

Insights: Publications

Approaches in the Absence of a Differing Site Conditions Clause

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A contractor who has encountered unforeseen conditions will typically rely on the contract's differing site conditions clause as a means to recovery. Most construction contracts address those issues directly. In ConsensusDocs Standard Agreement and General Conditions between Owner and Constructor, the starting point is § 3.16.2. But what if the contract does not contain a differing site conditions clause? Or, what if the contract does contain such a clause but the contractor failed to provide adequate notice or satisfy other conditions or requirements of the contract? When reliance on a differing site conditions clause is impractical, a contractor still may seek recovery in certain instances under one or more of the following legal theories: misrepresentation; fraud; duty to disclose; breach of implied warranty; and mutual mistake.

Related People



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