

Why School Districts Should Consult With Legal Counsel Before Signing a Standard AIA Contract

Apr 03 2025

Practice Area: Construction Law and Litigation & School Law

Numerous school referenda were approved in the 2025 Spring election this week, and construction is now on the horizon. Let's consider the contracts that will become the foundation of these building projects.

The American Institute of Architects (AIA) provides a comprehensive suite of contracts designed to streamline the creation and management of construction agreements. While these forms are expertly crafted to anticipate challenges in construction projects, they are primarily tailored for commercial use rather than for governmental entities such as school districts. As a result, AIA contracts may not fully address the unique legal and regulatory considerations school districts must navigate when undertaking construction projects. To ensure compliance with state laws and to safeguard their interests, school districts should carefully review and modify these contracts as necessary. Most importantly, school districts should consult their legal counsel before executing any construction or design contract to ensure it aligns with their specific requirements and legal obligations.

It's important to note that any unrevised AIA contract is essentially a base form and represents just the beginning of the drafting process. Created by an association that represents architects, these agreements require careful review and revision by the school district's counsel so that the interests of the owner-district are also incorporated. Representation by counsel during the development of the contract documents contributes toward ensuring a more balanced agreement that protects the district's interests. This is crucial in creating a fair and equitable contractual relationship among the parties.

No standard form can perfectly accommodate every project. Each construction project and each school construction project are unique. A contract that works for one project or district may require modifications to suit the specific needs of another. Thorough review and customization are essential to ensure that AIA construction and design contracts align with the district's wishes, requirements and legal obligations.

AIA construction contracts typically include the architect's agreement, the contractor's contract, and the general conditions, all of which must be consistent with one another. A common mistake is revising one of these agreements without carefully reviewing the other two documents, potentially creating conflicts between provisions.

Revisions to the base agreements might include inserting provisions that address critical steps occurring during a pre-referendum phase of a project. For instance, the parties may agree to add contract terms that reflect the contractor's commitment to provide referendum support services such as contributing to strategy development, research, community engagement, and/or graphic design, copywriting, and editing of referendum materials. Moreover, the construction contract should be modified to require strict adherence to the plans and specifications while granting the district's facility manager the right to observe the work during any phase of construction. The contract should include a warranty ensuring high-quality craftsmanship and materials that meet required standards. Provisions should also be added to minimize disruption to school operations and to enforce compliance with the district's or the school's access policy during construction.

Similarly, the design agreement should clearly outline the school district's expectations for conceptual design, allow the facility manager opportunities to review the design, require the designer to incorporate all legal requirements, and define the designer's responsibility for inspecting the work. Finally, it is up to the school district to establish the insurance requirements in the contracts. AIA documents do not specify coverage amounts, as these figures must be determined based on the specific project needs and on the guidance of the district's insurance broker.

It has been the intention of this update to shed light on some of the reasons why consulting an experienced construction law attorney is invaluable when a district begins the process of contract review and development. While AIA contracts are widely recognized as the industry standard for construction agreements, these agreements should be improved upon to best serve the interests of the school district and to level the playing field between all parties.

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