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DIFFERENT WORKS



RLI DESIGN PROFESSIONALS
Design Professionals Learning Event

Submittals, Substitutions and New Products

DPLE 285



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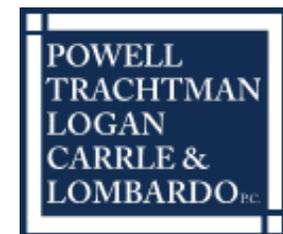




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Course Description

Submittals

Substitutions

New Products

These are three areas that can lead to increased risks on your projects. This course will review:

- standard procedures
- suggested contract language
- other avenues

to improve coordination for the benefit of the project, the owner, and the public health, safety and welfare.

Learning Objectives

**Participants
in this
session will:**

- Review three aspects of a typical project that may increase the risks for all of the project stakeholders, as well as the public.
- Discuss contractual solutions to mitigate the risks to both stakeholders and the public.
- Outline coordination procedures to enhance protections to the stakeholders and the public at large.
- Consider how the standard of care contributes to this risk mitigation strategy.

First Required Submittal: Submittal Schedule

Required by Article 3.10.2 of AIA A201-2017 General Conditions of the Contract for Construction

B101-2017, Article 3.6.4.1 requires the Architect to review and approve that Submittal Schedule

The Contractor will not be entitled to any increase in Contract Sum or Contract Time based on the time required for review of submittals if it does not comply with 3.10.2 of A201 (2017)

The Submittal Schedule should establish the time period for your review and action upon the various submittals.

In the case of no stated time period, the standard is “reasonable promptness”

Scope of Review

Defined by:

Article 4.2.7
A201-2017

Article 3.6.4.2
B101-2017

Limited to checking for conformance with information given, and consistency with the design concept expressed, in the Contract Documents

Scope does not include ensuring accuracy and completeness of other information such as:

Dimensions

Quantities

Installation

Performance of Systems

Review does not constitute:

approval of safety precautions

construction means, methods, techniques, sequences or procedures

Beware of revisions removing this language from 4.2.7 of A201 or 3.6.4.2 of B101

Design Professional's Role in Reviewing Submittals

B101-
2017

§3.6.2.4

Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings.

When making such interpretations and decisions, **the Architect shall endeavor to secure faithful performance by both Owner and Contractor**, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

Specific Purpose of Submittal Review

B101-
2017

§3.6.4.2

The Architect shall **review and approve**, or **take other appropriate action** upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, **but only for the limited purpose of checking in conformance with information given and the design concept expressed in the Contract Documents.**

Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility.

The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures.

The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Compare with the Owner-Contractor Agreement

A201- 2017

§4.2.7

The Architect will **review and approve**, or **take other appropriate action upon**, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, **but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.**

The Architect's action will be taken **in accordance with the submittal schedule** approved by the Architect **or**, in the absence of an approved submittal schedule, **with reasonable promptness** while allowing sufficient time in the Architect's professional judgment to permit adequate review.

Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.

The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12.

The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures.

The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Contractor's Role in Submittals

A201- 2017

§3.12.5

§3.2.17

§3.12.9

The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

Contractor as Design Professional through Submittals

A201- 2017

§3.12.10 §3.2.10.1

The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents... or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques...

If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy.

The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.

The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional.

Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect.

The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy.

Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

Design Professional's Role when Contractor is Designer

B101- 2017

If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy.

§3.6.4.3

The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect.

The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

The Architect shall be **entitled to rely upon, and shall not be responsible for, the adequacy and accuracy** of the services, certifications and approvals performed or provided by such design professionals.

Contractor's Work Based on Approved Submittals

A201- 2017 §3.12.8

The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and:

- the Architect has given written approval to the specific deviation as a minor change in the Work; or
- a Change Order or Construction Change Directive has been issued authorizing the deviation.

The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

Substitutions

B101- 2017

To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need.

§4.2.2

§4.2.2.5

If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination.

The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

The Contractor's Substitutions

A201- 2017

Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§3.4.2 §7.4

Minor Changes in the Work The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time.

The Architect's order for minor changes shall be in writing.

If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

Submission of Comparable Products vs. Substitutions

Specified Products: There are no comparable products, only substitutions

Specified Performance: Specified comparable products are not substitutions

Comparable Products in Basis of Design Systems

- When Basis of Design Systems are based on specific products take extra care in specifying “comparable” products to determine if each specified comparable product will function like the Basis of Design product without revision to the design
- If the Submittal is of a comparable product, only well-informed personnel should approve or reject that Submittal

Warranty – A201: New Language

§3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferrable to the Owner, and shall commence in accordance with Section 9.8.4.



New Products, Materials and Systems

If the project may require the use of products or systems with limited testing or verification of performance:

- Your agreement should require the Owner to acknowledge that you may be unable to determine if products, materials or systems will perform as represented.
- You should discuss with the Owner the proposed use of such products, materials and/or systems and potential effects on the project's performance if they fail to perform in accordance with manufacturer's/supplier's representations.
- Your agreement should require, and you should obtain, from the Owner a written decision on the use of such products, materials and/or systems.
- Your agreement should provide that, if the Owner elects to use those products, materials or systems, you will be permitted to rely on the representations of the manufacturer/supplier and that you are not responsible for any damages arising from failure of the products, materials or systems to perform in accordance with those representations.

Waiver of Consequential Damages

Relating to New Products, Materials or Systems

Include those consequential damages resulting from failure of the project to achieve represented performance due to failures in new products, materials or systems, including:

Unachieved:

- energy savings
- gains in productivity

Unintended operational expenses

Lost tax incentives or other financial losses

Acknowledgment of No Guarantee/Warranty

Put This In Your Agreement

The Owner and Design Professional acknowledge that achieving the Owner's performance objective is dependent upon the performance of certain new products/materials/systems specified for the project and identified to the Owner as such by the Design Professional, its consultants or other design professionals providing services for the project.

Those products/materials/systems are listed in the attached Exhibit []. Those products/materials/systems have been designed and/or manufactured by others and remain untested or unverified in regard to their performance.

Thank you for your time!

QUESTIONS??

**This concludes The American Institute of Architects
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