

**Construction Alliance
Meeting Minutes
January 15, 2021**

The meeting was called to order at 7:37 am. In attendance were:

AGC	Denise Hasty, AGC of Missouri	SLCCC	
ACEC/MO	Linda Moen, EFK Moen, LLC	IFMA	
	Joel Weinhold, Geotechnology, Inc.	CSI	Steve Gantner, Conspectus, Inc.
	Dana Halladay, PE	AIA	Todd Jacobs, TRJ

Minutes

Minutes of the July 17, 2020 meeting were approved.

Guidelines under Development

Virtual Plan Rooms (Assigned party no longer part of alliance) – In January, 2019 it was decided that this definition should be developed and added to the glossary, given that the term is utilized in the “Bid and Construction (Contract) Documents” guideline. Due to the assigned drafter no longer being part of the Alliance, the group opted to table this definition, but not to remove this from meeting documents in order that we might easily return to this item.

Updates on Guidelines in Process

Retainage of Payment – At the July meeting the Alliance approved all changes to this guideline but held final approval pending review by an attorney and assigned same task to D. Hasty. During this meeting, the Alliance reviewed the minor additional changes made by the attorney and then approved the document for posting on the website. Changes made are attached.

Safety Considerations – At the July meeting the Alliance approved all changes to this guideline but held final approval pending review by AGCMO Vice President of Safety and assigned same task to D. Hasty. During this meeting, the Alliance reviewed the changes suggested then approved the document for posting on the website. Changes made are attached.

Review of Existing Guidelines

Security & Background Checks (issued 2013) – Members made edits to the existing guidelines but asked D. Hasty to have an attorney review the document prior to the next meeting. Changes made are attached.

Submittals (Revised 2013) – Members immediately realized that updating this guideline required a major overhaul. S. Gantner volunteered to re-work this guideline and return at a subsequent meeting with suggested changes.

Temporary Facilities and Controls (Revised 2013) – Several edits were suggested, but after discussion, the Alliance agreed that time didn’t allow for complete editing but that, for the most part, this guideline required more compilation of content than editing of content; too many bullet points that could have simply been made into a few sentences. S. Gantner volunteered to draft changes and return at a subsequent meeting with suggestions. A copy of the changes made thus far is attached.

The meeting adjourned at 8:51 AM.

RETAINAGE OF PAYMENT

When retainage is used, the objectives of the Owner and the impact on contractors should be properly balanced to achieve project objectives within the constraints of state statutes.

Retainage of payment (or more commonly referred to as retention of payment or simply retention) is the practice of withholding a portion of the payment due to a contractor. Retainage can be an effective tool for Owners to obtain contract compliance. For contractors and subcontractors, retainage can be a burden on cash flow and profitability. The objectives of the Owner and the impact on the contractor should be properly balanced to achieve the project objectives.

The amount of retainage and any special circumstances that affect the amount of retainage should be clearly defined in the Contract Documents.

Typically, retainage is calculated as a percentage of the payment due, but specific amounts at certain defined events may also be used. In order not to unduly burden subcontractors that perform work early in the project, retainage can be reduced at certain project milestones, such as 50% completion, substantial completion and certificate of occupancy. Other milestones may include phase completion in a multi-phase project, partial occupancy or any other appropriate event. One alternative is a defined schedule of values for deliverables.

Retainage should not be confused with denial of payment for work that does not comply with the contract documents, breaches of contract or for reasons to protect the Owner from claims from third parties.

In Missouri, statutes regulate the use of retainage in both public works contracts and private contracts. The statutes distinguish retainage depending on the purpose. Retainage deducted according to a formula without a specific cause is treated in one manner, while retainage connected with identified completion or correction issues is treated in another manner.

Missouri statutes, [referenced below](#), include the following requirements:

PRIVATE CONTRACTS

1. For retainage not connected with any identified completion or correction issues:
 - a. Retainage may not exceed 10% of any payment due from the Owner where there has been proper performance of the contract.
 - b. Contractors may not withhold retainage from a subcontractor in excess of the retainage held by the Owner for the subcontractor's work that is properly performed.

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- c. Retainage shall be held in trust for the benefit of each contractor, subcontractor and supplier in proportion to the respective interest of each. This retainage may reduce the effectiveness to obtain overall contract compliance when individual subcontractor or sub-subcontractor have low retainage amounts. In these instances, careful selection of critical subcontractors along with well written contracts and bonding requirements may be essential.
- d. The contractor may request an adjustment in retainage held for a subcontractor prior to substantial completion of a project, including payment in full, if it is determined that:

- 1) The subcontractor's performance has been satisfactorily completed, and
- 2) There is no risk to the Owner involving the subcontractor's work.

- e. Contractors may tender acceptable substitute security for a release of retainage in the amount of the security, such as a retainage bond, certificates of deposit, or irrevocable letter of credit. State statutes limit the duration for which letters of credit are valid.

f. Retainage and any substitute security for retainage shall be released within thirty days of substantial completion, which occurs the earlier of the architect or engineer issuing a certificate of substantial completion in accordance with the terms of the contract or the owner accepting the performance of the full contract. The Owner may retain one hundred fifty percent of the cost to complete any remaining items, which are typically the items identified in the punch list. The Contractor shall release subcontractor retainage within seven days of receipt of payment from Owner.

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f.g. 2. At substantial completion, the Owner may retain one hundred fifty percent of the cost to complete any remaining items, which are typically the items identified in the punch list.

PUBLIC WORKS PROJECTS

- 1. For retainage not connected with any identified completion or correction issues:
 - a. Retainage may not exceed 5% of the value of the contract or subcontract unless both the public Owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. Retainage may not exceed 10% of the value of the contract or subcontract.
 - b. The public owner is not required to accept substitute retainage, such as bonds or other security.
 - c. Any amount due, less retainage, shall be paid pursuant to the Missouri or Federal Prompt Pay statutes. At substantial completion, if there are any remaining items identified to be completed as determined by the public Owner's representative, such as would be typically contained in the punch list, an amount equal to two hundred percent of the value of each item shall be withheld until such items are completed.

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~~2.—At substantial completion, if there are any remaining items identified to be completed as determined by the public Owner's representative, such as would be typically contained in the punch list, an amount equal to two hundred percent of the value of each item shall be withheld until such items are completed.~~

References:

AIA A201 General Conditions

[CSI Project Delivery Practice Guide](#)

Supplementary General Conditions

ConsensusDOCS 200, Paragraph 9.2.4

Guidelines for Progress Payment and Project Closeout

Missouri Statutes – Chapter 34, Section 34.057 ([prompt payment](#)) and Section 436.300-436.336

Issued: 2001

Revised: 2005, 2008, 2013

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SAFETY CONSIDERATIONS

Make all members of the construction team aware of safety.

All safety requirements regarding the project are the responsibility of the Contractor(s) and other safety requirements should be requested by the Owner and included in Division 1 of the project specifications to serve as instructions to all Contractors and should be considered when preparing their bids. Owners may implement additional safety measures that exceed state or federal laws, to help reduce liability or exposure. Visitors and guests on the project site are to comply with owner's and contractor's construction safety requirements per job specifications.

- All Prime Contractors and Subcontractors shall comply with the provisions and requirements of the current Occupational Safety and Health Act (OSHA) and/or the Construction Safety Act (whichever is applicable), and with all other applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for safety or persons or property, or to protect them from damage, injury, or loss.
- Each Prime Contractor and Subcontractor shall/should submit/prepare a written safety program that may need to be coordinated with the Owner's special requirements.
- If the Owner employs a Construction Manager, each contractor should submit a site specific written safety program to the CM.
 - If the Owner employs a General Contractor, each subcontractor should submit a written safety program to the GC.
- Each Owner/Project construction site should require a substance-abuse testing program policy to provide an environment which is free from the adverse effects of drugs and alcohol, such as Council of Construction Consumers recommended Substance Abuse Specification.
- Owners, Construction Managers and Contractors should perform due diligence to ensure safety competence. This may include checks of references or Experience Modification Ratings (EMRs).
- Unless the Contract Documents provide otherwise, the Contractor is solely responsible for and has control over construction means, methods, techniques, sequences and procedures, including safety.

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REFERENCES:

Council of Construction Consumers recommended Substance Abuse Specification

AIA201 - General Conditions

CSI Project Delivery Practice Guide

ConsensusDOCS 200, Paragraph 3.11

Construction Safety Guidelines for Owners & Contractors, published by St. Louis Council of

Construction Consumers

Security and Background Check guideline

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SECURITY AND BACKGROUND CHECK

Security and background checks may be required for work at some facilities.

Owners, including government and non-government entities, may require background checks for ~~their employees or contract employees or their contractor's employees and labor forces~~ individuals working on their property or project. The requirements and depth of these background checks will vary depending on the Owner, type of facility, exposure to confidential information, processes, etc.

The Federal Government performs their own background screening for anyone working in their facilities and they engage the help of agencies like the FBI, Homeland Security and Department of Justice. The depth of their background checks is driven by the type of facility being entered, security level and ~~for~~ information those entering the facility are exposed to. Contractors working for, or employees of private or public companies who manufacture on behalf of the Department of Defense ~~or~~ Federal Government may also be subject to the same type of background checks as those entering a U.S. Government facility.

Other government, or Non-Government companies/entities may require background checks. There are services and consortiums available that perform these checks. The information from these checks used to clear workers or employees is kept confidential.

Background checks are typically required within 30 days prior to being assigned to a job site. Acquiring background checks may require a significant amount of time; verify/coordinate -with the Owner.

The following are examples of checks that can be (and are) performed.

A typical ~~non-government~~ background check could include but is not limited to the following:

- Drug Testing
- Criminal Background Check ~~—5 years+~~
- Driving Record
- Employment history and verification
- Social Security number verification (also included under E-verify)
- Finger Printing for FBI review
- Reason for quitting a previous job, or firing
- Federal tax payment delinquencies
- Failure to comply with domestic judgements
- Credit Report
- Reference Check (i.e. neighbors, coworkers, friends, etc.)

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- Verify current and past residences
- Birth Place verification
- Military Record
- —
- Other

A typical government background check could include but is not limited to the following:

- ~~Criminal Background Check — 10 years +~~
- ~~Finger Printing for FBI review~~
- ~~Driving Record~~
- ~~Employment history and verification~~
- ~~Reason for quitting a previous job, or firing~~
- ~~Ever delinquent on Federal Tax payments or any type of Federal debt~~
- ~~Credit Report~~
- ~~Reference Check (i.e. neighbors, coworkers, friends, etc.)~~
- ~~Social Security number verification / Citizenship records~~
- ~~Verify current and past residences~~
- ~~Birth Place verification~~
- ~~Military Record~~
- ~~Other~~

REFERENCES:

EEOC Enforcement Guidance No. 915.002 – Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964

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TEMPORARY FACILITIES AND CONTROLS

Develop comprehensive specifications to make sure the temporary facilities are provided.

When it comes to those items considered temporary facilities and controls, it is important to specify who is responsible for their planning, design, implementation, removal and recycling and costs. Points to consider include the following:

- A comprehensive specification section 01 50 00 ~~00~~— Temporary Facilities in the Project Manual.
- Coordination of services, facilities and controls that will be provided by the Owner and those that will be the responsibility of the Contractor.
- A site plan that shows temporary staging areas, roads, utilities, barricades and similar temporary items. ~~Notes on the site plan can also be used to point out items that are not included as part of the project in order to provide proper coordination and agreement between Contractor and Owner.~~
- Clear assignments that help avoid duplication or omissions in the Work.

The following items should be considered and resolved prior to executing a project agreement:

TEMPORARY UTILITIES

- ~~General:~~ Installation and removal of temporary facilities, and use charges are typically included in Contract Sum. ~~Usage charges by the Owner's construction forces, Architect, and project occupants are typically part of Contract Sum.~~
- ~~Utility charges:~~ Paid by Contractor or Owner depending on project conditions which may include:-
- ~~Temporary electric power and light, connection sources:~~ May be by Owner in existing building projects or by Contractor for new, stand-alone projects.
- ~~Telephone/internet service:~~ Telephone/internet, installation and use charges are typically part of Contract Sum.
- ~~Storm and sanitary sewer and water:~~ May be by Owner in existing building projects or by Contractor for new, stand-alone projects.

TEMPORARY CONSTRUCTION AND SUPPORT FACILITIES

- Field offices and materials storage: By Contractor with Owner approval of extent and location.
- Temporary roads, paving, parking, fencing, etc.: By Contractor and documented on Drawings. Specifications and details should consider use of temporary paving for use as a permanent sub base material.
- Drinking water and sanitary facilities: By Contractor and located with Owner's approval.

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- Temporary project signs: Designed, detailed and located by Owner with coordination with [Architect/Engineer and Contractor](#) to include [Design Team and Contractor](#) information.
- Temporary computer and printer equipment: Included by Contractor in Contract Sum for project. However in some cases where equipment is on a lease basis, equipment may then be turned over to Owner at completion of project.
- Security guard and protection facilities: Contractor and Owner coordinate project services with Owner's existing security resources. Could be an extension of existing security services.
- Moisture protection plan: Contractor includes plan to protect materials and construction from water damage and mold growth.
- Website information updates during construction: Contractor may maintain project website, work with third party website, document printing, or use Owner's existing website.
- Contractor should review all interim life safety measures (ILSM) for temporary exits, fire rated partitions, hot work, noise control, dust control, air filters, and similar Owner and Code mandated provisions. Also Americans with Disabilities Act (ADA) requirements may apply during construction regarding public rights of way and temporary exits from existing buildings.
- Waste management plan: Contractor should coordinate with Owner for waste control measures, waste container placement, and recycling requirements.
- Additional temporary facilities typically by Contractor: Traffic controls and ongoing requirements for cleaning of existing pavement; Dewatering equipment needed to remove water from basements and excavations; Lifts, hoists and temporary stairs; Erosion and sedimentation control; Tree and plant protection; Pest control.
- Termination and removal of temporary facilities and controls including clean up can be a significant expense and scheduling item. Detailed requirements for the return of the site to acceptable condition should be included in the Contract Documents.

USE OF PERMANENT FACILITIES

- Use of permanent HVAC system during construction: If allowed by Owner, protection and cleaning requirements prior to turnover are by Contractor if so stipulated.
- Field offices and materials storage: May be provided by Owner approval of extent and location.
- Use of permanent roads, paving, parking, fencing, etc.: By Contractor and documented on Drawings. Specifications and details should consider use of temporary paving for use as a permanent sub base material.
- Use of elevator(s) during construction: if Owner permits use, define protection, warranty provisions, and parts replacement needed before turnover to Owner.
- Security guard and protection facilities: Contractor and Owner coordinate project services with Owner's existing security resources. Could be an extension of existing security services.
- Website information updates during construction: Contractor may maintain project website, work with third party website, document printing, or use Owner's existing website.

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- Contractor should review all interim life safety measures (ILSM) for temporary exits, fire rated partitions, hot work, noise control, dust control, air filters, and similar Owner and Code mandated provisions. Also Americans with Disabilities Act (ADA) requirements may apply during construction regarding public rights of way and temporary exits from existing buildings.
- Waste management plan: Contractor should coordinate with Owner for waste control measures, waste container placement, and recycling requirements.
- General requirements for tests and inspections: Document in Division 01 of Project Manual and include specific tests in Divisions 02 – 49 of the Project Manual as part of each specification section.
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REFERENCES:

ConsensusDOCS 200: Owner/Contractor Agrmt and General Conditions

AIA 201 - General Conditions, 2007 edition

ARCOM MasterSpec Section 015000, Nov 2007 edition

The PROJECT RESOURCE MANUAL, CSI Manual of Practice, Fifth Edition, 2005

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