

# ConsensusDOCS Guidebook



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by

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## **Introduction to the ConsensusDOCS Guidebook**

ConsensusDOCS is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The 21 participating associations represent Designers, Owners, Contractors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDOCS. If you are looking for documents that are pro-Owner or pro-Contractor, you should not use these documents. ConsensusDOCS contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control the risk. The practices articulated in the documents are forward-thinking, and may not always represent the status quo, but rather a better path forward. The goal of the multidisciplinary drafters was to create documents that best place the Parties to a construction contract in a position to complete a project on time and on budget with the highest possibility of avoiding claims.

By starting with better standard documents that possess unprecedented buy-in, you reduce your transaction time and costs in reaching a final Agreement. Many “fill-in-the-blanks” are intended to lead to productive discussions about how particular risks should be allocated on specific projects before a contract is finalized. Also, the ConsensusDOCS catalog includes complete “families” of documents for each project delivery method that provide a coordinated set of Agreements and complimentary administrative forms. There also are short form Agreements that address the Owner-Contractor (205), the Owner-Design Professional (245), and the Contractor-Subcontractor contractual relationships in a more abbreviated manner than do the standard Agreements (ConsensusDOCS 200, 240, and 750 respectively).

In this Guidebook you will find comments by individual associations regarding ConsensusDOCS 200.1. The overview sections highlight issues and innovative features of the documents generally. Association comments are expressions by an association to its association membership. These comments highlight provisions or alert their membership to consider possible project-specific modifications to a consensus standard Agreement or form. ConsensusDOCS contracts covered in the initial release of the complete Guidebook (others will be added later) include the 200; 200.1; 200.2; 240; 300; 410; 750.

# **Comments and Recommendations regarding ConsensusDOCS 200.1\***

## **Potentially Time and Price-Impacted Materials**

### **Overview**

The ConsensusDOCS 200.1 Potentially Time and Price-Impacted Materials Amendment is a standardized, three-page Amendment that provides an Owner and Contractor a baseline price and calculation method for potential adjustments to material prices. When material price fluctuations are a concern, the Amendment provides a sensible framework for Owners and Contractors to protect themselves against construction material prices volatility. Only commodities specifically identified in Schedule A can potentially be adjusted up or down, and Parties may limit the amount of price adjustment. Moreover, appropriate documentation for adjustments is required and do not include overhead and profit. Amendment A also addresses time extensions in the event of a project delay caused by scarcity or delivery delay.

Parties should take the following issues into consideration. The Amendment is intended to be completed and executed contemporaneously with the construction contract. Because the Amendment is intended to be flexible and to cover many different kinds of construction materials, calculation methods are merely suggested (established market or catalog prices; actual material costs; material cost indices; or other mutually agreed upon method) and no single method is deemed to be the default method. The Parties should agree upon a baseline price and adjustment method. This amendment is a tool to use in the negotiations, but it should be modified by the Parties to reflect the project circumstances.

If the document is used in the Owner-Contractor Agreement, then the document should be used in the subcontract Agreements. This document can also be used in other Agreements such as the ConsensusDOCS 410 Design-Build or the ConsensusDOCS 500 Construction Management At-Risk Agreements.

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\* This publication is designed to provide information in regard to the subject matter covered. It is published with the understanding that the publisher, endorsers of ConsensusDOCS and contributors to this Guidebook are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional advice is required, the services of a competent professional person should be sought.

—From the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations

## **Comments from AGC for ConsensusDOCS 200.1:**

(Additional comments on this document can be found on AGC's website at [www.agc.org/contracts](http://www.agc.org/contracts))

General Contractors should advocate for the use of this amendment when material price fluctuations are a concern. This innovative contracting tool is designed to eliminate a contingency premium in a Contractor's bid. Another contracting alternative to the 200.1 that assists in eliminating materials price contingency is for an Owner to pre-purchase materials.

Decreases in Price (Section 3.1): Contractors should be aware that this balanced document also carries the possibility that prices fall, and would thereby decrease payment.

Price Increase Limit (Section 3.3): If this fill-in-the blank section is mutually agreed upon by the Parties, then the amount of decrease or increase is capped. However, doing so eliminates some of the benefit of a Contractor eliminating contingency in submitted bid amounts.