

2007 AIA Contract Documents

Overview of AIA Contract Documents

- History and value
- Mission, requirements, and goals
- Document creation
- 1997/2007 key issues
- Integrated Project Delivery
- Resources

History

- Standard form documents since 1888
- Uniform Contract
- Always a consensus process
- First General Conditions 1911
- First Owner-Architect agreement 1917
- Now, over 100 agreements and forms

Document Creation

- Documents Committee and AIA staff
- 25 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
- Secure endorsements from industry groups

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

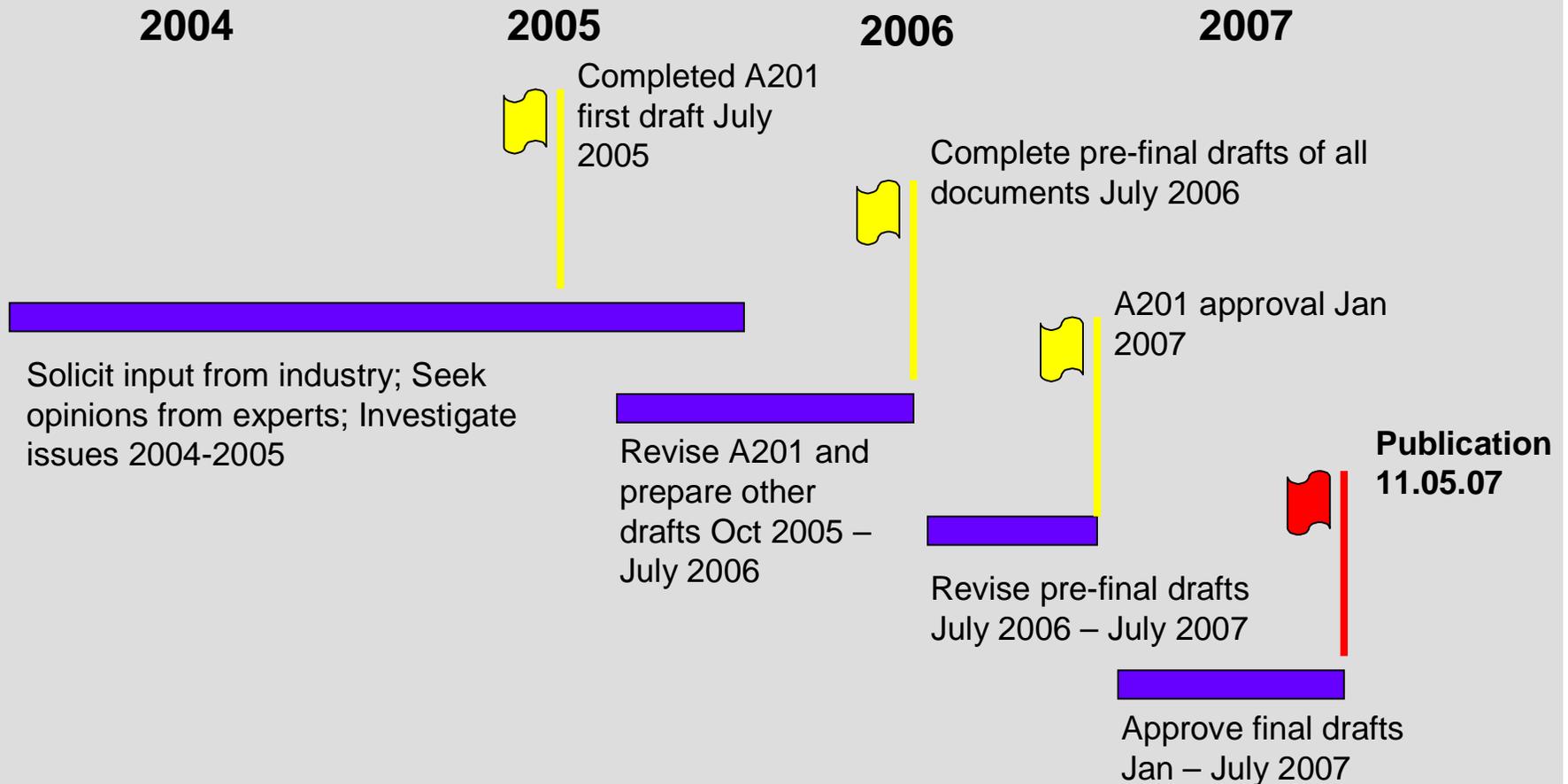
2007 Revision Process

- Documents Committee and AIA Staff
- Comments solicited and reviewed
- Industry organizations
- Insurance advisers
- Drafters strive to balance competing interests

Industry Organizations

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

2007 Publication Time Line



A201–1997 / 2007 Issues

- Architect as initial decision maker
- Arbitration
- Consolidation and Joinder
- Time limit on claims
- Insurance
- Consequential damages
- Owner financial information
- Jobsite safety
- Payments to subcontractors

1997: Architect as Decision Maker

- Condition precedent to mediation
- Owners don't want architects deciding against them
- Contractors allege architects cannot be impartial
- Architects do not like being caught in the middle
- Initial decision keeps project moving

2007: Initial Decision Maker (IDM)

- IDM identified in O/C Agreement
- Architect = default IDM
- IDM's initial decision a condition precedent to mediation
- IDM may decide disputes between parties other than the Owner and Contractor

2007: Initial Decision Maker (IDM)

- The initial decision shall be final and binding, subject to mediation
- Parties may demand that the other party request mediation within 30 days or waive further right

1997: Mandatory Arbitration

- Mandatory arbitration included in AIA documents since 1888
- Mediation added as condition precedent in A201–1997
- Arbitration often deleted from AIA documents
- AAA is not, but is thought to be, mandatory

2007: Arbitration is an option

- Mediation remains a condition precedent
- Arbitration is an option that has to be selected
- Litigation is the dispute resolution default
- AAA rules are the default
 - AAA rules require AAA case management
 - Redrafting clarifies that AAA is optional

2007: 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*)

1997: Limits on Consolidation/Joinder

- Joinder of architect or consolidation of arbitration w/architect without architect's consent prohibited
- Architect protected from arbitration when it may not be liable
- Concern re: application of standard of care
- Non-joinder potentially forces sequential arbitrations = inefficient

2007: Prohibitions removed

- The owner and contractor may consolidate arbitrations, if conditions met
- Other arbitrations can be consolidated at the election of the party whose arbitration is consolidated
- Parties may be joined with consent

1997: Time limit on claims

- Inconsistency between O/C and O/A disputes:
 - A201 has a three-phased commencement of limitation period
 - B141 limitations period begins to run no later than date of architect's substantial performance
- Owners say unfair restriction — should rely on state law

2007: Time limit on claims

- All claims must be filed in accordance with state law, but not more than 10 years from the date of Substantial Completion
- Parties waive claims not commenced in accordance with provision
- B101 limitation mirrors A201–2007

1997: Insurance

- Project Management Protective Liability
- Contractor's CGL
 - Operations and completed operations
 - No “additional insured” status for owner and architect
- 3.18 Indemnity coverage

2007: Insurance

- No PMPL
- Contractor's CGL to include:
 - Owner, architect and architect's consultants as additional insureds for claims arising from the contractor's negligent acts or omissions during operations
- 3.18 Indemnity coverage

1997: Consequential Damages

- Non-direct damages: extended home office overhead, lost rents, etc.
- Mutual consequential damages waiver added in 1997
- Owners find the waiver unfair although it is mutual
- Protects contractors from liability they can't control

2007: Waiver remains

- Provides benefit to both owner and contractor: prevents runaway claims
- Parallel clauses important: similar clause in O/A and A/C agreements
- Does not preclude award of liquidated damages

1997: Owner Financial Information

- Prior to commencement of the Work, and anytime thereafter, contractor had unrestricted right to request that the owner provide reasonable evidence that owner had made financial arrangements to fulfill the owner's obligations under the contract.
- Furnishing of such evidence was a condition precedent to commencement or continuation of the Work.

2007: Owner Financing Information

- Prior to commencement of the Work, contractor still has unrestricted right to request reasonable evidence that owner has made financial arrangements to fulfill the owner's obligations.

2007: Owner Financing Information

- After commencement of the Work, contractor may only request such evidence if:
 - (1) The owner fails to make payments to the contractor as the Contract Documents require;
 - (2) A change in the work materially changes the Contract sum; or
 - (3) The Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due.
- Furnishing such evidence remains a condition precedent to commencement or continuation of the work.

1997: Jobsite Safety

- If contractor felt Contract Documents gave specific instructions concerning means, methods, techniques, sequences or procedures, and that those instructions may not be safe, contractor obligated to provide written notice to the owner and architect.
- If contractor was instructed to proceed with the required means, methods, sequences or procedures, owner solely responsible for any resulting loss or damage.

2007: Jobsite Safety

- Contractor remains responsible for jobsite safety, and must provide written notice to owner and architect if Contract Documents give specific instructions concerning means, methods, techniques, sequences or procedures, and that those instructions may not be safe.
- If contractor is instructed to proceed with the required means, methods, sequences or procedures, owner solely responsible for any loss or damage arising solely from those owner-required means, methods, techniques, sequences or procedures.

1997: Payments to Subcontractors

- No joint checks provision
- No provision giving owner the express right to obtain information concerning contractor payments to subcontractors.

2007: Payments to Subcontractors

- The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for such Work.
- If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid.

2007: Transmission of Digital Data

§ 1.6: If the parties intend to transmit IOS or other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

2007: Digital Practice

- Two new documents this year:
 - Digital Data Protocol Exhibit (E201)
 - Attaches to any agreement for construction or services
 - Established project protocols for data transfer
 - Relies on license in attached agreement
 - Digital Data Licensing Agreement (C106)
- Integrated practice agreements: 2008

E201–2007 Digital Data Protocol Exhibit

- Attaches to any agreement for design services or construction
- Establishes protocols for the transfer and use of digital data on a project
- To be attached to O/A, O/C and any other downstream agreement
- Takes priority over underlying agreement

ARTICLE 3 PROJECT PROTOCOL TABLE

§ 3.1 The parties agree to comply with the data formats, transmission methods and permitted uses set forth in the Project Protocol Table below when transmitting or using Digital Data on the Project.

(Complete the Project Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting or modifying the listed Digital Data as necessary. Use Section 3.2 Project Protocol Table Definitions to define abbreviations placed, and to record notes indicated, in the Project Protocol Table.)

Digital Data	Data Format	Transmitting Party	Transmission Method	Receiving Party	Permitted Uses	Notes (Enter #)
§ 3.1. Structural Drawings and Calculations						
Analytical Design data from STAAD	Pro-Stl	S	CD	SF	I	
Drawings	RVT	S	DVD	SF	M	
Drawings – Sheet Files	DWF	S	DVD	SF	R	
§ 3.2 Structural Shop Drawings						
Drawings	RVT	SF	DVD	S	I	1
Drawings – Sheet Files	DWF	SF	DVD	S	R	1

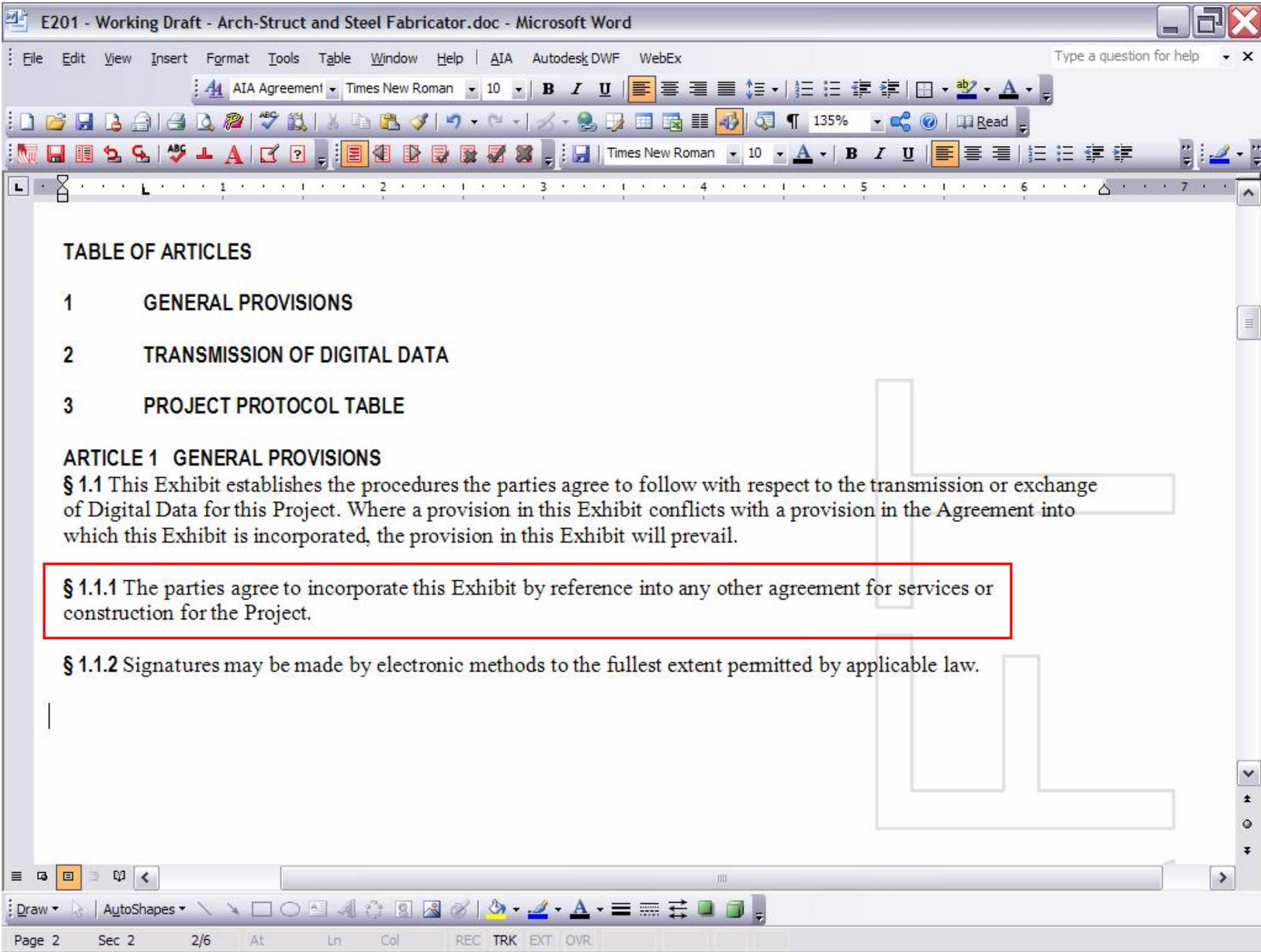


TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION OF DIGITAL DATA**
- 3 PROJECT PROTOCOL TABLE**

ARTICLE 1 GENERAL PROVISIONS

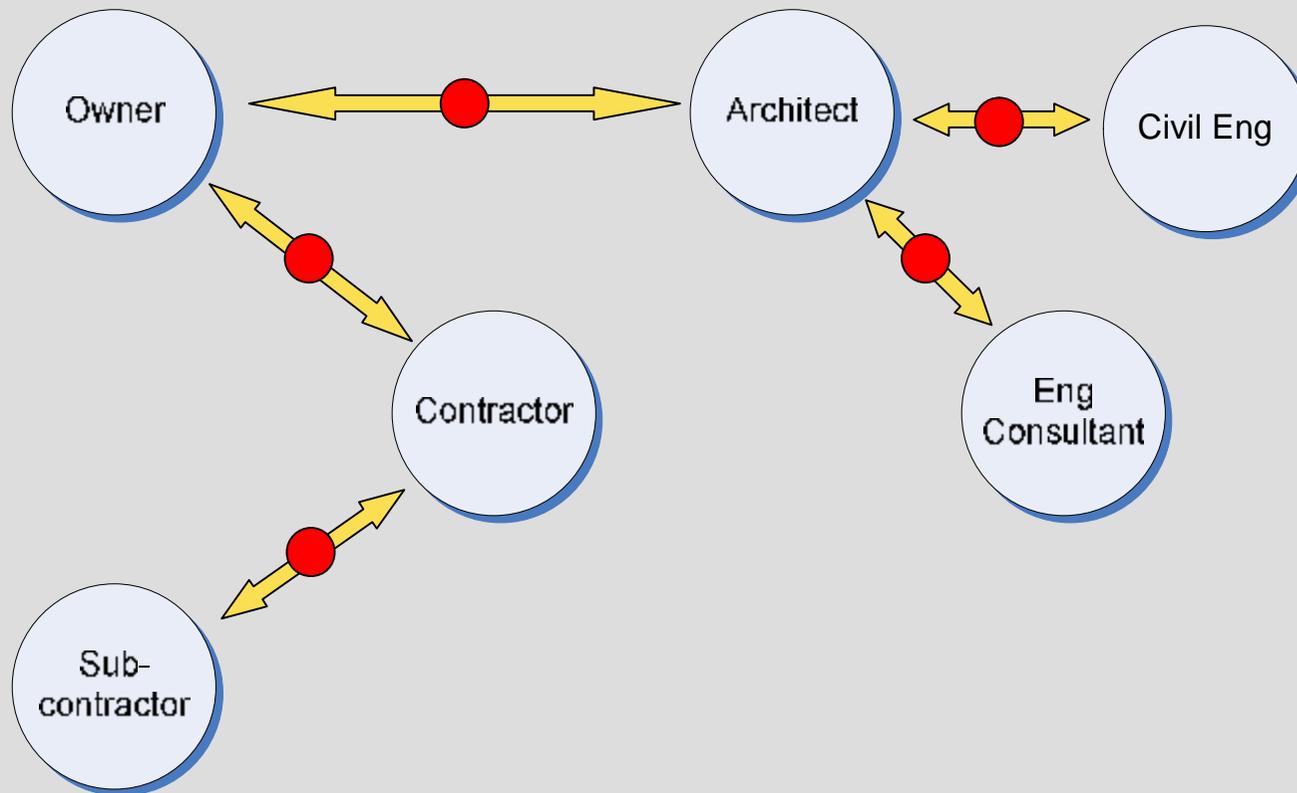
§ 1.1 This Exhibit establishes the procedures the parties agree to follow with respect to the transmission or exchange of Digital Data for this Project. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

§ 1.1.2 Signatures may be made by electronic methods to the fullest extent permitted by applicable law.

How to Use E201–2007

Attaches as an Exhibit to Multiple Contracts



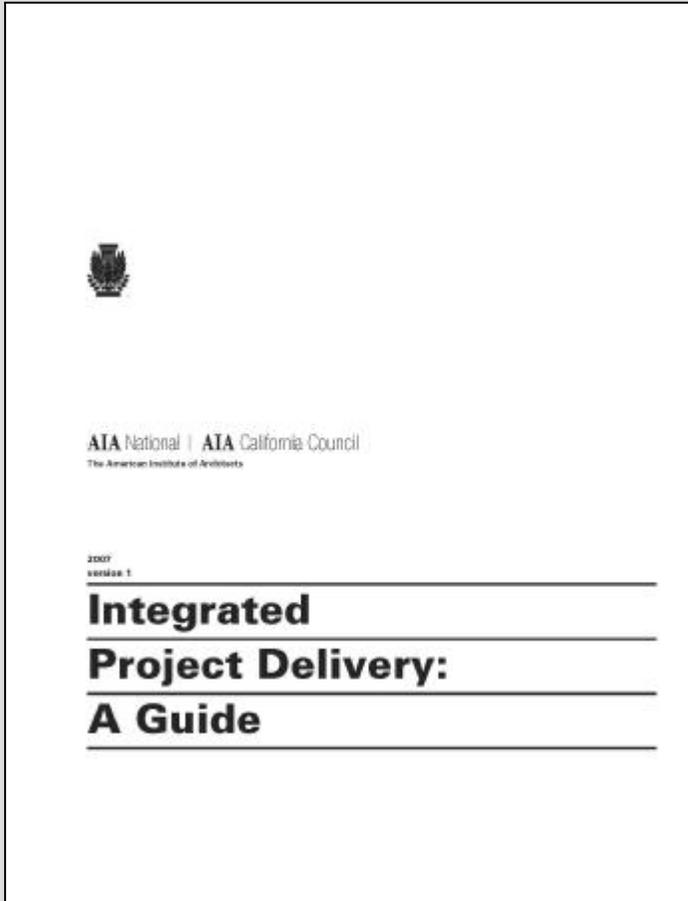
Integrated Project Delivery

- A process for working together
- BIM is a technology
- BIM ≠ Integrated practice
- Risk sharing v. risk allocation model
- AIA support of Integrated Project Delivery
 - Integrated Project Delivery Guide
 - Integrated Project Delivery Agreements

Integrated Project Delivery Defined

- Integrated Project Delivery (IPD) is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction.

IPD Guide

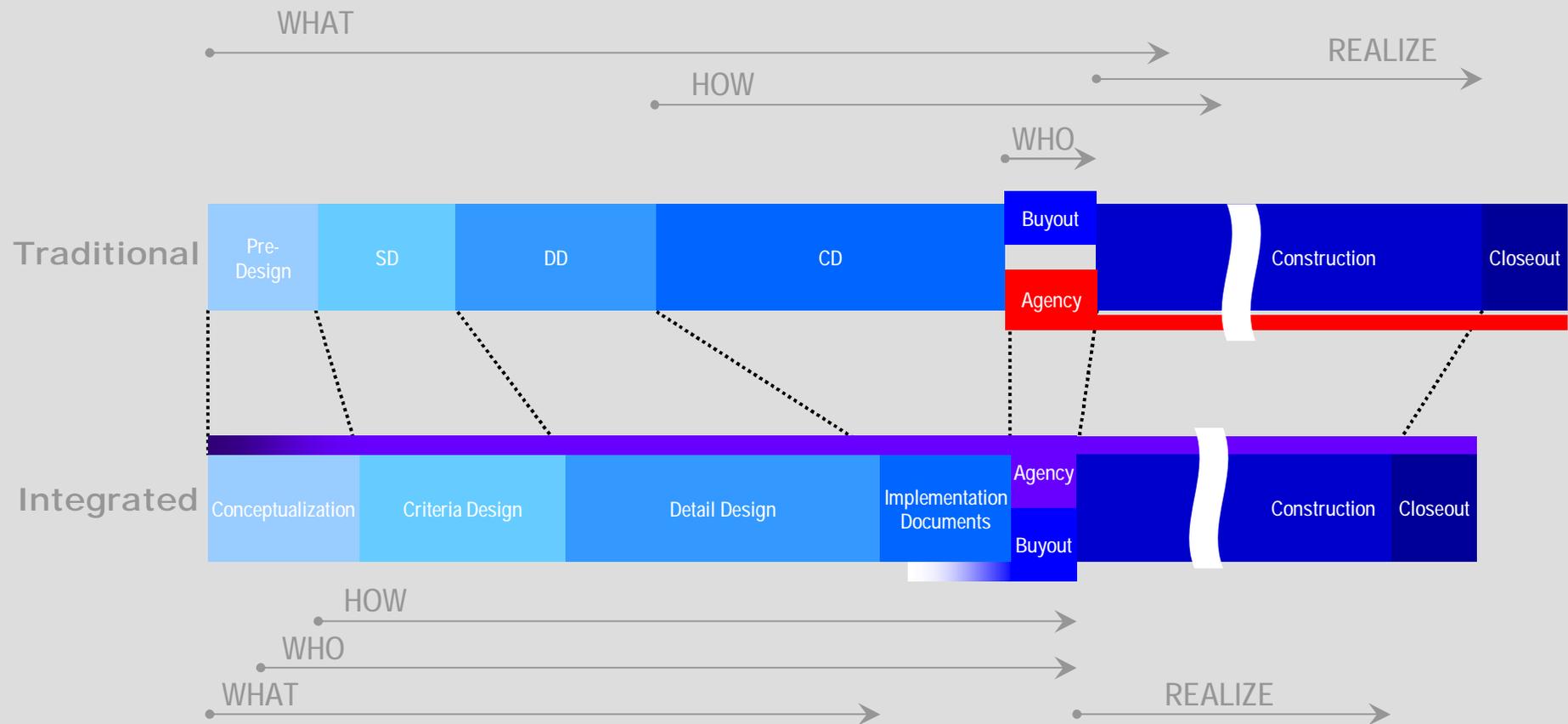


- Jointly drafted by AIA National and AIA California Council
- Sets forth broad principles relating to Integrated Project Delivery
- Describes how to set up and deliver an integrated project
- Evaluates how existing delivery models can be improved by applying the principles of integrated practice

IPD Principles

- Mutual respect and trust
- Mutual benefit and reward
- Collaborative innovation and decision-making
- Early involvement of key participants
- Early goal definition
- Intensified planning
- Open communication
- Appropriate technology
- Organization and leadership

Integrated Process Comparison



IPD: AIA Contract Documents

- AIA Contract Documents build off the principles set forth in the IPD Guide
- AIA is developing two new Contract Documents focusing on IPD
 - Single purpose entity
 - Construction management model

Resources

- Free for download at www.aiacontractdocuments.org (linked at www.aia.org):
 - Synopses
 - A201 and B101 Commentaries
 - Comparatives to 1997
- DocInfo: docinfo@aia.org, or 202-626-7526, 8:30 am to 5:00 pm Eastern, Mon.–Fri.
 - DocInfo responds to calls and e-mails the same day
- NBBJ Integrated Delivery contract template www.nbbj.com/access/IntDelDraftNBBJ.doc