

# QUICK UPDATE: 2017 AIA FORMS



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# RETIREMENT DATES FOR 2007 AIA CONTRACT FORMS

## October 31, 2018

B101-2007 (Owner-Architect)

B104-2007 (Owner-Architect Small Scope)

A101-2007 (Owner-Contractor)

A107-2007 (Owner-Contractor Small Project)

A133-2009 (Owner – CM @ Risk) will not update until probably  
2019

# AIA RETIREMENT DATES (CONT'D)

## May 31, 2019

G704-2000 (Certificate of Substantial Completion)

G710-1992 (Architect's Supplemental Instructions)

G714-2007 (Construction Change Directive)

G802-2007 (Additional Services Amendment for A/Es)

## May 31, 2021

A201-2007 (General Conditions) (to accommodate CMR projects)

# DURING THE CONVERSION PROCESS . . .

- Avoid mixing 2007 and 2017 versions on the same project, if possible
- If you must mix, be sure to correct references in the contract, and make sure paragraph provisions line up
- Be sure design professionals are publishing the correct versions in project manuals and solicitations (check paragraphs, not just title and introduction)
- Take a fresh look! Fix what has not been working and don't miss changes in law (applies to home-made contracts, as well)



# BATTEN DOWN THE VENDORS!

Steps to Prepare your District ***Before*** the Emergency  
(Storms, Fires, Mold, Failure)



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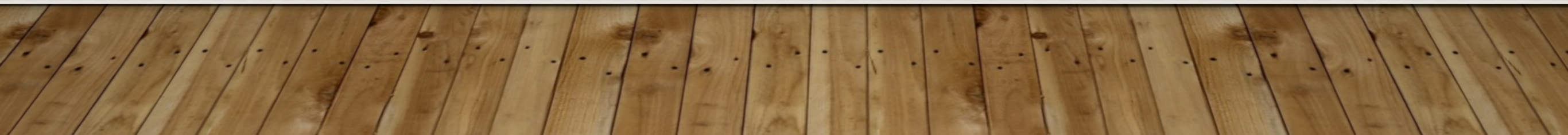
# DURING AND AFTER HARVEY . . .

Boards were meeting to adopt emergency resolutions to suspend procurement

Districts struggled to find vendors quickly

Districts were grappling with newly enacted and/or previously unenforced federal regulations to ensure FEMA reimbursement, including:

- Separating “emergency” from “post-emergency” work
- Separating mitigation work from restoration work
- Attempting to satisfy the requirement to obtain multiple quotes
- Determining whether architects or engineers had been (or needed to be) selected pursuant to an advertised RFQ process
- Ensuring that small, women and minority-owned businesses were given opportunities to compete
- Ensuring that all necessary contract provisions and pricing controls were worked into vendor contracts



# WHAT CAN WE DO DIFFERENTLY?

- Pre-procure restoration, cleanup and debris removal vendors
  - Non-construction services; TEC 44.031
- Pre-procure or pre-arrange repair, remodeling and rehabilitation vendors
  - Construction (JOC) services; TGC 2269.401
  - Line up cooperative JOC vendors (or have a list on-hand)
- Pre-qualify design professionals
- Ensure asset inventories are up to date



# PRESERVING ENTITLEMENT TO FEMA REIMBURSEMENT

- School districts are eligible to receive public assistance reimbursement from FEMA for eligible disaster recovery expenses
- Keys to successfully obtaining reimbursement are:
  - Compliance with procurement requirements under 2 CFR Part 200
  - Compliance with cost principles under 2 CFR Part 200
  - Compliance with “6 Affirmative Steps”
  - Inclusion of required contract provisions
  - FEMA prohibits CM-at-Risk or cost-plus contracts
- Reimbursements are subject to subsequent audit



# NON-CONSTRUCTION VS CONSTRUCTION

- *Clean-up work (which includes dehumidifying, dewatering, debris removal, and removal of wet materials, mold remediation) is not "public works" and does not require JOC procurement method, bonding, prevailing wages*
- Significant building and restoration work are public works that require use of construction procurement methods (including JOC), prevailing wages and bonding
- Payment bonds are required for public works projects that exceed \$25,000 in value
- Performance bonds are required for projects that exceed \$100,000 in value
- Prevailing wage laws still apply to public works contracts even in emergency works situations
- Davis Bacon rates ARE NOT required for projects eligible for FEMA public assistance

# “6 AFFIRMATIVE STEPS”

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor to take the affirmative steps listed above when subcontracting (insert into the contract or certifications)

# FEMA'S POSITION ON "6 AFFIRMATIVE STEPS"

- When soliciting multiple quotes, one of the three must be from a minority-owned or woman-owned business
- Prime contractors must be able to demonstrate that it took "6 affirmative steps" when selecting sub-contractors or sub-consultants
- If using a cooperative vendor, cooperative must be able to demonstrate that it took "6 Affirmative Steps" when procuring and awarding contracts



# PROCUREMENT CATEGORIES (IF SEEKING FEDERAL AID)

- **Micro Purchases** – purchases up to \$10,000
- **Small Purchases** – Over \$10,000 but less than \$50,000
- **State Law Consistent with 2 CFR Part 200** – \$50,000 but less than \$250,000
- **Simplified Acquisition Threshold** – \$250,000 or more



# **RULES FOR MICRO-PURCHASES (UP TO \$10,000)**

- Applies to the acquisition of supplies or services, the “aggregate dollar amount of which” does not exceed \$10,000
- May be awarded without soliciting competitive quotations if nonfederal entity considers the cost “reasonable”
- To the extent practicable, District must distribute micro-purchases equitably among qualified suppliers
- 2 CFR Part 200 Appendix II contract provisions required to be incorporated or signed

# FROM \$10,000 TO LESS THAN \$50,000

- Must obtain price or rate quotes from an “adequate number of qualified sources” (according to FEMA, 3 quotes)
- FEMA expects to see an attempt to obtain a quote from a certified small, women or minority owned firm
- Formal advertising not required
- FEMA advised that entities must document that it considered multiple cooperative options, including a small, women or minority owned firms
- 2 CFR Part 200 Appendix II contract provisions required to be incorporated into contract

# FROM \$50,000 TO LESS THAN \$250,000

- Follow state procurement rules, to the extent consistent with EDGAR
  - TEC 44.031 methods for non-construction
  - TGC 2269 methods for construction
  - Can use 2 CFR Part 200 compliant cooperatives
- 2 CFR Part 200 Appendix II contract certifications required
- Must take the 6 “Affirmative Steps” in procurements
- Architects and engineers need not be procured through an RFQ

# EXPENDITURES AT OR ABOVE \$250,000

## Permissible Procurement Methods:

- Advertised Request for Sealed Bids
- Advertised Request for Competitive Proposals (RFP)
- Qualifications Based Procurements (RFQ), where price is not a factor, may only be used (and must be used) for the procurement of Architectural and Engineering Services (2 CFR 200.320(d)(5))
- Cooperative purchasing if cooperative is 2 CFR Part 200 compliant (cannot be used for A/Es)
- Must take the 6 “Affirmative Steps” in procurements
- 2 CFR Part 200 Appendix II contract certifications required



# HIRING RESTORATION AND DEBRIS REMOVAL VENDORS—CONTRACTUAL PROTECTIONS

- Require vendors to provide either a lump-sum total (if possible) or unit prices or rates for labor and materials, equipment use/rental
- FEMA favors lump-sum contracts over time and material contracts; however, if using a time-and-materials contract, it must include a “not-to-exceed” amount (amend as you go, if needed)
- Require vendors to submit itemized invoices for materials and equipment/rentals, as well as payroll and timesheet backup for workers
- Ensure that choice of law and venue provisions are local
- Include mandatory certifications required under federal procurement laws to ensure FEMA reimbursement (2 CFR Part 200 Appendix II) **TASBO AND LEGAL COUNSEL HAS EXAMPLES**



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