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ABSTRACT:

Careless practices of preparing the Agreement Between the Owner and Contractor and assembling the Documents to be attached to this Agreement could lead to the unintended consequences of having Procurement Requirements included as part of the requirements for Construction.

FILING:

UniFormat™
30 - Procurement Requirements
40 - Contracting Requirements
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00 00 00 - Procurement and Contracting Requirements
00 50 00 - Contracting Forms and Supplements

KEYWORDS:

Table of Contents, Procurement Requirements, Bidding Requirements, Contract Agreement, AIA Contract Documents

REFERENCES:

AIA Document A101™ - 2007 Standard Form of Agreement Between Owner and Contractor
AIA Document A201™ - 2007 General Conditions of the Contract for Construction
MasterFormat® 2011

RESOURCES:

AIA Documents on Demand
AIA Contract Documents, A-Series
MasterFormat® 2011
CSI Project Delivery Practice Guide

How TOC Could Spell SNAFU

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The Problem

Are Procurement Requirements (A.K.A. Bidding Requirements or Sections 00 01 00 through 00 49 99) part of the Contract Requirements? In other words, do the requirements established for Procurement procedures apply after the contract is signed?

Depends!

Typically, we assume that Procurement Requirements do NOT apply once the contract is signed because that is what AIA Document A201™ states and what CSI teaches. It also makes sense. After all, Procurement Requirements are just that: requirements for bidding not for building. Once Bidding is complete, there should be no further use of the Procurement Requirements documents within Division 00.

However, theory and practice can collide at this point.

[AIA Document A201™](#) - 2007 General Conditions of the Contract for Construction § 1.1.1 THE CONTRACT DOCUMENTS states: "**Unless specifically enumerated in the Agreement**, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, etc." (emphasis added)

This seems reasonable until the Architect begins to prepare the final agreement for the project and gets to § 9.1.4 Specifications in the [AIA Document A101™](#) - 2007 Standard

Form of Agreement Between Owner and Contractor.

At this point, rather than inserting a list of specification section numbers and titles, Architects typically type in "See Attached Specifications Table of Contents." (TOC)

If the TOC contains a complete list of Division 00 Sections, the Architect has just unwittingly "enumerated in the Agreement" the very thing that was excluded in AIA A201™. Further confusing matters, by virtue of the very title of § 9.1.4 the Architect has defined the Procurement Requirements as Specifications.

Granted, a little further on in A101™, § 9.1.7.2 Other Documents provides the following instructions:

*"(List here any additional documents that are intended to form part of the Contract Documents. **AIA Document A201™–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are NOT part of the Contract Documents unless enumerated in this Agreement.** They should be listed here only if intended to be part of the Contract Documents.)"* (emphasis added).

"Additional documents" might include Allowances Schedules, Unit Prices Schedules, Minority Business Enterprise Certification Forms, and other such information. (Note that Insurance and Bonds are covered in

Article 10 of A101™.) However, the quote from A101™, § 9.1.7.2 above is just instructions to the document editor and NOT legal requirements. As stated earlier, requirements in the Procurement Requirements should apply ONLY to Bidding (e.g. where and when the bids are to be delivered, where and when they are to be opened, etc.); so even if they are accidentally included as part of the Contract Requirements what could possibly go wrong?

The problem is that often Owners or Construction Managers (CMs) are the ones preparing most, if not all, the Division 00 Documents. Depending on how well they understand the basic relationship of Contract Requirements and Procurement Requirements as defined by AIA Documents, there could be significant problems if Procurement Requirements inadvertently get carried over into the Contract Requirements.

This most often happens in regards to the selection of products and materials, but could also create confusion regarding Allowances, Unit Prices, Alternates, Bonds, and Insurance.

As an example, bidding forms will list all alternates that were intended to be bid. Bidders will complete the forms with a price for each alternate. The Owner may not accept all alternates. Including the bidding forms by reference, automatically includes the prices the contractor offered for the alternates, potentially creating a conflict with the owner's planned scope of the contract.

The Solution

How can this problem be easily addressed?

Three methods might be:

1. To use [MasterFormat®](#) Group titles in the TOC so the Contractor (and an attorney) can easily determine what Sections are included within that Group. Then insert "See Specification Group as identified in the attached Table of Contents" into A101™ in § 9.1.4 and attach the entire TOC.
2. To create 2 separate TOCs; one that lists only Division 00 Documents and a separate TOC for all other sections. Then insert "See Attached Specifications Table of Contents" into A101™ in § 9.1.4 and attach the correct TOC.
3. To simply insert the list of specifications into § 9.1.4 of A101™ and do not attach a TOC. This technique only works if using [AIA's electronic documents](#). However, because this is proprietary software that most Architects use infrequently, it is simply easier to staple a TOC to the physical document. However, because this is proprietary software that most Architects use infrequently, it is simply easier to staple a TOC to the physical document.

Each of these processes would allow Architects to continue a common practice and be assured no problems would crop up during construction because of some misplaced or conflicting requirement occurring in the Procurement Requirements. Of course, it then hinges on making sure that (after all the Addenda have been issued) the correct TOC is attached!

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PROCUREMENT AND CONTRACTING REQUIREMENTS GROUP

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