

Comment: Because both the “thereafter” language and the reference to §9.10.3 of the A201™–2007 (which addresses only matters after Substantial Completion) were deleted, a Contractor could argue that this new language allows recovery for any material delays at any time in the Project—and not limited to those after Substantial Completion. An Owner should consider the potential ramifications of this new change to the 2017 forms when negotiating the contract terms.

Interest on Unpaid Balances

Section 5.3 in A101™–2017 and §12.3 in A102™–2017 and A103™–2017 now provide that payments due and unpaid under the contract will bear interest from the date the payment is due at a rate that is agreed on by the parties. If the parties do not insert a rate into the contract, then statutory interest in the jurisdiction of the project will be the rate at which any unpaid sums under the contract will accrue interest.

Termination Fees

Section 7.1.1 in A101™–2017 and §14.1.3 in A102™–2017 and A103™–2017 eliminate the Contractor’s right to recover reasonable overhead and profit when an owner terminates for convenience. Instead, the agreements now provide for a negotiated termination fee.

Changes to Only A101™ and A102™

Contract Time

In the 2017 editions of A101™ and A102™, the Contract Time starts on the commencement of the Work, not from the “date of commencement” as in the 2007 editions. A101™–2017 §3.2; A102™–2017 §4.2.

Comment: If the construction schedule and the Contract Time are dependent on timely performance of preconstruction or value engineering services by the Contractor before the actual start of Work, this language will require revision.

Notice

The 2017 editions of A101™ and A102™ now allow for notice via electronic transmission per the new notice provisions of §1.6 of A201™–2017 (the General Conditions of the Contract for Construction). A101™–2017 §8.6; A102™–2017 §15.6. Note that A201™–2017 §1.6.2 continues the requirement in the 2007 edition that claims must still be made in writing via certified mail or courier with proof of delivery.

Changes to Only A102™ and A103™

Owner’s Right to Select Subcontractors and Suppliers

Section 10.1 of A102™–2017 and A103™–2017 provides that the Owner may object to the use of any subcontractor or supplier. Section 10.1.1 of A102™–2017 further provides that when a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submit-

ted a bid that conforms to the requirements of the contract documents without reservations or exceptions, but the Owner requires another bid to be accepted, then the Contractor may require issuance of a change order to adjust the guaranteed maximum price by the difference between the bid of the person or entity recommended by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

Off-Site Personnel Costs

Section 7.2.2.1 of A102™–2017 and A103™–2017 clarifies what is to be included in the cost of off-site personnel working on a project. Both editions state that the wages or salaries of supervisory and administrative personnel when performing work off-site may be compensated, but only for that portion of time required for the Work and limited to the personnel and activities that are agreed to at the time of entering into the contract.

Comment: The new editions prompt Owners and Contractors to discuss what off-site work will be compensated. This clarification and creation of this negotiated term should help limit disputes between Owners and Contractors regarding compensation for off-site work.

Labor Rates

Labor rates will now remain unchanged throughout the duration of the Agreement unless changed through a Modification of the Agreement. A102™–2017 and A103™–2017 §7.2.5.

Related Party Transactions

In §7.8, A102™–2017 and A103™–2017 have revised the definition of a “related party” to include any other entity having “common ownership” or sharing “common management” with the Contractor, as well as any person, or the immediate family member of any person, who has the right to control the business or affairs of the Contractor. The revisions also now require that any approval of a related party transaction by an Owner be in writing.

Comment: Provisions regarding “related party” transactions were added in the 2007 editions to address situations in which the Contractor conducts business with (or through) related parties, then charges the costs of that transaction to the Owner as if it were an arm’s-length deal. The Contractor must notify the Owner of the nature and cost of the contemplated transaction as well as the identity of the related party. The Owner has the right to disapprove the transaction and, if so, the Contractor will have to procure the work, materials, or services from some other entity. The 2017 revision broadens the definition of “related party” to include more indirect relationships.

Progress Payments

The process and calculation of progress payments have been completely rewritten. While the underlying principles are the same, the new provisions contained in Article 12 of