G702 and G703

- Project Administration Forms
- Reflect the payment process outlined in A201-2007

## G702 Application and Certificate For Payment Forms

Allows contractor (or subcontractor) to apply for payment and architect to certify payment application to owner.

## G703 Continuation Sheet

Breaks contract sum into portions of work in accordance with a schedule of values prepared by contractor as required by the general conditions.

# A201-2007: General Conditions of Contract for Construction

## Payment Application Process

§ 9.3.1 – Requires Contractor to submit an itemized application for payment to Architect

§ 9.4.1 – Architect required, within 7 days of receipt of application, to issue to Owner a Certificate for Payment for amount determined to be due to Contractor

§ 9.6.1 – The Owner, after Architect has issued a Certificate for Payment, is then required to pay Contractor the certified amount

*While A201 does not require use of any particular form, G702 & G703 effectuate the process identified in A201.*

# How Do I purchase AIA Contract Documents?



Paper

Agreements  
\$9.99 – \$24.99

Forms \$49.99/50



Documents on Demand

\$29.99 /  
Agreement

\$9.99/ Form



Documents on  
Demand

**PLUS**

Agreements  
\$59.99 – \$79.99

Forms \$24.99



Software

Docs 100 starting at  
\$249.99

Docs 300 starting at  
\$399.99

# AIA/ABC Partnership Details

- Partnership launched in November of 2011
- ABC members get a 10% discount off AIA Contract Documents software licenses. *Current Licenses that apply: Docs100, Docs300 and all Unlimited licenses.*
- ABC members get a 10% discount off single-use, fully editable documents available through Documents-on-Demand Plus.
- ABC members will have access to all the tools and education available for AIA Contract Documents at the same rate as AIA members.
- Offer ABC members and ABC leadership the opportunity to add input to help shape the direction of future AIA Contract Documents programs.

*\*The discount does not apply for paper documents or Documents-on-Demand®.*

Learn More at [www.abc.org/aia](http://www.abc.org/aia)

# Questions?





Thank you!