Editorial: Time to Cool Heads on Construction Claims

By The Editors of ENR

Model contracts documents are a starting point for what construction project team members consider to be a problem, so the five-year updates to the Engineers Joint Contract Documents Committee model contracts are important. The EJCCD model contracts, which go on sale this month, contain significant modifications in the change-order and dispute-resolution process.

These changes have the potential to head off the kinds of poisonous conflicts that run so many projects into the ground and possibly ruin the companies involved. EJCDD model contracts document are written cooperatively by the three major engineering associations that endorse and maintain them: the American Society of Civil Engineers, the American Council of Engineering Companies and the National Society of Professional Engineers. The model contracts represent what these associations feel is best for the industry.

One of the most important changes made is in the C-700 document, which covers general conditions and reimagines the change-order and dispute-resolution process.

During the initial discussions about the model-contract updates, which included contractors, there were concerns that even the smallest issues related to scope changes or offering site conditions could lead to claims. The point of the new changes is to resolve issues within the project team before they reach arbitration or administrative procedures.

Resolving Changes Early

To eliminate some of the problems and create an initial in which thought and patience can prevail over worry and anger, the authors created a new step in what had been a revised change: The final step used as a change proposal, not a claim. This tactic should help diffuse any anger and stop the new process or project from moving forward. Addressing the issue will minimize the final costs and time required. Supporting documents must be presented within 30 days of the initial change proposal. The engineer reviews the proposal, and within 10 days of receipt of the documents, they will provide a recommendation to the owner. The engineer’s decision is final and binding unless the contractor or owner appeals, according to regulations.

Under the old way, addressing such changes, once the claim was filed and the engineer made a final decision, contractors or owners who disagreed with the engineer had only 30 days to file a claim or go to court. With time being spent on that built-in deadline, a contractor or owner who took no action always had claims as a path to resolution.

Other model contracts have addressed these issues, and the EJCDD model contracts alone aren’t the last to avoid conflicts. However, what the EJCDD contracts could provide is a little extra space and time for cool heads to prevail, sidestepping costly legal battles.

Keywords: Engineers; Contracts; Documents; EJCDD; Change Orders

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