

other digital transmission protocols, they should strike §1.7, add the term “or equivalent,” or insert their own protocols.

### **Evidence of Owner’s Financing**

Proper financing may be an issue, particularly if the Owner is a single-purpose LLC with no assets other than the project site. Under revised §2.2.1, if the Owner fails to provide “reasonable evidence” of project financing on the Contractor’s written request, the Contractor is not obligated to start the Work, and the Contract Time is extended. After commencement of the Work, revised §2.2.2 still obligates the Owner to provide reasonable evidence of financing only if

- The Owner fails to make payments to the Contractor as required;
- The Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due; or
- A change in the Work materially changes the Contract Sum.

Revised §2.2.2 provides that if the Owner fails to provide reasonable evidence of financing within 14 days, the Contractor may immediately stop the Work, or the portion of the Work affected by the change in the Contract Sum, until such reasonable evidence is provided. In such a case, the Contract Time shall be extended, and the Contract Sum increased by the amount of the Contractor’s reasonable costs of shut-down, delay, and start-up, plus interest as provided in the Contract Documents. Revised §2.2.4 provides the Contractor cannot disclose the financial information received from the Owner to the Contractor’s lenders.

The Contractor may stop Work only on the portion of the Work affected by the material change giving rise to the need for evidence of financing. A201™–2017, §2.2.2. It may be unclear what Work is affected by the material change, and thus what portion of the Work can be stopped. In addition, revised §2.2.4 poses the risk that a Contractor may be liable for inadvertently disclosing confidential information by sharing information with its own lender.

### **Alternative Means and Methods**

Former §3.3.1 provided that if the Contractor determined that proposed construction means or methods were unsafe, the Contractor was to provide written notice and stop that portion of the Work and propose alternative means or methods. Revised §3.3.1 still requires the Contractor to give notice and propose alternative means or methods, but does not allow or require the Contractor to stop Work. The Architect is now required to evaluate the proposed alternative means or methods “solely for conformance with the design intent.” Unless the Architect objects, the Contractor shall perform the Work using its alternative means and methods.

Many believe this shifts responsibility from the Architect to the Contractor. The revision also gives rise to an issue if the Contractor’s proposed alternative is contrary to the Con-

tract Documents. For these reasons, the Association of General Contractors of America (AGC) has recommended that Contractors seek to revise this provision.

### **Warranty**

New §3.5.2 mandates that all “material, equipment, or other special warranties required by the Contract documents”

- Be issued in the Owner’s name or be transferable to the Owner; and
- Start when substantial completion is issued for that work, which will be determined by the Architect’s preparation of the Certificate of Substantial Completion for the “Work or designated portion thereof” under §9.8.4.

The requirement that warranties be issued or transferable to the Owner makes clear that the Contractor’s warranties are for the benefit of the Owner. Because warranties start on substantial completion of the Work or portion of the Work, there may be different warranty periods for different portions of the Work. This may require revision of subcontract, purchase order, and warranty forms.

### **Differing Site Conditions**

Revised §3.7.4 reduced the time requirement for a Contractor to give notice of differing site conditions from 21 to 14 days.

### **Contractor’s Construction Schedule**

Former §3.10.1 required the Contractor to provide a schedule “for expeditious and practicable execution of the Work” that did not exceed the time limits contained for the entire Project. Revised §3.10.1 requires the schedule to provide for the “orderly progression of the Work to completion” within the time limit for the entire Project, and also requires the schedule to include

- The date of commencement of the work, scheduled milestone dates, and the date of Substantial Completion;
- An apportionment of Work by construction activity; and
- The time required to complete each portion of Work.

Revised §3.10.1 further provides that the schedule shall be revised as required by the conditions of the Work and Project.

Contractors may wish to revise §3.10.1 to specify that the schedule may be revised at the Contractor’s discretion and/or without prior notice.

### **Contractor’s Reliance on Performance and Design Criteria**

Former §3.12.10.1 provided that the Contractor was not responsible for the adequacy of the performance and design criteria specified in the Contract Documents. Revised §3.12.10.1 deletes that provision, but adds that the Contractor is entitled “to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.”