

## **Modular Construction Contracts: Integrating Components and Deliveries, Delays, Lien Challenges, and Risk of Loss**

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WEDNESDAY, FEBRUARY 23, 2022

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Today's faculty features:

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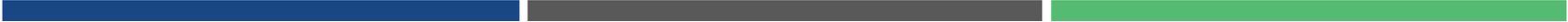
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# MODULAR CONSTRUCTION CONTRACTS

Integrating Components and Deliveries, Delays, Lien Challenges, and Risk of Loss



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Mike's practice focuses on construction litigation. He represents contractors, subcontractors, design professionals, owners, and other parties on both private and public construction projects.

Prior to joining Cohen Seglias, Mike was an attorney at a Philadelphia law firm where he defended owners, contractors, and subcontractors against catastrophic injury and construction defect claims. He also completed a judicial clerkship with New Jersey Superior Court and a judicial internship with the United States Bankruptcy Court.

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Fred has more than 20 years of experience handling complex transactional and litigation construction matters for public, institutional and private project owners, developers, contractors, design professionals, manufacturers, sureties and insurance companies.

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Seth's practice is focused on all aspects of the construction industry. He has represented a wide range of construction industry participants, including general contractors, subcontractors, manufacturers, project owners, and design professionals. He frequently advises clients on bidding issues, contract negotiation and drafting, payment issues, liens and bonds, litigation, arbitration, and dispute resolution. His experience includes many trials and arbitrations concerning construction and professional liability claims.

## OF NOTE

We note that in this presentation we are only providing general information; the information contained in this presentation does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, please contact us directly.

# TODAY'S ADVANCEMENTS IN MODULAR CONSTRUCTION

- Modular construction dates as far back as the mid-1800s, and Sears Roebuck Company sold over 75,000 modular home kits between 1908 and 1940.



**THE WINONA** ▲ ▲  
▲ FIVE OR SIX ROOMS AND BATH

**MODERN HOME  
ALREADY CUT AND FITTED  
No. 12010A No. 12010B**

**THE Winona bungalow is a popular American cottage type home. Broken roof lines, wide overhanging eaves supported with brackets, and full front porch gives it a pleasing appearance from either perspective. The outside walls are planned to be covered with bevel siding which we suggest painting white, light gray or ivory. The best grade of material and carefully prepared plans are needed for you to reproduce this home. They are included in our low cash price.**

**FLOOR PLAN No. 12010A**

**FLOOR PLAN No. 12010B**

**Plan No. 12010A.** The vestibule contains a handy closet for outer wraps. The left side of the plan is devoted to living room (size, 12 ft. 5 in. by 12 ft. 11 in.), dining room and kitchen. The kitchen windows are placed high enough from the floor so sink or table will fit underneath. A plastered arch in the right wall of the dining room leads to small hall which connects the two bedrooms and bath.

**Plan No. 12010B.** This practical plan is 24 ft. wide and 40 ft. in depth and contains six rooms. Living room and dining room with connecting arch have the appearance of one large room, size 12 ft. 5 in. wide and over 26 feet long. Note stairs over cellar stairway, leading to large storage space in the attic. The grade platform is constructed to provide refrigerator space. The right side of the plan is laid out for three bedrooms, each with closet. The bath is planned to accommodate fixtures according to Specification No. 21A or 22B with Venetian mirrored medicine case over the lavatory.

Fill out blank with the type of heating, lighting and plumbing you desire us to include for your complete home. Size 24 ft. by 36 ft.

# TODAY'S ADVANCEMENTS IN MODULAR CONSTRUCTION



**Built in 1971 – Almost 50 years ago!!!**

# DISNEY'S CONTEMPORARY RESORT CONSTRUCTION



# WHAT IS MODULAR CONSTRUCTION?

- Also known as “prefabricated” construction
- Components constructed off-site
- Transported and rapidly assembled on-site by prefabricator or trades.

# GROWING USE OF PREFABRICATION

## National Institute of Building Sciences Off-Site Construction Council (2018)

“More than 87% of construction managers, general contractors, engineers, trade contractors, architects, owners and developers used some form of prefabrication in the past 12 months.”

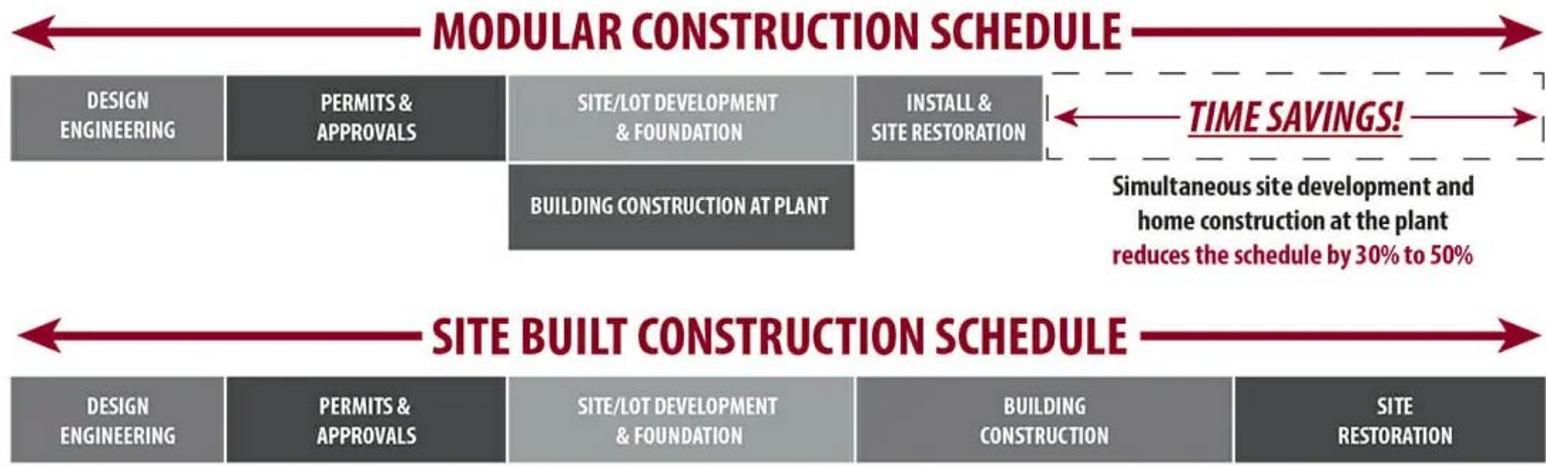
# BYPRODUCT OF CHANGE

Advancements in technology and project delivery methods are finally permanently changing the construction industry!

- These advancements are lending to the spread of modular construction and other prefabrication processes
- Bringing new challenges and potential **pitfalls in the legal landscape**



# REDUCED PROJECT SCHEDULE



Modular Building Institute  
285 Hydraulic Ridge Road, Suite 6  
Charlottesville, Virginia 22901 USA

# WHY **NOT** BUILD MODULAR?

- Can be structurally stronger
- Reduces on-site building construction activity
  - Reduces site disruption and traffic
  - Improve safety
  - Improve security

# TWO TYPES OF MODULAR CONSTRUCTION PROJECTS

## Permanent



## Relocatable



# HIDDEN RISKS OF PREFAB CONTRACTING

- Many issues specific to modular construction:
  - Modular Manufacturer (who is also responsible for the manufactured component's integration into the on-going project) – Subcontractor or Manufacturer?
  - Is the Contract for services or goods (UCC or common law)?
  - Insurance-related issues?
  - Who bears the risk of loss during transport/delivery?

# HIDDEN RISKS OF PREFAB CONTRACTING

- Parties should consider these and other issues at the outset to minimize potential costly disputes and to allocate risk properly
- ConsensusDocs 753 addresses these and many other issues
  - The 753 allows parties to specifically negotiate their own allocation of risk



# CONSENSUSDOCS 753

- First in the nation standard agreement between constructor and prefabricator
- Tailored to help parties deal with issues specific to modular construction
- Parties can accept form provisions or contract around them
- Creates new terms, relationships, and terminology consistent with and helpful to the industry

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER?

- Modular construction transactions may combine both goods and services
- Thus, this hybrid transaction has legal implications concerning both UCC and common law



# COMMON LAW OR UCC

- Related to the Subcontractor/Manufacturer issue is: **Does the Uniform Commercial Code (UCC) Apply?**
- UCC Article 2 applies only to transactions in goods
- UCC defines “goods” as “all things (including specifically manufactured goods) which are movable at the time of identification to the contract for sale . . .,”
- The UCC does not apply to contracts that are purely for services

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER?

- Most courts apply the “Predominant Factor” test
- **Predominant Factor Test:**
  - Goods** → UCC applies → Manufacturer
  - Services** → Common law applies → Subcontractor
- Provision of services is currently the prevailing view
- Therefore, **Subcontractor** predominates

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER?

- Form construction contract documents treat subcontractors and manufacturers very differently
- These distinctions create very different rights and obligations

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER?

- ConsensusDocs 753 addresses the Subcontractor vs. Manufacturer issue by creating a difference between “Fabrication Site” and “Worksite” as well as a more appropriate definition of “Subcontract Work”



# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER

## ConsensusDocs 753, Section 2.2

- 2.2 SUBCONTRACT WORK: Subcontract Work includes labor, materials, equipment, **Components**, and services provided with the Scope of Work Exhibit. . . .

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER

- **“Components”** means “the prefabricated elements constructed at the Fabrication Site prior to installation at the Worksite.”
- **“Fabrication Site”** means “the physical location(s) of the facility or facilities where the Components are constructed as identified in Article 1.”

# MODULAR MANUFACTURER: SUBCONTRACTOR OR MANUFACTURER

- Including the term “Component” in the definition of “Subcontract Work,” makes clear the intent that the modular manufacturer (who is also responsible for the manufactured component’s integration into the on-going project) is a subcontractor under ConsensusDocs 753





# MANAGING THE RISK AND OTHER ISSUES

PERFORMANCE, WARRANTIES, DEFAULT, LIEN RIGHTS,  
STATE LAW ISSUES, INSURANCE AND BONDS



# ACCEPTABLE PERFORMANCE

- Under Common Law, a party to a construction contract does not materially breach if it performs its obligations in “substantial compliance” with the contract terms
- Under UCC – Perfect Tender Rule – if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:
  - a) Reject the whole; or
  - b) Accept the whole; or
  - c) Accept any unit or units and reject the rest

# ACCEPTABLE PERFORMANCE

- ConsensusDocs 753 requires Prefabricator to correct any Work that “is not in conformance with the Subcontract Documents” (Section 3.22)
- But it also requires a “material breach” in order for Prefabricator to be deemed in “default” (Section 10.1)



# FAILURE TO PERFORM- NOW WHAT...

- Notice to Cure Default (Section 10.1.1)
- Constructor's Remedies in event Default Not Cured
  - Use of Prefabricator's Equipment
- Constructor Remedies in event Default Not Cured
- Suspension by Constructor (Section 10.6)
- Termination by Fabricator (Section 10.8)



# WARRANTIES- UNIFORM COMMERCIAL CODE

- The UCC creates both express and implied warranties
- EXPRESS = Express affirmation or promise (§ 2-313)
- **IMPLIED:**
  - **Merchantability (§ 2-314) –**
    - Fit for the ordinary purpose for which such goods are used
  - **Fit for a Particular Purpose (§ 2-315) –**
    - Seller knows of the buyer's particular purpose for purchasing the goods and the buyer is relying on the seller's skill and judgment to furnish suitable goods

# WARRANTIES- CONSENSUSDOCS 753

- Prefabricators should consider contracting as subcontractors, not suppliers, to avoid application of products liability law and the UCC.
- ConsensusDocs 753 defines the applicable warranties
- **Section 3.12:**
  - Prefabricator warrants that materials, Components, and equipment shall be new unless otherwise specified, of good quality, are in conformance with Subcontractor Documents and are without defect.
  - Prefabricator gives same warranty as to the Subcontract Work, including the Components.
  - Warranties begin at Substantial Completion of the Work or a portion of the Work installed at Worksite.

# WARRANTIES- CONSENSUSDOCS 753

## Section 3.12.1:

- Materials, equipment, products or systems incorporated in the Subcontract Work and specified and purchased by Owner or Constructor are covered ONLY by manufacturer's warranty

## Section 3.12.2:

- All other expressed or implied warranties, including Warranty of Merchantability and Warranty of Fitness for a Particular Purpose are EXPRESSLY disclaimed.

# STILL NEED TO BE AWARE OF IMPACT OF STATE LAW

## BE CAREFUL

- Contractors/Prefabricators will still have to be aware of the local legal implications
- May be impacted by state laws in the jurisdiction of an out-of-state manufacturer / subcontractor



# IMPACT OF STATE LAW

## The Governing Law determines:

- Applicable building codes
  - Most states apply International Building Code, as amended in absence of uniform modular construction building code.
  - Some states have amended their building codes to account for modular construction.
- Licensing and permitting
- Safety requirements
- Labor relations
- Applicable statutes of limitation and repose



# IMPACT OF STATE LAW

- ConsensusDocs 753 allows the parties to choose applicable law and choose UCC or Common Law
- Section 12.5 Governing Law:
  - The Law in effect at the location of the Project governs, including the construction, transport, and installation of the Components, BUT...
  - The Parties agree that the law that governs the construction, transport, and installation of the **Components** shall be either Common Law or the UCC to the extent that the Common Law or the UCC conflicts with the law in effect at the location of the Project (and if permitted by law)



# IMPACT OF STATE LAW

- Statutes of Limitation / Repose
  - Out-of-state manufacturer of modules may effect differing statutes of limitation / repose
  - Potential claims based applicable governing law and whether claim arises from written contract, sale of goods under the UCC or a product deficiency.
- OSHA Implications
  - Module manufacturer and project site may be subject to different state plans, or even different industry standards (e.g., 29 CFR 1926 – Construction Industry Standard; 29 CFR 1910- General Industry Standard)
  - OSHA Regulations regarding permitting and training.
- State Licensing Requirements
- Labor-Related Jurisdictional Issues
  - Section 12.4- labor and/or collective bargaining agreements apply to Work performed at Worksite, but not to Work performed at the Fabrication site.
  - conflicts with local collective bargaining agreements, etc.

# IMPACT OF STATE LAW

- *Mech. Contractors Ass'n of New York, Inc. v. New York City Dep't of Bldgs.*
- Mechanical and plumbing contractor associations brought suit - argued that the DOB failed to apply construction code licensing requirements to off-site modular construction operations
- Supreme Court for the State of New York dismissed action
- Judge Rakower stated “[the DOB] did not exceed its mandate in permitting the *manufacture* of these systems”



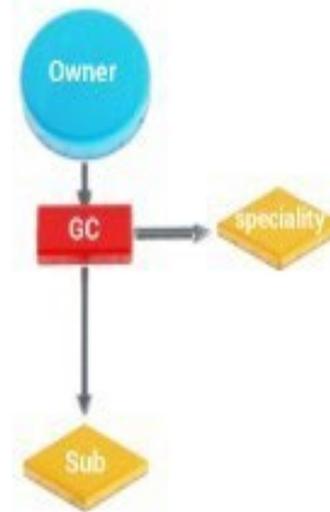
# BOUND BY TERMS OF PRIME CONTRACT?

- UCC, like service contracts, allows those entering into contract (buyers/sellers) to agree to liquidated damages
- Under UCC, parties can also agree to refund of purchase price, or repair / replace non-conforming modules
- UCC also permits the waiver of consequential damages, so long as waiver is not unconscionable
- A Contractor may need to **preserve its rights** through flow-down provisions

# BOUND BY TERMS OF PRIME CONTRACT?

- Modular/Prefab subcontracts must be drafted to account for proper “flow-down” of Prime Contract terms and provisions

Contract  
**Risk**  
Flowdown



# BOUND BY TERMS OF PRIME CONTRACT?

- ConsensusDocs 753 incorporates the prime agreement by reference (Section 2.4)
- ConsensusDocs 753 contains “Flow-Down” provisions that allow the Parties to manage their risks
- Section 5.4.1 Limited Waiver of Consequential Damages
- Parties waive consequential damages except for:
  - a) Any damages that owner is entitled to recover vs. Constructor and
  - b) Losses covered by insurance

# PROTECTION AGAINST MODULAR/PREFAB SUB DEFAULT

- Modular/Prefab subcontractors are highly specialized and difficult to replace
- Contract provisions concerning liquidated damages and bonding requirements must be properly carried down to modular/ prefab subcontracts
- Contingent assignment of agreement to Owner (Section 10.5)



# PROTECTION AGAINST MODULAR/PREFAB SUB DEFAULT

## Section 5.5.1 Liquidated Damages

If Subcontract Documents allow Liquidated Damages or other delay damages that are not addressed in this Agreement, and such damages are assessed, then Constructor can assess them against Prefabricator in proportion to Prefabricator's share of responsibility.



# PROTECTION AGAINST MODULAR/PREFAB SUB DEFAULT

- As noted, Section 5.4.1 allows Prefabricator to flow-down liquidated damages and consequential damages liability to its subcontractors
  - Section 5.4.1 provides that LDs and consequential damages are not waived if they are recoverable by Owner
  - Section 5.4.1 requires Prefabricator to include the same waiver (excluding LDs and consequential damages recoverable by Owner) in its subcontracts

# INSURANCE-RELATED ISSUES

- **Builder's Risk Policy**
  - Whether policy schedule/ coverage includes materials and manufactured products at Fabrication Site.
  - Whether rider necessary for Components stored offsite after having left the Fabrication Site.
- **ConsensusDocs 753, Section 9.2.5 – Builder's Risk**
  - Builder's Risk shall cover damage/losses to Subcontract Work occurring during storage and/or installation at the Worksite.
  - Subcontract Work includes Components.
  - Once Components are stored at the Project, they are to be covered by Builder's Risk.

# INSURANCE-RELATED ISSUES

## ■ OCIP/ CCIP-

- Because most work in modular construction is performed off-site at Fabrication site, Owner- or Contractor-Controlled Insurance Programs may not be feasible since labor performed at worksite does not meet minimum requirements to qualify for those programs.

## ■ Prefabricator's Insurance (Section 9.2.1)

- Insurers must be licensed in states of Fabrication Site and Worksite.
- CGL, Workers Comp, Automobile
- Employers Liability, Excess Liability
- Professional Liability Insurance

# BOND-RELATED ISSUES

## Bonds

- Prefabricator may be required to provide performance and payment bonds (Section 9.3)
- Sureties must be admitted in states of Fabrication Site and Project.
- Bonds must cover all Work, whether it occurs at Fabrication Site or Project.



# LIEN-RELATED ISSUES

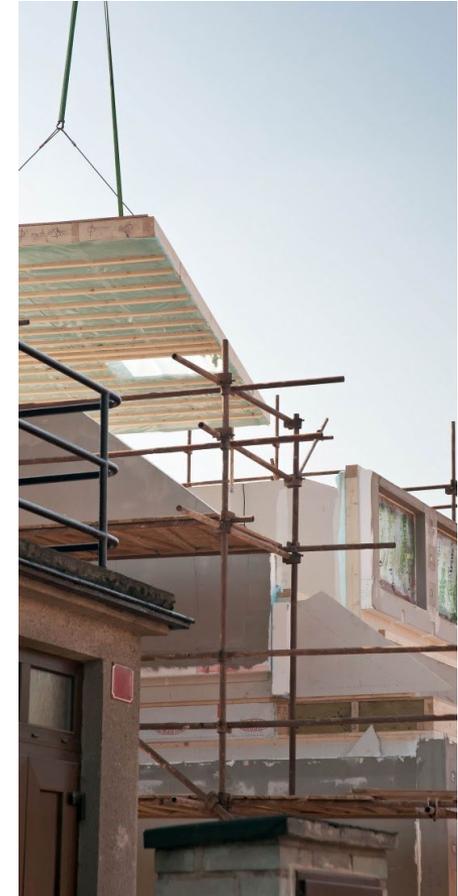
- Whether prefabricators have lien rights for labor performed at Fabricate Site
- Potential lien protection for specifically fabricated materials
- Fact-specific inquiry based on prefabricated structure's connection to the property
- Lien rights for prefabricated construction is still a question mark



# QUALITY ASSURANCE/QUALITY CONTROL

## Who is responsible for QA/QC inspection?

- Is the Owner / General Contractor allowed access during fabrication?
- Right to enter land / possession issues



# QUALITY ASSURANCE/QUALITY CONTROL

## ConsensusDocs 753, Section 3.30 Shipping:

- Constructor must provide Prefabricator a written QA/QC protocol for inspection of Components at the Fabrication Site
- Parties must agree on terms of the protocol before work begins
- Prefabricator cannot release Components to a Carrier until Constructor's Rep confirms that each Component conforms with the Subcontract Documents and satisfies QA/QC protocol

# QUALITY ASSURANCE/QUALITY CONTROL

## ConsensusDocs 753, Section 4.8 Constructor's Right of Inspection

- With 48 hours written notice to, Constructor may enter the Prefabrication Site(s) to inspect the Subcontractor Work
- Prefabricator must provide access to the Constructor to all Subcontract Work, including partially completed Components
- Constructor agrees to execute a Confidentiality Agreement before being provided access

# TRANSPORTATION ISSUES

- Who covers the expense and risk of loss / damage?
- Risk of Loss/Damage:
  - If module manufacturer is considered a **UCC merchant** (i.e. manufacturer selling modules/goods), risk of loss **passes to buyer upon receipt**
  - If module manufacturer is not considered a merchant (i.e. **subcontractor** performing services), risk of loss **passes to buyer on tender of delivery**
- Must be controlled through careful contract drafting!

# TRANSPORTATION ISSUES

## Risk of Loss/Damage (cont'd.)

- **When modules are shipped by carrier (or bailee holds modules to be delivered) the risk of loss passes to the buyer at the moment the seller delivers the goods to the carrier**



# TRANSPORTATION ISSUES

- ConsensusDocs deals with Risk of Loss/Damage during Transportation in Sections 3.15.2 and 3.30
- Sec. 3.15.2 – Damage during transportation:
  - Prefabricator bears the risk
  - Prefabricator shall promptly remedy the damage in compliance with applicable insurance policy and/or contractual terms with a third-party carrier
  - If Prefabricator fails to do so, after 48-hour notice, Constructor may remedy damage and deduct costs not covered by insurance otherwise due to Prefabricator

# QUALITY ASSURANCE/QUALITY CONTROL

## Section 3.30 – Shipping:

- Risk of loss or damage is on Prefabricator until the Components are physically delivered to the Constructor at the Worksite or other authorized destination, unless otherwise agreed to in writing and signed by the Constructor, or if covered by builder's risk insurance



# TRANSPORTATION ISSUES

## Other transportation considerations:

- Time and cost associated with customs and international shipping
- Truck and/or container height/weight limitations
- Storage
- Insurance



# CONSENSUSDOCS 753 – OTHER RISK OF LOSS

## Section 3.15 deals with other Risk of Loss/Damage situations:

- 3.16.1 Damage during prefabrication and/or at Fabrication Site
- 3.16.3 Damage post-delivery where Prefabricator is not the installer
- 3.16.4 Damage post-delivery where Prefabricator is the installer

# CONSENSUSDOCS 753, SECTION 3.16

## Protection during prefabrication/at prefabrication site (Sec. 3.15.1):

- Prefabricator bears risk and will promptly remedy damage in compliance with the conditions of applicable insurance policies
- If Prefabricator fails to do so, after 48-hour notice, Constructor may remedy the damage and deduct costs not covered by insurance otherwise due to Prefabricator

# CONSENSUSDOCS 753, SECTION 3.16

## Post-delivery damage where Prefabricator is NOT the installer (Sec. 3.15.3):

- Constructor bears the risk of damage and shall promptly remedy such damage in compliance with the conditions of any applicable insurance policies



# CONSENSUSDOCS 753, SECTION 3.16

## Post-delivery damage where Prefabricator is the installer (Sec. 3.15.4):

- Prefabricator bears the risk of damage from the time of delivery through the completed installation of the Subcontract Work
- Prefabricator shall promptly remedy such damage in compliance with the conditions of applicable insurance policies
- If Prefabricator fails to do so, after 48-hour notice, Constructor may remedy the damage and deduct costs not covered by insurance otherwise due to Prefabricator

# RISK OF LOSS AT SUBSTANTIAL COMPLETION

## SECTIONS 3.8.1 AND 3.8.2

### Section 8.2.8.1

- Upon substantial completion of the Subcontract Work, Constructor becomes responsible for security and protection of Subcontract Work pending substantial completion of the Project
- But accepting Subcontract Work for purpose of allowing succeeding Work to proceed does not start warranty period

### Section 8.2.8.2

- Partial occupancy by Owner of completed portions of Subcontract Work constitutes substantial completion of that Work and starts the warranty period

# SCOPE ISSUES

- Who performs survey/inspection and acceptance sign-off prior to delivery of modules?
  - ConsensusDocs 753, Section 3.30 (Constructor obligated to perform)
  - ConsensusDocs 753, Section 4.8 (Constructor's inspection rights)
- ConsensusDocs 753, Section 4.5
  - Constructor bears cost for additional off-site storage caused by delay



# EFFECTIVE RISK MANAGEMENT TOOLS

## ■ PRE-CONSTRUCTION

- The Contract
- Bonds/Insurance

## ■ DURING CONSTRUCTION

- Project administration
- Record keeping

## ■ AFTER CONSTRUCTION

- Managing Project Risks Through Dispute Resolution

# PROJECT ADMINISTRATION

- Each project is a small or large business – have a plan for success
- Develop a good understanding of the contract before construction begins
  - Understand notice timing and requirements
  - Understand claims related time frames
  - Understand the ASI and Submittal processes
- Timely submission of notice, COR's
- Document design decisions – Don't make design decisions
- Track all questions in RFI format
- Make sure you have all submittals approved

# PROJECT ADMINISTRATION

- Support your Superintendent
- Daily super reports with pictures are very important.
- These reports are a project diary.
- Superintendents and field people are generally not good administrators. Provide them clerical support to make them efficient.

# RECORD KEEPING

## Need for records in construction has never been greater

- Contract requirements
- Schedule requirements
- Accounting, financial and tax requirements
- Employment and insurance requirements
- Safety and other agency requirements
- Change order and claim requirements

# RECORD KEEPING

## Having a System for Record-Keeping and Following it is NOT Optional

- Public Contracts make record-keeping mandatory
- Failure to have a system in place can result in:
  - Delays in or denials of payment
  - Denials of claims for extra compensation
  - Potential FALSE claims exposure

# RECORD KEEPING

## Estimates/Quotes

- Maintaining Records of the Estimate:
  - Allows for setting an accurate budget for the project, for tracking profit or loss
  - Demonstrates whether items of work were bid “in” or “excluded” out from the contract price with your customer
  - Will permit a clear review if a claim arises to confirm the estimate was reasonable

# RECORD KEEPING

## Base Contract

- Whatever system is used for tracking cost, be certain that it is agreed on by the project team and followed throughout the project until final closeout
- Each item of cost in the original or “base” contract price must be detailed, typically from the estimate, with an original budget and anticipated cost

# RECORD KEEPING

## Labor Cost

- Labor cost MUST be supported by contemporaneous records
- Time sheets (paper or electronic) have to be kept in a logical fashion, consistent for all project employees
- Labor costs allocated across multiple projects must be kept consistent from bid time through contract completion

## Labor Burden

- Almost no way to recover these items on an “actual cost” basis
- Critical to establish a labor burden value (usually a percentage) in advance and then charge that value consistently as cost

# RECORD KEEPING

## Certified Payroll Records

- Know Contract requirements--Failure to keep these records can delay payment, result in denial of claims, and possible debarment of the contractor from future public work
- Possible benefit of supporting claims and also, to defend subcontractor damage claims

# RECORD KEEPING

## Sales Taxes

- State revenue agencies maintain a strong interest in seeing that sales taxes are paid
- Scrutiny is much higher with out of state contractors
- Best practice to itemize sales tax specifically in the contract AND to require that sales tax be specifically listed on each invoice

# RECORD KEEPING

## Insurance

- Be sure to match up insurance charges in the cost system with the amount allowed by contract
- For insurance claims, it is important to develop a system for reporting and tracking such claims, internally and to the carrier(s)
- Builders risk insurance, pollution (if applicable), employment practices liability, professional liability and similar type policies
- Most common of these is builder's risk insurance and, as a contractor, it is critical to know who is carrying the builder's risk

# RECORD KEEPING

## Safety Records

- Develop a system for conducting safety inspections and then maintaining the reports
- “Tool box” meetings and other safety planning should be recorded and kept in the same place. Any difficult actions (heavy load picks, setting of cranes, working in confined spaces, shoring excavations, etc.) should also be recorded.
- Corrective actions required from a safety inspection should be documented as completed

# RECORD KEEPING

## Claims

### Notice and Contract Requirements

- **READ THE CONTRACT, KNOW THE NOTICE AND CLAIM PROVISIONS!!**
- If the contractor does not provide the notice required, the Owner can AND WILL deny claims at a later date whether or not the change or claim has merit

# RECORD KEEPING

## Cost of Changes and Claims

- Managing changes and claims and the cost of the same can be the difference between a profitable job and a loser
- Know your contract method for pricing changes and what it requires for cost documentation

# RECORD KEEPING

- All companies need to have a policy for records retention – what is kept, where it is stored, for how long, and how are documents reviewed for destruction
- General period for project specific records is 3 years or 6 years. Statutes of repose in most states is up to 8 years, that is a better “standard” option.
- Financial and tax records may be required for longer periods of time, and the better practice is to maintain these records for longer periods of time
- Maintain insurance policies and original contracts for long periods of time (ten plus years or indefinitely) – claims can be and are made many years after a project is finished

# RECORD KEEPING

- Once the system is in place, make certain it is being used!
- Develop a periodic system for review of records.

# QUESTIONS?

