Audio Sessions

Session 9
INTERPRETATIONS AND MODIFICATIONS

Construction Contract Administration
Education Program
Certified Construction Contract Administrator (CCCA)
Preparatory Course
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Learning Objectives

- To understand the procedures and purposes of a request for interpretation (RFI)
- To define the procedures and responsibilities for interpreting contract documents
- To gain an insight into the general condition provisions and procedures for managing unknown and unforeseen conditions, including hazardous materials
- To explore the procedures for contract document modifications and changes to the contract
- To understand substitutions and the evaluation of substitution requests

Session Outline

STUDY GUIDE: Subject Matter Area No. 9  16%
INTERPRETATIONS AND MODIFICATIONS

A. Requests for Interpretations
B. Interpretations of Contract Documents
   1. A/E (IDM) is the interpreter
   2. A/E decisions will be consistent with intent of what may be reasonably inferable from contract documents
   3. Timeliness of interpretations
   4. Claims situations and methods to foster dispute resolution

C. Unknown Conditions
   1. Hazardous materials
   2. Unforeseen conditions
   3. Alteration work

D. Modifications and Changes to the Project
   1. Reasons contract document modifications may be necessary
   2. Construction change process and documentation
   3. Proposal requests
   4. Change order request
   5. Minor changes
   6. Change directives
   7. Change orders

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Session Outline

STUDY GUIDE: Subject Matter Area No. 9
INTERPRETATIONS AND MODIFICATIONS

E. Change Order Procedures
   1. Methods of determining cost increase or decrease for change order
   2. Area of concern for determining the effect of a change
   3. Posting modifications to the contract documents
   4. Substitutions after the procurement state

F. Substitutions
   1. How substitutions may cause contract document modifications
   2. How to determine if substitutions
   3. When substitutions should not be considered
   4. Substitutions after the procurement state

G. Evaluation of Substitution Requests
   1. Product
   2. Manufacturer
   3. Product representative
   4. Installation and installer
   5. Response to substitution request
REQUESTS FOR INTERPRETATIONS
STUDY GUIDE: Submit Matter Area No. 9 - A.

Requests for Interpretations

- **Standard general conditions typically stipulate A/E**
  - Will review and respond to requests for information about contract documents
  - Is interpreter of contract documents
- **Requests for interpretations (RFI) should be limited to**
  - An interpretation of the contract documents
  - Information that may be missing
- **RFI's should not be used as substitute for**
  - Contractor reviewing the contract documents
  - Asking where to find information
- **RFI's may be initiated by Contractor or Owner**
Requests for Interpretations

- Standard general conditions typically stipulate Contractor responsible for:
  - Studying and comparing contract documents before fabrication and installation of Work
  - Notifying A/E of any errors, inconsistencies, omissions, etc

- RFI’s allow:
  - Contractor or Owner to seek an interpretation
  - A/E to respond with an interpretation that does not require change to contract sum or time
Requests for Interpretations

- If the A/E can not be clearly answer the RFI or if it is not reasonably inferable from the contract documents
  - A/E may respond with proposal request for a solution that anticipates an adjustment to contract sum or time
  - Error/Omission may or may not have cost or time implications
  - Modifications affecting cost or time should not be prepared as a minor change of the Work!

- Excessive number of RFI’s may indicate
  - Inadequate contract documents
  - Incomplete study and comparison of contract documents
  - Ineffective use of project meetings
Requests for Interpretations

- Contractor should be limited to submission of valid RFI's
- RFI's should be referenced to contract documents
- A/E's response to RFI's
  - On the RFI Form – no change in cost or time
  - Issue supplemental instructions or field order – no change in cost or time
  - Issue proposal request – change in cost or time

INTERPRETATIONS OF CONTRACT DOCUMENTS

STUDY GUIDE: Submit Matter Area No. 9 - B.

1. A/E is the interpreter
2. A/E decisions will be consistent with intent of what may be reasonably inferable from contract documents
3. Timeliness of interpretations
4. Claims situations and methods to foster dispute resolution
Interpretations of Contract Documents

- **Standard general conditions typically stipulate**
  - A/E (IDM) is interpreter of contract documents
  - A/E’s decisions should be consistent with intent and reasonable inferable from contract documents

- **Contract documents**
  - Cannot foresee every variable
  - Are not perfect

- **A/E should render interpretations**
  - Issued promptly in writing
  - With supplemental drawings and specifications
  - Without partiality
  - Using professional judgment

Failure of A/E to respond in timely manner may delay Contractor and result in claim for delay

Claims may be caused by Owner’s or Contractor’s disagreement with A/E’s interpretation

Claims may be minimized by use of effective
  - Communications
  - Negotiations
  - Instructions
Interpretations of Contract Documents

• Unresolved claims become disputes
• Methods of promoting dispute resolution
  – Documenting interpretations
  – Acknowledging dispute if one arises
  – Listening carefully and communicating effectively
  – Finding mutually beneficial solutions
  – Considering outside or expert help

UNKNOWN CONDITIONS
STUDY GUIDE: Submit Matter Area No. 9 - C.

1. Hazardous materials
2. Unforeseen conditions
3. Alteration work
Unknown Conditions

• May arise that were not anticipated during preparation of documents or pricing

• Changed conditions may include
  – Work of Owner or separate contractor interfering with work progress
  – Changed existing conditions beyond Contractor’s control

• Standard general conditions typically stipulate procedures when Contractor encounters conditions materially different than indicated on contract documents

Unknown Conditions

• Standard general conditions typically include disclaimer provisions for hazardous materials in existing conditions

• Standard general conditions typically stipulate
  – Contractor stops work in area affected by hazardous and notify Owner and A/E
  – Owner is responsible for hazardous materials unless brought to site by Contractor
  – A/E will not recommend corrective or remedial measures
  – A/E may recommend Owner retain qualified expert to
    - Investigate and evaluate hazardous materials
    - Recommend corrective action
Unknown Conditions

- Separate specialty contractor usually employed to remove and encapsulate hazardous materials
- Contractor cannot be forced to perform work until hazardous materials are removed or made safe

Standard general conditions typically stipulate when unforeseen conditions are encountered by Contractor
- Observing party is required to give notice before condition is disturbed
- A/E will promptly investigate conditions and determine if contract modifications are required

Alteration work typically can reveal unknown or concealed conditions due to
- Alterations made after original construction
- Incomplete or inaccurate record documents
MODIFICATIONS AND CHANGES TO THE PROJECT

STUDY GUIDE: Submit Matter Area No. 9 - D.

1. Reasons contract document modifications may be necessary
2. Construction change process and documentation
3. Proposal requests
4. Change order request
5. Minor changes
6. Change directives
7. Change orders

Modifications

- Standard general conditions typically stipulate provisions for modifications along with commensurate adjustments in contract sum and time without invalidating contract
- Change orders are used to modify contract documents when cost, time, or both are affected
- Minor changes in the work are issued when neither time or cost are affected
Modifications

- Modifications may be necessary when
  - Intent of documents are not reasonably inferable and corrections are required to eliminate
    - Errors
    - Omissions
    - Discrepancies
    - Design deficiencies
  - Unknown conditions
  - Owner’s requirements change – additions or deletions
  - Changes in regulations after issuance of permit
  - Time between bid proposal acceptance and contract execution is long
  - Interpretations of regulations by AHJ’s

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Modifications

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- Specified product is no longer available
- New product is considered offering cost savings or other benefits
- New information about specified product becomes available
- To resolve specified allowances
- Estimated quantity of work for unit price is changed
- Unattainable requirements exist and need to be revised
Modifications

- **Methods to make modifications**
  - Written requests for changes
    - Proposal requests
    - Change order requests
    - Requests for substitutions
  - Minor changes
    - Architect’s supplemental instructions
    - Field orders
    - Written interpretations or clarifications
  - Change directives
    - Construction change directive
    - Work change directive
  - Change orders

**Construction Contract Administration Practice Guide:**

- **Proposal requests**
  - Written document prepared by A/E that describes proposed change
  - Must contain enough detail for Contractor to accurately evaluate
  - Should state reasons for change
  - May be supplemented by drawings and specifications
  - Sent to Contractor for evaluation
  - Contractor responds to Owner with change order request
  - A/E should review Contractor’s schedule of values to be aware of Contractor’s cost for units of work; such awareness assists A/E’s evaluate Contractor’s proposals
Modifications

- Change order requests
  - Initiated by Contractor for changes that Contractor deems necessary
  - Should state reasons for proposed change along with:
    - Itemization of labor
    - Material
    - Taxes
    - Subcontracts
    - Bonds
    - Insurance
    - Overhead
    - Profit
Modifications

• Minor changes
  – Clarifications or instructions not involving adjustments of contract sum or time
  – Architect’s supplemental instructions or engineer’s field order do not need Owner’s or Contractor’s signature
  – Binding on Contractor and Owner
  – Owner should be informed and receive copies
  – Contractor required to carry out written instructions
Modifications

- **Change directives**
  - Directs Contractor to make changes to project before Owner and Contractor have agreed up proposed changes in contract sum or time
  - Used to allow project to proceed without agreement between Owner and Contractor on terms of change order
  - May or may not affect contract sum or time
  - Serves notice that change will be incorporated in change order once value has been determined
  - Prepared by A/E and signed by A/E and Owner
  - Once cost or time change has been agreed upon it is incorporated into change order
Modifications

- **Change orders**
  - Written modification used after execution of agreement
  - Authorizes adjustment in contract sum, time, or both
  - General conditions grant owner authority to authorize change orders
  - A/E usually prepares and signs change order
  - Contractor then signs change order authorizing change
  - Change orders may originate with issuance of
    - Change directive
    - Change order request
    - Proposal request

**CHANGE ORDER PROCEDURES**

**STUDY GUIDE:** Submit Matter Area No. 9 - E.

1. Methods of determining cost increase or decrease for change order
2. Area of concern for determining the effect of a change
3. Posting modifications to the contract documents
Change Order Procedures

- Should be processed promptly to avoid delays; process is time consuming
  - Negotiating costs
  - Preparing change order
  - Securing signatures
  - Circulating information
- Beneficial for A/E to prepare A/E’s own estimate of cost to compare with Contractor’s proposal
- Potential difficulty is agreement on price adjustment
  - Most additions cost more than if same work in original documents
  - Full value of most deductions is usually not recovered
Change Order Procedures

• Increase or decrease in change order determined by one or more of following methods
  – Mutual acceptance of stipulated sum
  – Unit prices as stated in contract documents or subsequently agreed upon
  – Contractor’s costs plus fixed or percentage fee for overhead and profit
• Include a not to exceed

Change Order Procedures

• Following items determine cost of change
  – Contractor’s overhead and profit
  – Method of crediting deductions
  – Unit prices
  – Confirmation of cost incurred
  – Use of subcontractors to perform work
  – Equipment rental cost for both active and idle equipment
  – Amount of time extension and related costs, if applicable
Change Order Procedures

- Contract has specific guidelines when pricing changes
  - Amount of overhead and profit is allowed to be added to cost of labor, material and supplies
  - Contractor should be fair in accumulating cost of changes
  - Obtaining prices from subcontractors and suppliers for portions of work
- Concerning delays due to weather
  - Contractor may be required to include anticipated weather delays in schedule based on normal weather conditions
  - When anticipated weather delays are incorporated into construction, only delays beyond anticipated conditions are allowed in extending schedule time
  - Unusual to grant change to contract sum for additional overhead when time extensions are granted for weather delays

Occasions when delays are justified and time extensions may be granted

- If Owner or A/E delays Contractor through failure to act in timely manner
- Unavoidable causes, such as weather or strikes, beyond Contractor’s control that prevents Contractor from expediting contract

Once modifications are made, information should be posted in Contractor’s and A/E’s sets of contract documents
SUBSTITUTIONS
STUDY GUIDE: Submit Matter Area No. 9 - F.

1. How substitutions may cause contract document modifications
2. How to determine if substitutions
3. When substitutions should not be considered
4. Substitutions after the procurement state

Substitutions

- Scenarios when substitutions during construction may be required or allowable
  - Owner-initiated to change a certain product, system, or other element
  - Contractor-initiated because Owner wants Contractor to propose changes of products, system, or other elements in order to save money
  - Contractor-initiated because of low-bid substitutions to save money
  - Integrated project delivery during design phase
  - Unavailability of product

- Substitutions during construction allowed if so stipulated in Division 01 specifications
Substitutions

• Scenarios when substitutions during construction should not be allowed
  – Request is made by RFI
  – Indicated or implied in submittals
  – Has not been reviewed and approved by Contractor
  – Acceptance that requires substantial revisions of contract documents without reimbursement of A/E’s fees
  – Does not include itemized comparison of proposed substitution with specified product

• Substitutions during construction allowed if so stipulated in Division 01 specifications
EVALUATION OF SUBSTITUTION REQUESTS

STUDY GUIDE: Submit Matter Area No. 9 - G.

1. Product
2. Manufacturer
3. Product representative
4. Installation and installer
5. Response to substitution request

Evaluation of Substitution Requests

• First consideration is whether or not proposed substitution meets requirements of contract documents; should also include following
  – Operating costs
    - Energy demands
    - Replacement part life cycle
    - Routine maintenance
  – Maintenance costs
  – Warranty concerns
Evaluation of Substitution Requests

- **Product considerations of general characteristics**
  - Performance
  - Reference standards
  - Sustainability
  - Fabrication
  - Warranty
  - Operation
  - Finishes

Evaluation of Substitution Requests

- **Manufacturer considerations**
  - Length of time in business
  - Ability to meet specification requirements
  - Technical services provided
  - Accurate preparation of submittals
  - On time delivery
  - Supervision during installation
  - Track record in resolving product problems
Evaluation of Substitution Requests

- Product representative can provide advice
  - Limitations
  - Advantages
  - Availability
  - Costs
  - Delivery information
  - Product information
  - Operation manuals
  - Warranty information

Evaluation of Substitution Requests

- Installation considerations
  - Coverage of particular conditions
  - Installation methods designated in specifications
  - Availability of skilled workers and complexity of installation
  - Preparation and finish requirements
  - Installer compliance with required qualifications
Evaluation of Substitution Requests

- **Response to substitution request**
  - Entity submitting substitution should prove substitution is appropriate for intended use
  - Proposer of substitution should recognize
    - Intended use of product or system in specific project
    - Consistent with manufacturer’s intended use
  - A/E determines acceptability of proposed substitution

Review Outline

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