

Legal Brief



Understanding the Pros and Cons of Standard Form Construction Contracts

Construction projects, whether a simple office remodel or a multimillion-dollar plant expansion, can be one of the more challenging projects undertaken by any business entity. A properly drafted construction contract can be key to a successful project by establishing the expectations, rights and responsibilities of the owner, contractor and other parties involved in a modern construction project. Given the vital role a good contract can play in a successful construction project, it is important to put in place a contract that meets the needs of your specific project. In many instances, parties rely on standard form contracts. If you are considering using a standard form construction contract, it is important to know the pros and cons of doing so.

There are numerous standard form construction contracts available in the marketplace. Most have been developed by trade groups and organizations whose members play a significant role in the construction business. Among the organizations whose standard form construction contracts are widely used are the American Institute of Architects (AIA), the Engineers Joint Contract Documents Committee (EJCDC), and the Associated General Contractors of America (AGC). Each organization has developed a series of contract documents addressing different types of construction projects, the various party relationships that may exist on a project (i.e., contractor/subcontractor, architect/owner, etc.) and certain project tasks (i.e., pay applications, lien forms, etc.).

Standard form construction contracts have several advantages. First, because the documents are widely used in the industry, the contract terms are generally well understood by parties

involved in construction, which hopefully results in fewer misunderstandings on the job. Unlike contracts drafted from scratch that may fail to address important issues, the form contracts are generally thorough and cover virtually any issue that is likely to arise in a construction project. Because standard form contracts have been used over a period of time, a body of case law has developed addressing the specific contract terms and clauses used in these types of contracts so that when issues arise, the parties can look to prior decisions to see how certain key provisions have been interpreted. Finally, standard form contracts are easily obtained at a relatively low cost.

Despite the advantages of standard form construction contracts, they don't fit all projects. Even where they are an appropriate starting point for your project, the contract terms may need to be modified to fit your specific circumstances. In considering whether a standard form contract is appropriate, and which one to use, you should keep in mind that because they have been developed by trade groups, the contract terms can, in subtle and not so subtle ways, favor the membership of that trade organization. For instance, the AIA documents are widely used and, in general, are well-balanced documents. However, the AIA contract documents provide a significant project role for the project architect, which may or may not fit your project delivery system. Similarly, those contracts created by the EJCDC provide a significant role for a project engineer. The AGC, in conjunction with other organizations, has developed a series of contracts, known as ConsensusDocs, which it contends are well balanced and don't favor one particular party.

If you chose to use a standard form construction contract for your project, it is still wise to have that contract reviewed by an attorney or other professional. A professional who is familiar with this type of contract, as well as construction practices, can determine what contract modifications may be necessary for your particular project. Given the propensity for construction projects to result in problems such as cost overruns, schedule delays and payment disputes, it is important that your contract protect your interests. Overall, a properly tailored standard form construction contract is the best way to ensure that you get the end result you want and any disputes are resolved in a fair and appropriate manner.

For more information on standard form construction contracts, contact Steven Beckman at MacDonald, Illig, Jones & Britton LLP at 814/870-7610 or sbeckman@mijb.com.

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