

# Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

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## The Contract Documents

When forming construction contracts, one must clarify the terms of the work. A common tactic to clarify the specific work or “scope” being performed, is to attach or reference other documents. The full and comprehensive set of documents that form the terms, conditions, and “scope of work” are often called the “Contract Documents.”

In many construction contracts, the “Contract Documents” are defined as the contract itself, plus references to other documents such as the prime contract, and also additional identified documents such as specifications, drawings, plans, supplemental conditions, general conditions, schedules, and other documents. Generally, shop drawings, submittals, and bids are excluded from the definition of Contract Documents.

But in all instances, the contract can be tailored to define and identify which items are part of the Contract Documents, and which items are excluded. Certain considerations should be made when defining the Contract Documents.

**1. Scope of Work.** At a fundamental level, it must be clear what work or services are being performed by the contractor/subcontractor. There are various ways to clarify the scope of work, but a common way is to attach or reference documents. Accordingly, if

referencing separate documents, whether they be specifications, drawings, plans, bids, or specially prepared “scope sheets,” it is important that those documents be specifically identified in the contract itself. Often, if a contract does not specifically reference the separate document, then that separate document is not part of the contract nor the scope of work.

**2. Bid Documents.** Bid documents often include additional terms that the contractor/subcontractor intends to be part of the contract. Such terms may address scope, exclusions, assumptions, contingencies, qualifications, or other additional terms that are often meant to protect the bidder from risk. The best practice to ensure that those terms are part of the contract is to *make them part of the Contract Documents* by specifically referencing and attaching any important bid documents.

**3. Status of Design Documents.** A common issue that leads to litigation is incomplete design or changes in the design. One way to address these issues is to clearly identify in the Contract Documents which design documents are part of the Contract Documents, and whether there are any contingencies, allowances, special pricing, options, exclusions, assumptions, or other special mechanisms to address incomplete or developing design. Depending on the type of project and the terms and language in the Contract Documents, the risk of incomplete design or changes in the design could be borne by either the owner, the contractor, or some other party. A failure to address these issues upfront often leads to disputes later in the project. It is best to identify which design documents are part of the Contract Documents and any special pricing related to any specific design documents.

Reviewing the Contract Documents and clarifying the terms is an important aspect of contract administration and protecting your legal rights. It is also wise to consider seeking advice from your accountant, insurance broker/agent, and legal advisor when reviewing construction contracts.

## The Numbers:

**54.2**

- June 2017 Architectural Billings Index.
- Any score greater than 50 indicates growth.
- This represents five positive monthly growth indexes in a row.

Source(s): AIA Architecture Billings Index, available at <https://www.aia.org/resources/10046-the-architecture-billings-index>.



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