

Workshop T1

Tuesday, October 30, 1:30–3:00 p.m. and 3:30–5:00 p.m.

***CONTRACT DOCUMENTS—
A COLLABORATIVE APPROACH***

Panelists



Ricardo Aparicio, Esq.
**Contracts Manager
and Counsel**
General Electric Company



James E. Frey
Senior Vice President
Alberici Group, Inc.



Kevin F. Peartree
Partner
Ernstrom & Dreste, LLP

Hot off the press, a new family of contract documents by the name of ConsensusDOCs has the backing of leading construction organizations, including the AGC, ASA, ASC, CURT, COAA, and more. Designed to replace the traditional adversarial project environment with one of trust and collaboration, these documents encourage joint decision making, early resolution of disputes, and elimination of waste. Come find out more about this exciting development in construction contracting.

- Outlines key differences in the ConsensusDOCs contracts compared to other standard contracts.
- Describes the “pièce de résistance” of this family of documents: its unique collaboration agreement.
- Provides insight into the perspective of construction contractors and project owners.

Moderated by



J. William Ernstrom
Vice President
The Walsh Group

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**Ricardo Aparicio, AIA, Esq.
Contracts Manager & Counsel
General Electric Company**

Mr. Aparicio is a panelist for Workshop T1, "Contract Documents—A Collaborative Approach," on Tuesday afternoon. He is In-House Legal Counsel and Contracts Manager with General Electric Company's Corporate Properties and Services Operation. In this role, he is in direct charge of negotiating and executing construction and design agreements for capital projects throughout the United States, Canada, Latin America, Europe, and Asia.

Mr. Aparicio holds multiple degrees and licenses spanning the entire cross-section of the design and construction industry. These include Bachelor of Architecture and Juris Doctor (*Cum Laude*) degrees from the University of Miami, Florida, as well as professional licenses as Architect, General Contractor, Interior Designer, and Attorney in the State of Florida. He is also currently licensed to practice law in the State of Alabama, and during his 20-year-plus career has also held licenses to practice architecture in the states of Georgia, South Carolina, North Carolina, Alabama, and Texas. He is also certified as a Construction Law specialist in the State of Florida.

He is a member of the American Institute of Architects and the American Bar Association's Forum on the Construction Industry. He is currently a member of the Board of Trustees and President of the Construction User's Round Table and chaired the 2003 National Conference of Construction Owners. Mr. Aparicio served as CURT representative in the 2006–2007 CICC drafting group.

In addition, Mr. Aparicio is actively involved in numerous community organizations and is a member of the Board of Directors of the Birmingham Urban League as well as the Birmingham Regional Chamber of Commerce's Hispanic Business Council.

**J. William Ernstrom
Vice President, Strategic Major Projects
The Walsh Group**

Mr. Ernstrom is moderating the panel discussion for Workshop T1, "Contract Documents—A Collaborative Approach," on Tuesday afternoon. He is Vice President of The Walsh Group, where he advises management on major strategic projects. Previously, he served as General Counsel of Alberici Group, Inc. He is a founding partner of the law firm of Ernstrom & Drethe, LLP, where he spent over 25 years developing a law practice focused on the construction industry. Mr. Ernstrom is also Counsel to the Contract Documents Program for the Associated General Contractors of America.

In 1998, Mr. Ernstrom was selected by the AGC as "Chairman of the Year" for his work in representing contractors' interests in contract documents. He has been awarded the AGC President's Coin for exemplifying skill, responsibility, and integrity as well as unlimited motivation on behalf of the Association. At IRMI's 2003 Construction Risk Conference in Chicago, Mr. Ernstrom was presented with the Words of Wisdom (WOW) award.

Mr. Ernstrom coedited the *AGC Contractor Documents Handbook*, Aspen Publishers, Inc. 2003, and contributed a chapter to that book on AGC Document No. 200. He has authored numerous articles on surety and construction law topics. In particular, he has written about construction management and the American Institute of Architect A201 General Conditions for the *Wiley Construction Law Update*, as well as on the topic of design-build for the *Aspen Construction Law Update*. He frequently lectures throughout the country for the Associated General Contractors, the National Association of Surety Bond Producers, the American Arbitration Association, the Design Build Institute of America and the Construction Financial Management Association. Mr. Ernstrom is a member of the ABA Fidelity & Surety Committee, the Surety Claims Institute, and the National Bond Claims Association. He has spoken at the Fidelity & Surety Law Committee Mid-Winter Meeting and the ABA's Forum on the Construction Industry.

James E. Frey
Senior Vice President
Alberici Group, Inc.

Mr. Frey is a panelist for Workshop T1, "Contract Documents—A Collaborative Approach," on Tuesday afternoon. He is senior vice president of Alberici Group, Inc., St. Louis, Missouri, a diversified international construction services firm specializing in providing general contracting, design-build, construction management, and specialty contracting services to companies worldwide. Mr. Frey has over 30 years of experience in the construction industry, working as an owner representative and in various capacities for general contractors and design-builders. His experience includes estimating, preconstruction services, design management, contract administration and risk management, project management, business development, and executive management roles. He has extensive experience with the design-build delivery process for both government and private sector projects.

During his career, Mr. Frey has been involved with the construction of office buildings, retail, multifamily, retirement, hospitality, industrial, power, water and wastewater treatment, warehouse/distribution, manufacturing, education, health care, food and beverage, and government projects. He serves on the Board of Directors of Alberici Corporation; is a member of the Board of Trustees of Fontbonne University; is on the Board and has served as the chairman of the Board of Directors of the Associated General Contractors of St. Louis; is management cochairman of PRIDE of St. Louis, Inc., a labor/management organization; is chairman of the Advisory Council for the University of Missouri—Rolla Department of Civil, Architectural and Environmental Engineering; and has chaired several committees of the Design Build Institute of America. Mr. Frey holds a bachelor of science Degree in Civil Engineering with honors from the University of Missouri—Rolla and has completed the Executive Program for Growing Companies at the Graduate School of Business, Stanford University.

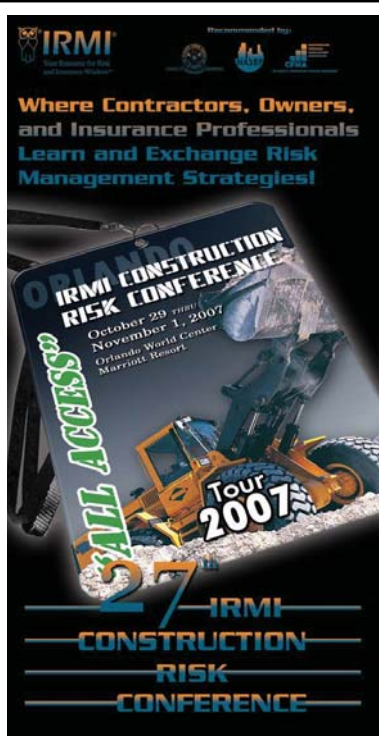
Mr. Frey is the contract review officer and a member of the Project Review Committee for Alberici. He has spoken nationally on a variety of topics including winning new business by making great presentations, the do's and don'ts of responding to an RFP, the design-build delivery system, the fundamentals of risk transfer, and strategies for evaluating and managing risk in design-build projects.

Kevin F. Peartree
Partner
Ernstrom & Dreeste, LLP

Mr. Peartree is a panelist for Workshop T1, "Contract Documents—A Collaborative Approach," on Tuesday afternoon. He is a partner in the law firm of Ernstrom and Dreeste LLP, where he represents clients in all areas relating to the construction industry, contract law, and suretyship. Mr. Peartree most recently was a principal participant in the drafting of the new ConsensusDOCS standard form contract documents published in September 2007 by a group of 20 construction industry-related associations. He was one of the principal drafters of the new ConsensusDOCS 300, Standard Form of Tri-Party Agreement for Collaborative Project Delivery, an agreement signed by owner, designer, and constructor promoting integration of efforts and lean construction principles. Mr. Peartree coedited the *AGC Contract Documents Handbook*, Aspen Publishers, Inc., 2003, for which he also contributed a chapter on AGC design-build Document No. 410. He was involved in the drafting of the 1999 edition of the Associated General Contractors of America design-build standard form contract documents. Mr. Peartree has also assisted in the revision and drafting of the AGC's standard form owner-contract agreements, joint venture agreement, owner's representative agreement, and various statement of qualifications and administrative forms. He has written for presentations given around the country on the topic of design-build and has coauthored presentations on the AGC standard form design-build contract documents. He has also written about construction management and the AIA A201 for the *Wiley Law Construction Update*, and has written and lectured on insurance and surety topics. Mr. Peartree received his bachelor's degree from the University of Notre Dame and received his law degree from Albany Law School of Union University.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.



Contract Documents – A Collaborative Approach

Moderator:

Bill Ernstrom
The Walsh Group
Chicago, Illinois

Panel:

Ricardo Aparicio
General Electric Company
Birmingham, Alabama

Jim Frey
Alberici Group, Inc.
St. Louis, Missouri

Kevin Peartree
Ernstrom & Dreste, LLP
Rochester, New York

ConsensusDOCS



- **Industry Consensus Documents**
- **Balanced and Best Practices**

ConsensusDOCS – Participating Organizations



- **National Association of State Facilities Administrators (NASFA)**
- **Construction Users Roundtable (CURT)**
- **Construction Owners Association of America (COAA)**
- **Associated General Contractors of America (AGC)**
- **Construction Industry Round Table (CIRT)**
- **Lean Construction Institute (LCI)**
- **Associated Specialty Contractors, Inc. (ASC)**
- **American Subcontractors Association, Inc. (ASA)**
- **Associated Builders and Contractors (ABC).**

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ConsensusDOCS – Participating Organizations



- **Finishing Contractors Association (FCA)**
- **Mechanical Contractors Association of America (MCAA)**
- **Plumbing-Heating-Cooling Contractors—National Association (PHCC)**
- **National Electrical Contractors Association (NECA)**
- **National Insulation Association (NIA)**
- **National Subcontractor Alliance (NSA)**
- **National Roofing Contractors Association (NRCA)**
- **Painting and Decorating Contractors of America (PDCA)**
- **Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)**
- **National Association of Surety Bond Producers (NASBP)**
- **Surety & Fidelity Association of America (SFAA)**
- **Engineers Joint Contract Documents Committee (EJCDC).***
 - *** Actively participated in the drafting process, but considering endorsement after initial publication.**

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ConsensusDOCS – Drafting Principles



- **Balanced Risk Allocation**
- **Best Practices**
- **Consensus Process**
- **Developing a Full Family of Documents for Each Project Delivery System.**

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ConsensusDOCS



- **Consensus 200 Standard Agreement and General Conditions Between Owner and Contractor (Where the Contract Price is Lump Sum)**
- **Consensus 200.2 Electronic Communications Protocol Addendum**
- **Consensus 240 Standard Agreement Between Owner and Architect/Engineer**
- **Consensus 300 Standard Form of Tri-Party Agreement for Collaborative Project Delivery**
- **Consensus 410 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Where the Basis of Payment is the Cost of the Work Plus a Fee With a Guaranteed Maximum Price)**
- **Consensus 500 Standard Agreement and General Conditions Between Owner and Construction Manager (Where the Basis of Payment is a Guaranteed Maximum Price)**
- **Consensus 750 Standard Agreement Between Contractor and Subcontractor.**

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ConsensusDOCS 300 Collaboration Agreement



- **Owner, Designer and Constructor all sign**
- **Collaboration throughout design and construction**
- **Increased relatedness of project participants**
- **Network of commitments**
- **Optimize project as whole, not the pieces**
- **Consensus decision-making**
- **Couple action with learning**

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ConsensusDOCS 300



- **Drives out waste by**
 - **Eliminating RFIs**
 - **Eliminating rework**
 - **Using innovative scheduling/planning techniques**
 - **Only doing what is necessary to obtain permits and permit field to perform work**
 - **Resolve disputes early/independent expert/discourage lawsuits.**

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ConsensusDOCS 300



Project Risk Allocation

Safe Harbor Decisions

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Management Group Decision-Making

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Pull Based and Target Value Design

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Schedule and Pull Planning

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Project Target Cost Estimate

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Savings and Losses

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