

GORDON&REES
SCULLY MANSUKHANI

YOUR 50 STATE PARTNER™

"I'VE GOT A BAD FEELING ABOUT THIS"

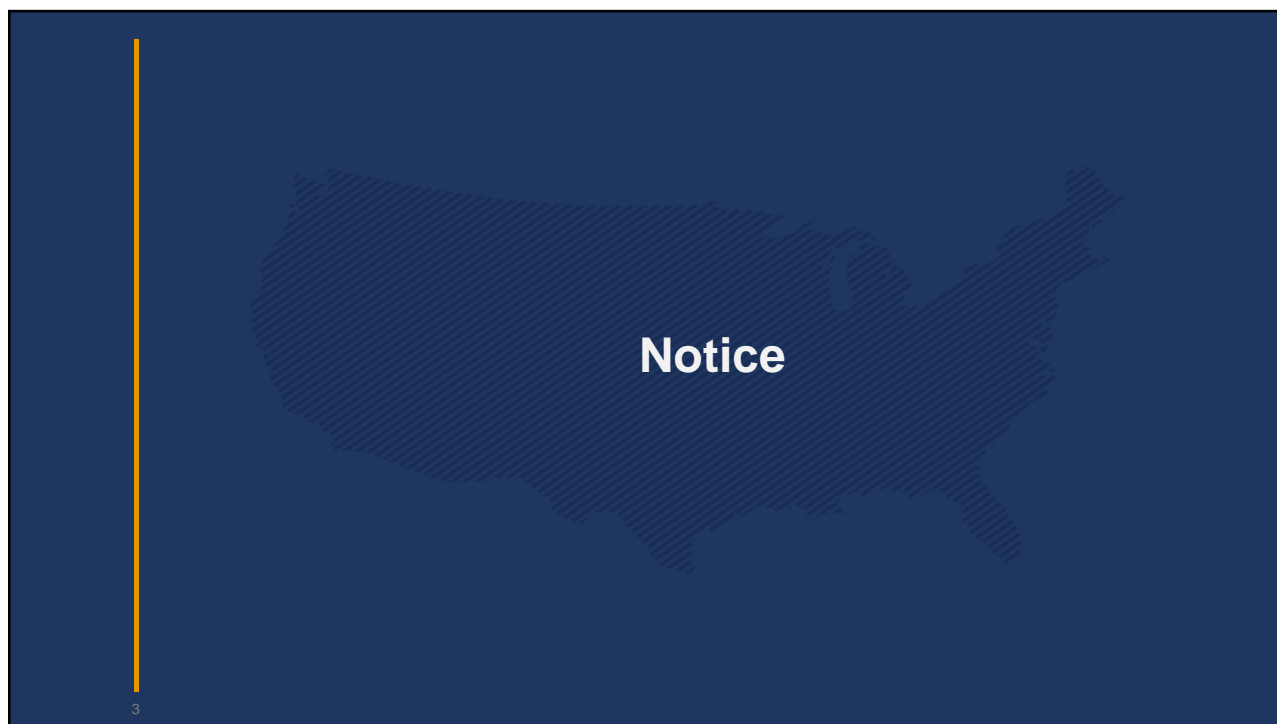
What Can You Do To Avoid Having That "Bad Feeling" When You Are Trying To Collect Changes?

Angela Richie
Chip Clay
February 4, 2020

GORDON&REES
SCULLY MANSUKHANI
YOUR 50 STATE PARTNER™

Remember NEDD - Change Claims

1. Change in **Quantity & Character** of the Work
 1. N= Notice
 2. E = Entitlement
 3. D = Damages
 4. D = Don't Waive Your Claims
2. Change in Contract Time: **Delay & Acceleration** Claims
 1. Notice
 2. Entitlement
 3. Damages
 4. Don't Waive Your Claims



**GORDON REES
SCULLY MANSUKHANI
YOUR 50 STATE PARTNER™**

NEDD

- **N = Notice**
 - Notice: Time (5 days?)
 - How given - certified mail return receipt
 - To whom?
 - What must be included?
 - Who can authorize a CO?
- E =Entitlement
- D = Damages
- D = Don't Waive Your Claims

AIA Document A201 –

§ 4.7.3 Time Limits on Claims.

Claims . . . must be made within 21 days after occurrence of the event giving rise to such claim .

. . . Claims must be made by written notice. . . . **Claims not made in accordance with this paragraph shall be deemed waived.**

AIA Document A401: Contractor-Subcontractor

§ 5.2 . . . The Subcontractor, **prior to commencement of such changed Work** shall submit . . .
written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time in a manner
consistent with the Subcontract Documents.

Notice

- Upon a preliminary review of {INSERT RFI/ASI/DWG}
- Received on {date} – only do this if you met the notice requirement
- Fabricator hereby notifies you of a change to the contract sum and contract time.
 - Fabricator's rough order of magnitude for the change is \$____
 - Fabricator's estimated number of days needed to be added to the schedule is ____
 - Fabricator reserves the right to update this Notice as more information becomes available to the Fabricator.

7

Entitlement

8

NEDD

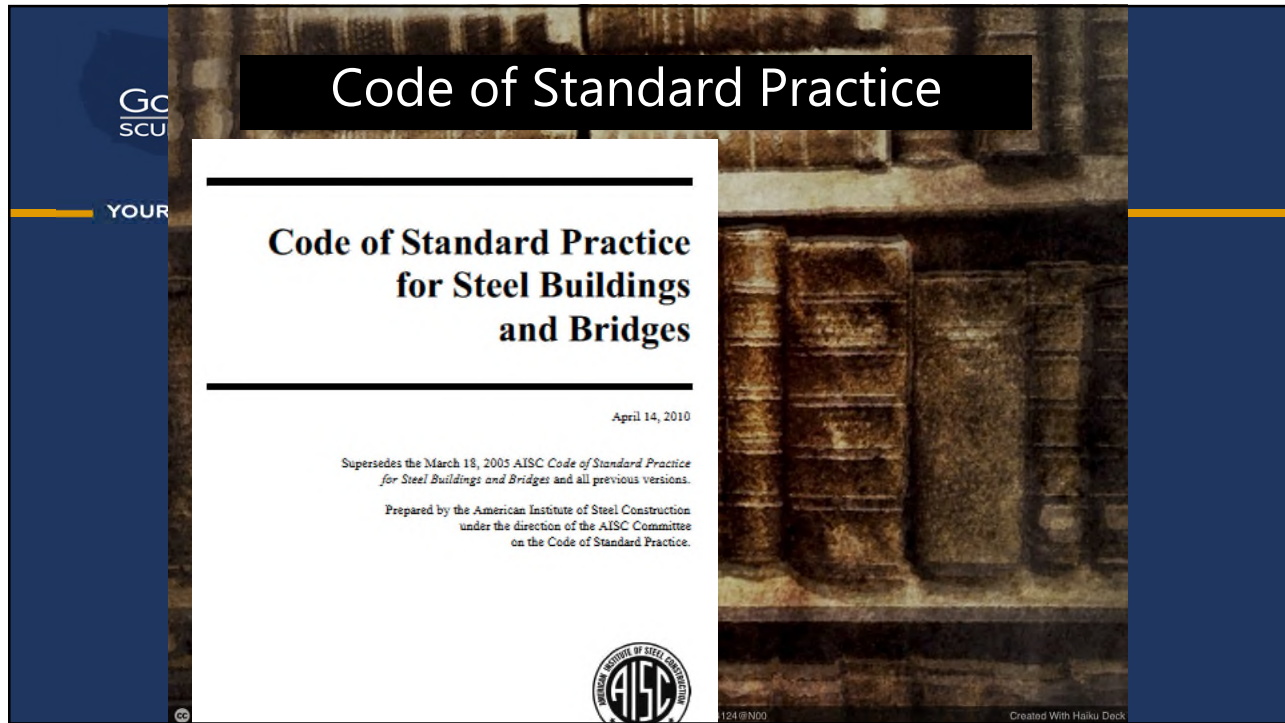
- N = Notice
- E = Entitlement
 - Legal Entitlement
 - Factual Entitlement
 - » Original Drawing
 - » Revised Drawing or RFI
- D = Damages
- D = Don't Waive Your Claims

9

Legal Entitlement - Contract Terms

- Contract Change Order Terms:
 - Changes Clause – what is required to prove scope change?
 - » Most contracts silent
 - » Review for any special proof required
 - CoSP
 - » Contract Documents - Plans & Specs – CoSP
 - » Contract Documents – Building Code - CoSP

- Schedule & No Damages for Delay Clauses – discussed later



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Contract Terms = CoSP

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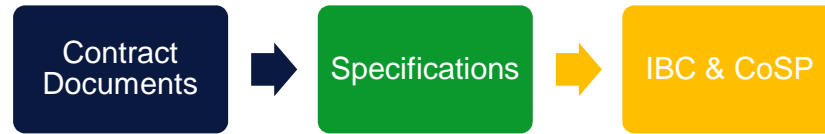
graph LR
    A[Contract Documents] --> B[Specifications]
    B --> C[IBC & CoSP]
            
```

Section 1: Contract Documents.

1.1 The Contract Documents for this Subcontract include this Agreement, the current executed Master Subcontract Agreement between Contractor and Subcontractor; the General Contract between Contractor and Signature [redacted] dated 2/14/2017 (the General Contract); the General, Supplementary and any other conditions of the General Contract; Drawings; **Specifications**; all Addenda issued before the execution of this Subcontract; the Project Schedule as may be amended from time to time, and any other documents referred to in the General Contract (the Contract Documents).

1.2 **The Contract Documents form this Subcontract and are fully incorporated in this Subcontract as if fully set out herein.**

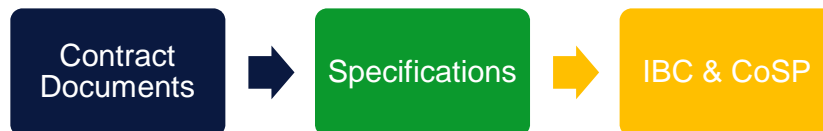
Contract Terms = CoSP



Specification Section 05120 Structural Steel Framing

- 1.2 REFERENCES, CODES AND STANDARDS: The following references, codes and standards are hereby made a part of this Section shall conform to the applicable requirements therein except as otherwise specified herein or shown on the Drawings. Latest edition of references and codes adopted by the Governing Agency shall apply. Nothing contained herein shall be construed as permitting work that is contrary to code requirements.
- A. International Building Code (IBC) State of California Amendments (CBC).
 - B. AISC Standards - Code of Standard Practice for Steel Buildings and Bridges (AISC 303); Specification for Structural Steel Buildings (AISC 360); and Steel Construction Manual; Seismic Provisions (AISC 341) including Supplement No. 1 and Appendix W.

Contract Terms = CoSP



- IBC Chapter 22
 - Design must comply with AISC 360 A.4.
 - “The structural design drawings and specifications shall meet the requirements in the Code of Standard Practice.”
 - Section 3.1 of CoSP provides the requirements for structural design drawings and specifications

Code of Ethics for Engineers

- "Engineers shall approve only those engineering documents that are in conformity with the applicable standards."
 - II. Rule of Practice 1(b)
- "Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards."
 - III. Professional Obligations 2(b)
- Failure of structural design to comply with Section 3.1 = violation of Building Code and Code of Ethics

CoSP 1.1 Scope

- "This Code sets forth criteria for the trade practices involved in steel buildings, bridges and other structures . . ."
- "In the absence of specific instructions to the contract in the contract documents, the trade practices that are defined in this Code shall govern the fabrication and erection of structural steel."

Contract Terms = CoSP 3.1 Structural Design Documents and Specifications

- “The **structural design documents shall clearly show or note** the work that is to be performed
 - Watch your scope – you have probably incorporated all design documents not just structural
 - Mechanical Openings – USE ALLOWANCES
- and shall give the following information with **sufficient dimensions**
- to accurately convey the **quantity and complexity** of the structural steel to be fabricated:
 - (A) the size, section, material grade and location
 - **(I) The information required in Sections 3.1.1 through 3.1.6**
- The structural steel specifications shall include any special requirements for the fabrication and erection of structural steel.

CoSP 3.1.2 – Scope of Work

- **Permanent bracing, openings** in structural steel for other trades, . . .
 - shall be . . . shown in sufficient detail in the structural design documents issued for bidding so that the **quantity, detailing and fabrication requirements for these items can be readily understood.**
- **Stiffeners, web doubler plates, bearing stiffeners, and other member reinforcement**, where required,
 - Away from connections, shall be . . . shown in sufficient detail in the structural design documents issued for bidding so that the quantity, detailing and fabrication requirements for these items can be readily understood.
 - At connections –
 - » stiffeners shall be shown in bid docs or
 - » (b) Option 3B: the owner’s designated representative for design **shall provide a bidding quantity of items required for member reinforcement at connections with corresponding project-specific details that show the conceptual configuration of reinforcement**

CoSP 3.1.2 – Changes to Scope

- When the actual quantity and/or details of any of the foregoing items differ from the bidding quantity and/or details, the contract price and schedule shall be adjusted equitably in accordance with Sections 9.4 and 9.5.
- Any limitations regarding type and connection of reinforcing shall be clearly provided.

CoSP 9.4.1 – Lump Sum Changes

- When the scope of work is changed, “an appropriate modification of the contract price shall be made.”
- “In computing the contract price adjustment, the fabricator and erector shall consider
 - The quantity of work that is added or deleted,
 - The modifications in the character of the work
 - And the timeliness of the change with respect to the status of material ordering, detailing, fabrication and erection operations.
 - » ALWAYS PAY ATTENTION TO SCHEDULE IMPLICATIONS

CoSP 9.4.3 – Unit Price Changes

- “Price-per-pound and price-per-item contracts shall provide for additions or deletions to the
 - quantity of work
 - » NOT CHARACTER
 - that are made prior to the time the work is released for construction.
- When changes are made
 - to the character of the work at any time,
 - or when additions or deletions are made to the quantity of the work after it is released for detailing, fabrication, or erection,
 - the contract price shall be equitably adjusted.”

Scope



What is in your scope?

- 5- Subcontractor shall participate in such BIM coordination and review meetings as may require and agrees that, as a result of the information exchanged at such meetings, both the digital submission and the Work depicted in the Subcontractor's digital submission may be required to be changed by Subcontractor to achieve coordination with other elements of the Project being provided by others. Such changes shall be accomplished at no increase in the Price or Time of Completion. Subcontractor

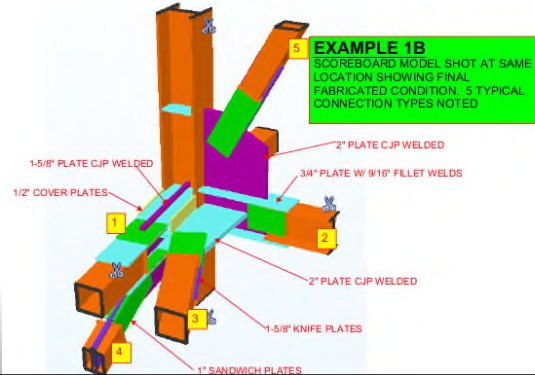
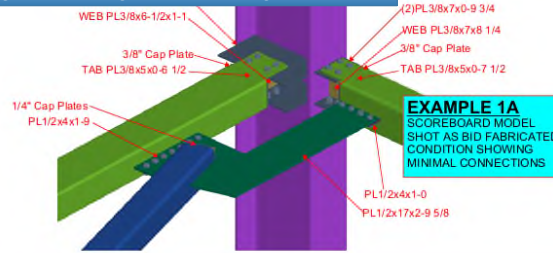
Such changes shall be accomplished at no increase in the Price or Time of Completion?

When does this end?

Categories of Changes in Character

- Increased Connection Ratio
- Changed drawings where no drawings given at bid
- Changed drawings from what given at bid
- Drawings not designed based upon necessary forces required by Subcontract

Changed drawings from what given at bid



5/16" Fillet

7/8" Fillet

1" A709-50W



5. Use single-pass fillet welds. If possible, try to use single-pass filled welds. Figure 4 indicates that a 3/8-in. weld requires three passes, which is approximately three times the cost for a strength increase of 20%. Figure 5 indicates that doubling the fillet weld strength will increase the cost to approximately six times that of a single-pass weld. The increase in welding cost for multiple-pass welds is generally much more than increased material cost required to accommodate single-pass welds. - Modern Steel Construction, April 2019

values below are for leg size 10% oversize, consistent with normal shop practices.

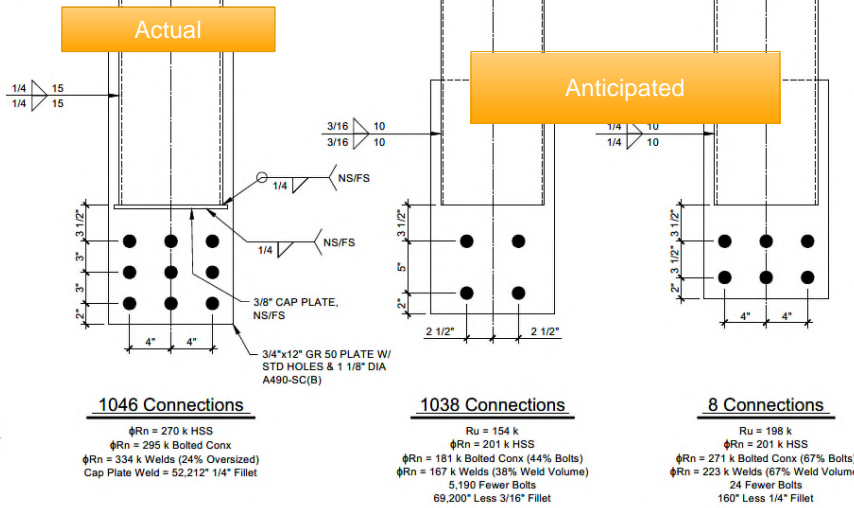
flat	convex	concave	d or r dimen- sion
			1/16
.032	.041	.036	1/8
.072	.093	.081	3/16
.129	.165	.145	1/4
.201	.258	.226	5/16

1/4" to 5/16" weld = weld material goes from .129 to .201

ALMOST DOUBLES – MANHOURS WILL AT LEAST DOUBLE

Fitting & Welding Increased beyond What Was Necessary and Anticipated

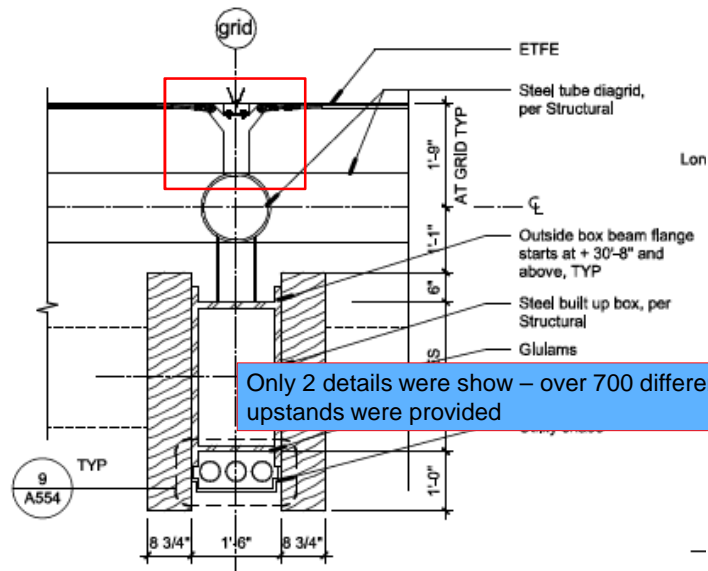
HSS10x0.250
A500 GR B,
TYPICAL



1 & 2/S5.401 (4/3/18 SET)

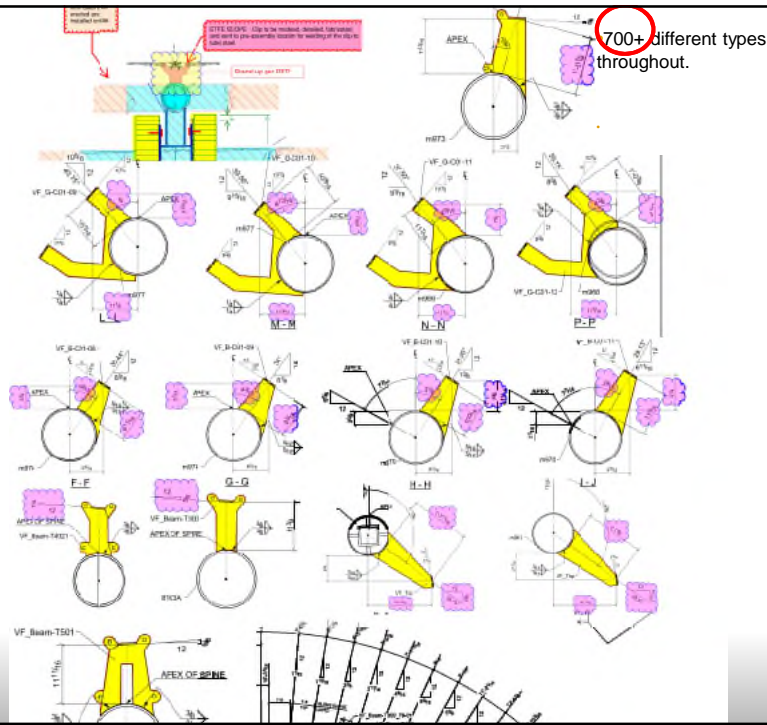
REDESIGNED USING ANALYSIS MODEL FORCES

Model Files Used:
20180303_NLVS_West
20180304_NLVS_East



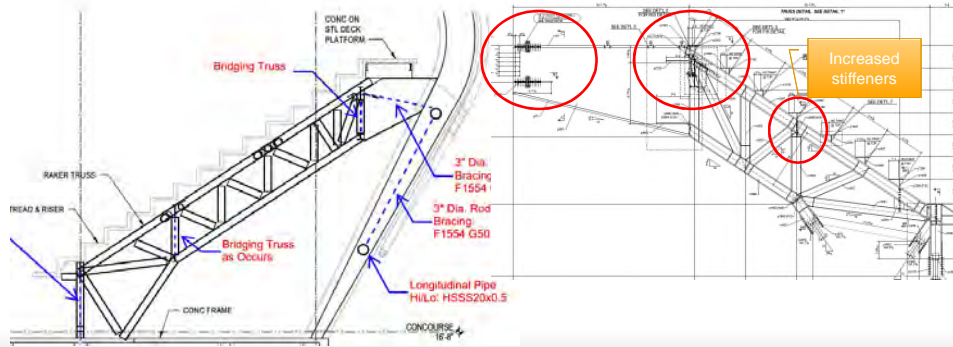
Only 2 details were show – over 700 different upstands were provided

7 CROSS SECTION - TYPICAL
A554 1/2" = 1'-0"



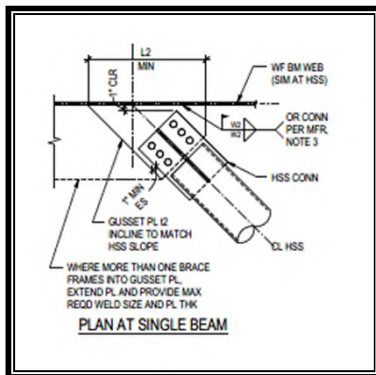
Changed welding requirements and increased connection material

RAKER TRUSSES - BASIS OF RFP

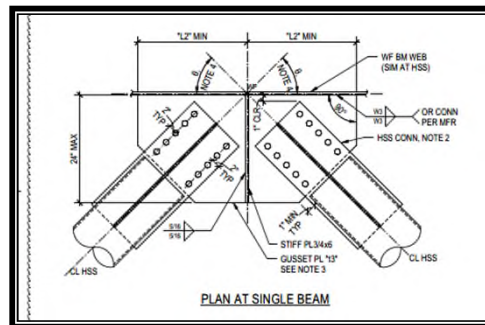


Bowl Steel Connections

RFP



Revised



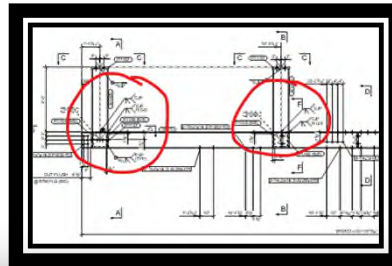
Bid Document 26173-000-S0-0000-NE001 VS Actual Shop Drawing

Bid Document 26173-000-S0-0000-NE001

WELDS

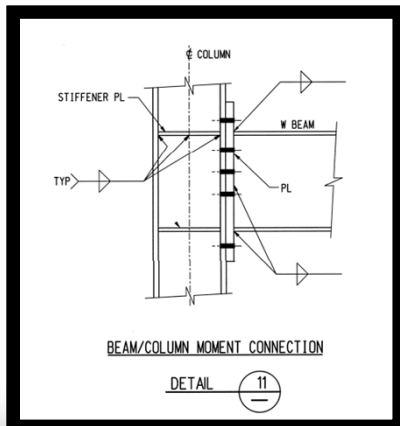
1. WELDS TYPICALLY ARE TO BE FILLET WELDS.
2. PARTIAL PENETRATION WELDS ARE ALLOWED AS AN ALTERNATE FOR FILLET WELDS LARGER THAN 1/2".
3. FULL PENETRATION WELDS ARE NOT PREFERRED.
4. FIELD WELDS ARE NOT PREFERRED, UNLESS NOTED OTHERWISE.

Shop Drawing 111B1500

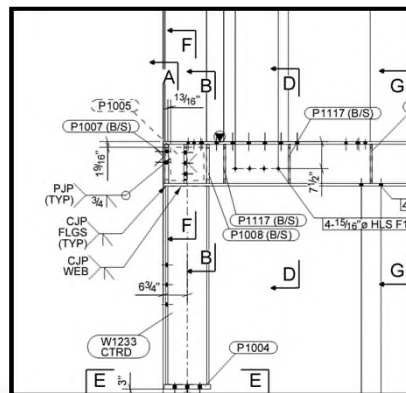


Bid Documents Showing Moment Connection VS. Actual Shop DWGS

Bid Document 26173-000-S0-0000-NE003



Shop Drawing 111B1517, CJP's, Extra Stiffeners, and added double plates



IMPACT NOTICE No. **5 - pg 1 of 11**
CHANGES TO THE ORIGINAL PURCHASE ORDER

LETTER OF TRANSMITTAL

Use Your Detailers Wisely!!

This cost and schedule impact is due to the following changes to the original Purchase Order:

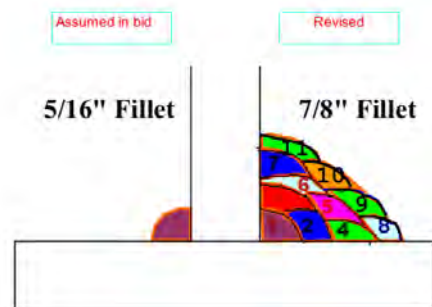
Ref :	Hrs:
- 2018-07-01 STRUCTURE- MKA- PHASE ONE PERMIT SET	
- 2018-07-16 - Progress Set	
- 2018-08-20 - ASI #1	
- 2018-09-04 - ASI #2	
- 2018-09-17 - ASI #4	
- 2018-10-02 - ASI #6	
- RFI-0001, RFI-0144	
- Penetrations Thru Box Beam_Diagrid 2018-10-12.pdf	
Phase One Permit Set vs 2018-07-16 Progress Set:	
Drawing S251: (see S251-Overlay - Markup Summary)	
- Beam revised from W27x84 to W27x178	0.50
- Beam revised from W18x60 to W27x84	0.50
- Bowl Brace revised from HSS8.625x0.375 to HSS12.75x0.250	0.50
- Framing geometry adjusted: BU-Rakers lengthed, beams relocated to suit	3.00
Drawing S252: (see S252-Overlay - Markup Summary)	
- '11' Beams revised from W18x50 to W18x46	1.50
- '13' Bowl Braces revised from HSS8.625x0.375 to HSS12.75x0.250	1.50
- '2' Bowl Braces revised from HSS8.625x0.375 to HSS12.75x0.500	0.50
- '5' Beams revised from W27x178 to W27x146	1.00

Damages



NEDD

- N = Notice
- E = Entitlement
- D = Damages
 - Unit Price adjustment –provide for adjustment?
 - T&M
 - Lump Sum
- D = Don't Waive Your Claims



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How much will the change cost?

- Lump Sum Price
- Unit Price
- IF NO AGREEMENT -T&M or TBD. . .

Damages - Change Order Pricing

Pricing without an agreement (A201 Article 7.3.6)

- Contractor must keep and present itemized accounting of all costs.
- **Labor costs**
- **Material costs** (including transportation)
- **Rental costs** (exclusive of hand tools)
- Bond and insurance premiums
- Sales or use taxes
- Additional supervision and field costs directly attributable to the change

Document Expenses

Please remit to:

WARE INDUSTRIES

TRANSACTION

ORDER #	TYPE	NUMBER	PAGE
419957	Shp	1068277	Page 1 of 1

REFER TO THIS NUMBER ON INQUIRIES

DATE	DUE DATE	TERMS
10/13/2010	11/30/2010	2% 105 NET30

SHIP TO:

Invoices

Labor
Materials
Equipment

ACCOUNT NO.	P.O. NUMBER	SALES PERSON	SHIPPED VIA	B/L NUMBER
176550	WT BARRACKS	Steve McDaniel	n/a	

LN	ITEM CODE	QTY SHIPPED	UNIT	SIZE	LINEAR FEET	DESCRIPTION/COMMENTS	PRICE	MLP	PER	AMOUNT
1	6005716	34	PC	3.75	90	6 TRACK 16GA (600123-54) 36 3/8"	3.74	997.00	E	\$95.73
2	6005516	32	PC	12.15	390	6 SW STUD 16GA (6005162-24) 12ft 2.25in. (shipped)	14.06	1,154.00	E	\$450.06

CAIRO, GA 39828

11/10/2010

FAY TO THE ORDER OF: _____ \$2,224.77

Two Thousand Two Hundred Twenty-Four and 77/100 DOLLARS

MEMO **Checks**

VOID AFTER 90 DAYS
TWO SIGNATURE REQUIRED OVER \$300.00

AUTHORIZED SIGNATURE

Payroll & Daily Reports

Name and Address	Soc Sec No. Class Mar Exemp.	Hours Worked This Job							Pay Rate	Gross Pay This Job All Jobs	Deductions --		Check #	
		06/27 Mon	06/28 Tue	06/29 Wed	06/30 Thu	07/01 Fri	07/02 Sat	07/03 Sun			Fed. Fica State	Local Other Total		Net Pay
[REDACTED]	R	8.00	8.00	8.00	8.00	8.00	0.00	0.00	40.00	32.142	1285.67	216.99	26.22	
	1 O	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	+0.348FR	94.09	55.78		
	R	8.00	8.00	8.00	0.00	0.00	0.00	0.00	24.00	19.974	479.38	74.11	12.52	
	1 O	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	+0.396FR	42.66	57.86		
[REDACTED]	R	8.00	8.00	8.00	8.00	8.00	0.00	0.00	40.00	27.551	1102.02	111.46	10.52	
	1 O	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	+1.300FR	80.48	49.98		
	R	8.00	8.00	8.00	8.00	8.00	0.00	0.00	40.00	0.000	1102.02	54.96	307.40	794.62
	1 O	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	+0.000FR, 40hrs				

ID extra time v. scope time
ID amount paid

DAILY COST CARD

No. _____ RATE _____

NAME Keith Price

TIME IMPRINTS	TIME USED	JOB NO.
	10 1/2	Total
	NO	Lunch
	2 1/2	o.t
21 APR 16.51	17-1800-06	Aranga
21 APR 5.92	17-1800-06	Res Aranga
TOTALS	8.0	

DATE 1940L FOREMAN O.K. CB

DUWE METAL PRODUCTS INC. DAILY/WEEKLY TIME SLIP

NAME Jason Kalin WEEK ENDING 4-21-17

DATE _____

CLOCK NO. 42783

RATE SHW LOCAL NO. 8

JOB NAME	NUMBER	DAY	HOURS		DESCRIPTION
			REG	PREM	
Home wood	16-2854-61	M	8		STAIR
		T	8		
		W	8		
		TH	8		
	-64	F	8		ELEVATOR
		Sa	8		VAW
					24.89
					57.33
					R 995.00
					ST 298.04
					1294.24

TOTAL HOURS 40 8

CONTRACT NO. _____ PAID TO MEN _____ SUB. _____ MILEAGE _____ MISC. _____

*USE BACK OF CARD FOR FURTHER 'DESCRIPTION' IF REQUIRED

Job History Detail Reports

Job History Detail Report
171800 - Catwalk Module & Railings
To 12/31/17

Cost Code	Description	Source	Date	Class	Category	Dollars	Hours/Units	Comment
1	Phase 1							
620	Shop Mechanic	P/R	04/15/17	LAB SH20	OTPRE	75.66	2.000	25185 Lechman, Michael
		P/R	04/15/17	LAB SH20	REG	201.76	8.000	25185 Lechman, Michael
		P/R	05/27/17	LAB SH20	REG	50.44	2.000	26902 Wall, John E
		P/R	04/15/17	OHD		499.36	10.000	
		P/R	05/27/17	OHD		90.80	2.000	
		P/R	04/15/17	WCO		17.10	10.000	
		P/R	05/27/17	WCO		3.45	2.000	
		P/R	04/15/17	PTX		49.17	10.000	
		P/R	05/27/17	PTX		8.95	2.000	
		P/R	04/15/17	FRG		154.10	10.000	
		P/R	05/27/17	FRG		30.82	2.000	
		Cost Code 620 Total:		LAB		327.86	12.000	
				OHD		590.16	12.000	
				WCO		20.55	12.000	
				PTX		58.12	12.000	
				FRG		184.92	12.000	
Totals:						1,181.51		

Damages Methodology

Analysis of As-Fabricated Shop Drawings

- Estimate/Subcontract Sum

= Damages

- Not Total Cost Claim (Actual Cost – Estimate)
- Modified Total Cost Method Supports this Analysis
 - Impossible to track actual change in weld requirements
 - » Shops cannot track change actual hours for increased welds (5/16" fillet to CJP)
 - Bid Reasonable (expert testimony)
 - Actual Cost Reasonable (fact & expert testimony)
 - Lack of Responsibility for added cost (fact & expert testimony)

Limitation to Recovery from Owner



- Option 1: "Nothing in this agreement shall be construed to limit Subcontractor's right to seek a change order from Contractor **to the extent such change is attributable to Contractor** and not attributable to Subcontractor, Owner-Directed Changes, or Differing Conditions."

Option 2: "**Except where such extra work is caused by Contractor or its subcontractors**, Contractor's receipt of compensation from Owner for extra work, changed work or changed circumstance shall be a condition precedent to Subcontractor's right to payment for the same."

NEDD

- N = Notice
- E =Entitlement
- D = Damages
- **D = Don't Waive Your Claims**
 - Accept payment =waiver?
 - Fail to modify lien waivers = waived claims?
 - Missed deadlines for lien and bond claims
 - Failed to timely start dispute resolution procedures

Lien Waivers



Lien Release



- In consideration of \$____, which represents the full, complete, and final payment for the Work, Subcontractor releases the GC and Owner from
 - All claims, demand and causes of action; and
 - All liens

(insert Name and Location of Job)

NOW, THEREFORE, in consideration of \$ _____ * which represents the full, complete and final payment for the Work, the Subcontractor/Supplier does hereby:

1. Release, remise, relinquish and forever discharge J&S Construction ("J&S") and the Owner of the Premises of their successors or assigns, from any and all claims, demands and causes of action which the Subcontractor/Supplier has, might have or could have against _____ or Owner by reason of, or arising out of, the Work.
2. Waive and release any and all liens or right to lien against the Premises on account of labor and/or materials furnished by the Subcontractor/Supplier, which the Subcontractor/Supplier has under the law and statutes relating to Mechanic's Liens of the State in which the Premises are located.

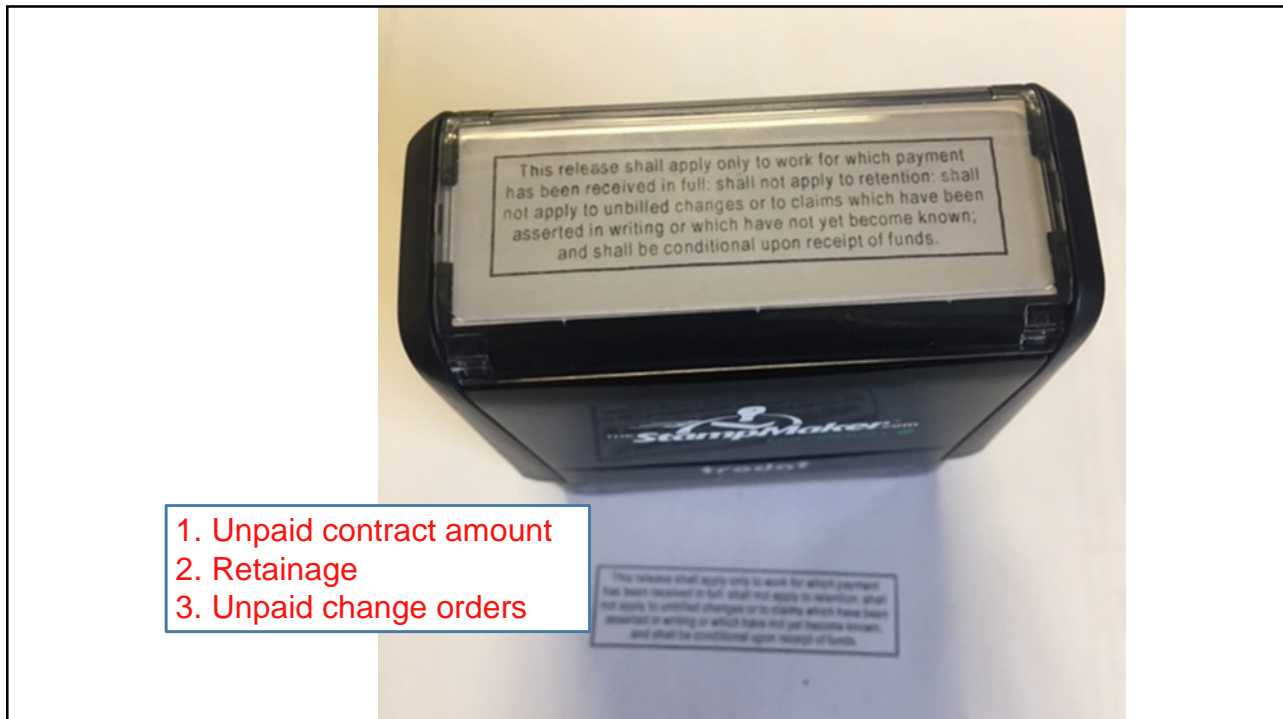
_____, Subcontractor/Supplier, hereby releases, J&S and the Owner of the Premises on account of any liens, demands, as

SUBCONTRACTOR/SUPPLIER
CONDITIONAL WAIVER OF LIEN AND CERTIFICATION OF PAYMENT
FOR LABOR, MATERIALS, EQUIPMENT AND SUBCONTRACTORS

NOW THEREFORE, conditioned upon actual receipt of One Hundred Eighteen Six Hundred Ninety Five Dollars and Fifty Cents (\$118,695.50) ("Payment") the undersigned shall provide the FINAL RELEASE AND WAIVER OF LIEN ("Release") for the amount of the Payment actually received. The Release shall be in the form of the attached **Exhibit 1** and shall be provided within five (5) business days from the day the Payment check clears.



conditioned upon actual receipt of C
186,955.50 (\$118,695.50) ("P



Watch Out!

Notes:

Through acceptance of this Change Order, Subcontractor/Vendor acknowledges that it has reviewed the progress of the Work related to this Project and the potential impact of the added work on the progress of the Project in the future. As a result, this Change Order includes compensation to Subcontractor/Vendor for any and all effects, delays, inefficiencies or similar demands associated with this Project and the Subcontractor/Vendor recognizes that there is no basis for any such claim in the future.

Note that this amendment does not constitute a modification to the original agreement until accepted by both Subcontractor/Vendor and Turner Construction Company.

- Change Order No. 3 = Disputed

- Change Order No. 4 = Agreement, but . . .
 - This CO includes compensation for all effects, delays, inefficiencies associated with this Project
 - and there is no basis for any such claim in the future

Watch Out

Please note that all other terms and conditions of the Agreement remain unchanged, including those related to schedule and Time of Completion, provided that any schedule referred to in the Agreement shall instead refer to the current project schedule; and Subcontractor/Vendor agrees that all costs to satisfy said terms and conditions with the inclusion of the adjusted scope of work as set forth by this Change Order are included within the lump sum Change Order amount stated herein.

- Change Order No. 4:
 - All other terms unchanged including the Schedule
 - » What if you requested a time extension?
 - Agrees that all costs for the adjusted scope are included in the lump sum CO amount
 - » Really? What about CO #3?

DUTY TO PROCEED WITH DISPUTED WORK

Duty to Proceed with Change Order Work

Should the parties hereto be unable to agree as to the value of the work to be changed, added or omitted, the Subcontractor shall proceed with the work promptly under the written order of Contractor from which order the stated value of the work shall be omitted, and the determination of the value of the work, if not resolved in the normal course, shall be addressed pursuant to the dispute resolution procedures in accordance with Article XVIII.

(3) CHANGES.

Without invalidating this purchase order, the Buyer, at any time, may make changes to the purchase order including, but not limited to the goods ordered, the drawings, plans, designs or specifications, quantities ordered, the method of shipment or packing, the place of delivery or the time of performance. The purchase price of the goods may be increased or decreased only where and to the extent that there is a change in the goods and/or quantity ordered. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing with ten (10) days from receipt by Seller of the notification of change. In the event Buyer and Seller are unable to agree on such equitable adjustment, the adjustments shall be determined pursuant to an arbitration held under the auspices of the American Arbitration Association. Such arbitration may be confirmed by either party pursuant to a court order. Nothing provided in this clause shall excuse the seller from proceeding with the performance of this contract as changed. Any other modification must be in writing and Signed by the parties. In the event the Owner directs a change to the Purchase Order, including but not limited to the goods ordered, drawings, plans or specifications or quantity ordered, the Seller shall only be entitled to an adjustment in price as approved by the Owner thru a fully executed Change Order.

Exceptions to Duty to Proceed

1. Contractor cannot proceed with work until owner responds to a requested clarification.
2. Specifications are so defective that the purpose of the contract will fail if the contractor proceeds.
3. Owner is in material breach of the contract.
4. The change is of such magnitude that it constitutes an entirely different undertaking: A "Cardinal Change."

RISKY – THERE IS A BETTER WAY

Solution

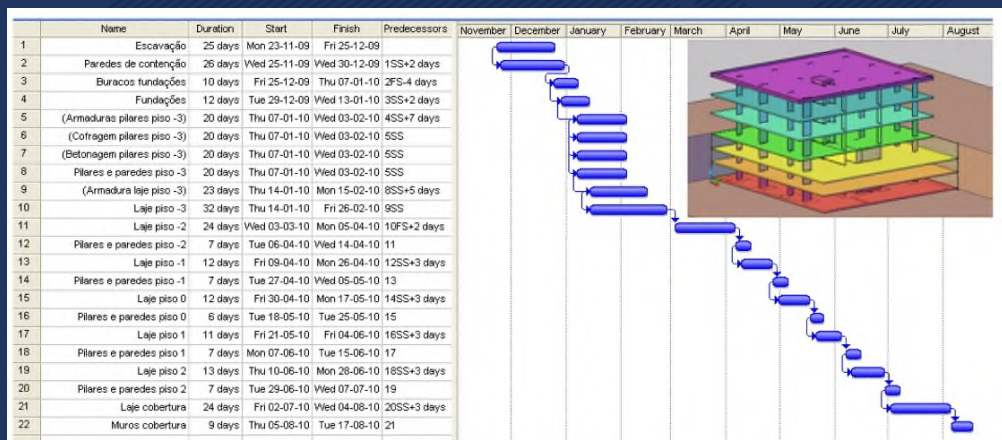
- Provided Contractor has:
 - Timely paid all amounts owed under the original scope of Work in accordance with the Contract,
 - » To the extent Contractor has included a pay-if-paid clause in the Subcontract, Contractor has passed along all Subcontractor Applications for Payment, and has taken steps to demand and ensure timely and prompt payment to the Subcontractor,
 - Paid for all Contractor Caused Changes,
 - for Owner-caused changes, established that within 14 days of receipt from Subcontractor, submitted and requested timely payment of all applicable Change Order Requests,
- Subcontractor shall proceed diligently with performance of the original Work and changed work which has been directed, and Contractor shall continue to make payments in accordance with the Contract Documents.

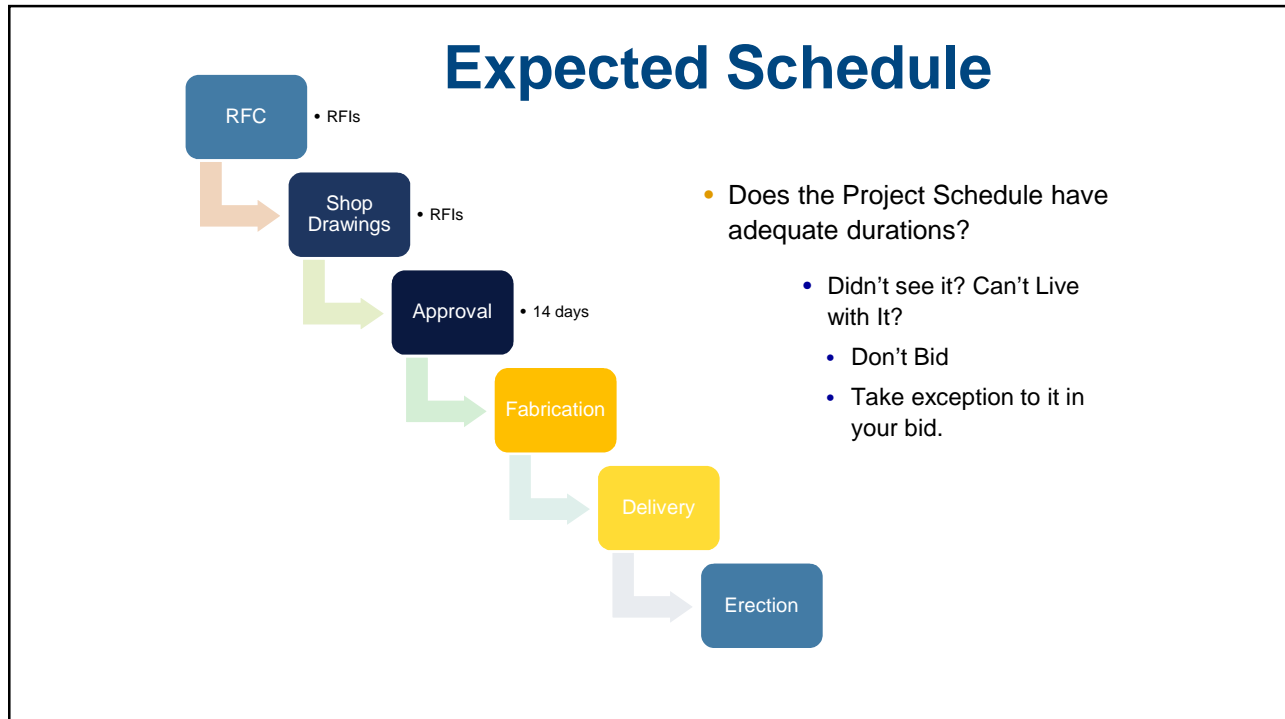
Best Practices

- Strike while the change is fresh
 - Issue notice and assign a PM to follow up on the approval of the change weekly
 - Document any agreements reached in writing

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Changes to Contract Time

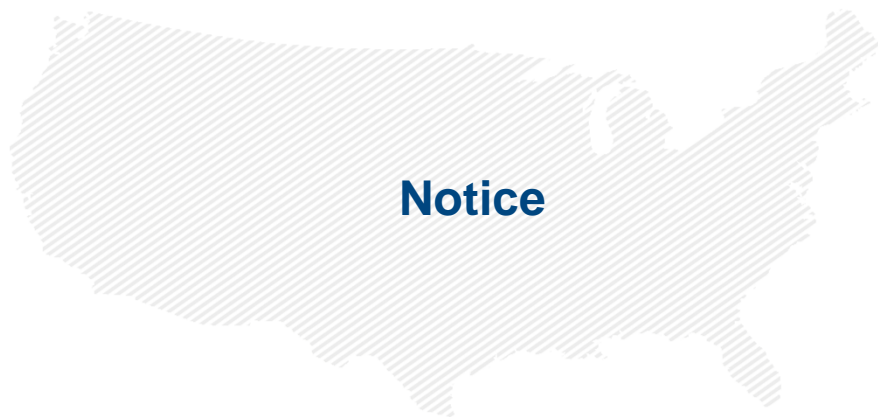
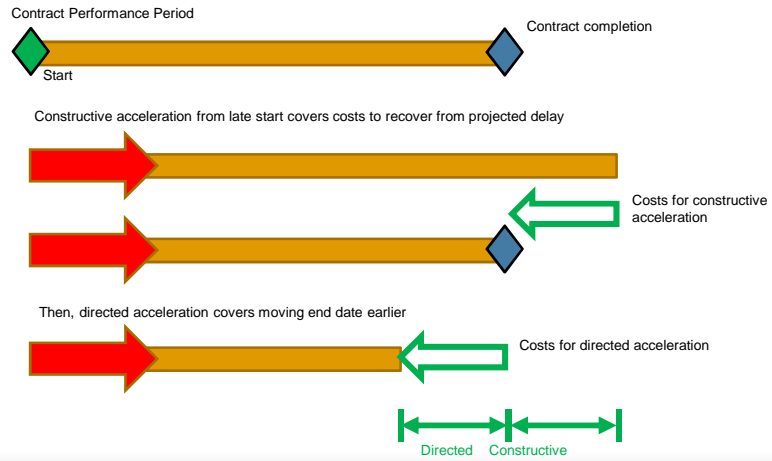




Contract Language

- Subcontractor's Baseline Schedule is attached hereto as Exhibit ____.
- The Subcontract Time and the achievement of Milestones in this Agreement are contingent upon:
 - (1) Issued for Construction Drawings, which comply with Section 3.1 of the AISC Code of Standard Practice, current edition, obtained on or before ____;
 - (2) return of approved shop drawings within __ business days of submission to Contractor,
 - (3) prompt return of RFI responses to Subcontractor, but in any event, no later than __ hours of submission by Subcontractor, and
 - (4) Subcontractor being given approved shop drawings __ weeks prior to the necessary delivery date for that sequence of work ("Predecessor Work Milestones").
- Conditioned upon the attainment of the Predecessor Work Milestones,

Constructive & Directed Acceleration



DRAFT AIA® Document G701™ - 2001

Change Order

PROJECT (Name and address): ARS	CHANGE ORDER NUMBER: 001	OWNER: <input type="checkbox"/>
	DATE: []	ARCHITECT: <input type="checkbox"/>
TO CONTRACTOR (Name and address): []	ARCHITECT'S PROJECT NUMBER: []	CONTRACTOR: <input type="checkbox"/>
	CONTRACT DATE: []	FIELD: <input type="checkbox"/>
	CONTRACT FOR: General Construction	OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:
 (Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The original Contract Sum was
 The net change by previously authorized Change Orders
 The Contract Sum prior to this Change Order was
 The Contract Sum will be increased by this Change Order in the amount of
 The new Contract Sum including this Change Order will be

\$	0.00
\$	0.00
\$	0.00
\$	0.00
\$	0.00

The Contract Time will be increased by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is []

HUGE PROBLEM



NEDD

- N = Notice
- E = Entitlement
 - Legal Entitlement
 - » Contract Terms
 - » CoSP
 - Factual Entitlement
- D = Damages
- D = Don't Waive Your Claims

Contract Terms

NO DAMAGES FOR DELAY



DELAYS

- Example clause
 - If Subcontractor is delayed, the Subcontractor shall be entitled to an extension of Time. **The Subcontractor shall not be entitled to and shall make no claim for damages arising out of or relating to delays, disruptions, suspensions, accelerations, inefficiencies or impacts upon the work.**
- No Damage for Delay Clauses:
 - limits recovery to time extension
- Is Time an adequate remedy for excusable delay?
 - Delay – think of idle crane
 - Acceleration - think of sub-fab

No Damages for Delay

- Enforceable? CHECK STATE LAW
- Modify
 - Subcontractor shall be entitled to an equitable adjustment resulting from any change of schedule, acceleration, out of sequence work, or delay **caused by others for whom Subcontractor is not responsible.**
 - Allow recovery of direct cost

No Damage for Delay Clauses

1. Some states declare them void or allow exceptions
 1. Active interference
 2. Bad faith, willful, malicious, or grossly negligent
 3. Beyond contemplation of parties
 4. Delay so unreasonable = intentional abandonment of contract

Go
SCU

YOUR

Code of Standard Practice

Code of Standard Practice
for Steel Buildings
and Bridges

April 14, 2010

2005 AISC Code of Standard Practice for Steel Buildings and Bridges

Contract Documents → Specifications → IBC & CoSP

Ways you can use the code.

124@N00

Created With Haiku Deck

CoSP 9.5.1 - Release for Construction Date

- “The contract schedule shall state
 - when the design documents will be released for construction, if the design documents are not available at the time of bidding,
 - And when the job site, foundations, piers and abutments will be ready, free from obstructions and accessible to the erector,
 - So that the erection can start at the designated time and continue without interference or delay caused by the owner’s designated representative for construction or other trades.”

CoSP 4.1

- “The owner shall furnish,
 - in a timely manner
 - and in accordance with the contract documents,
 - complete structural design drawings and specifications
 - that have been released for construction.”

CoSP 4.4 Approval

- “The approval documents shall be returned to the fabricator within **14 calendar days.**”
- Commentary: “The intent in this Code is that, in the absence of information to the contrary in the contract documents, 14 days may be assumed for the purposes of bidding, contracting, and scheduling.”

CoSP 4.4.2 – RFI Response and Released for Construction

- Commentary:
 - “RFIs should be prepared and responded to in a **timely fashion** so as not to delay the work of the steel detailer, fabricator, and erector.”
 - “[I]f the response will result in an increase in cost or a delay in schedule, Section 4.4.2 requires that the fabricator and/or erector promptly inform the owner’s designated representatives for design and construction.”

CoSP 6.7.1 – Fabricator Determines Sequence Unless Contract Docs State Otherwise

- “Fabricated structural steel shall be delivered in a sequence that will
 - I permit efficient and economical fabrication and erection,
 - AND is consistent with the requirements in the contract documents.
 - » **Note: most contracts allow gc to alter sequence; if this happens make sure your contract allows you to seek adjustment to contract sum and time for such changes.**
- If the owner or owners designated representative for construction wishes to prescribe or control the sequence of delivery of materials, that entity shall specified the required sequence in the contract documents.

CoSP 7.1 – Method of Erection

- “Fabricated structural steel shall be erected using methods and a sequence that will
 - **permit efficient and economical performance** of erection,
 - AND that is consistent with the requirements in the contract documents.
- If the owner or owner’s designated representative for construction wishes to prescribe or control the method and/or sequence of erection, or specifies that certain members cannot be erected in their normal sequence, **that entity shall specify the required method and sequence in the contract documents.**”

Problem Clause

- Do you really want to take on this cost?

D. The sequencing of the work is to be scheduled and approved by . It is understood that reserves the right to change the sequencing of the work, if necessary. After this Subcontractor has reviewed and approved the mutually acceptable revisions, Subcontractor shall be responsible for the costs of all overtime, shift time differentials, and other premium time costs required to make the schedule commitments outlined above. This includes, but is not limited to, work in excess of eight hours per day, forty hours per week, and/or work on Saturdays, Sundays and Holidays.

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Problem Clause

E. Within **20 workdays** after contract execution, the Subcontractor will have notified in writing of any foreseeable conflicts in the project schedule, Exhibit "G". If there is a conflict or concern, this Subcontractor agrees to work with the Project Team to provide a mutually acceptable Recovery Schedule to meet the intended project schedule start dates, durations and completion dates at the Subcontractor's Cost.

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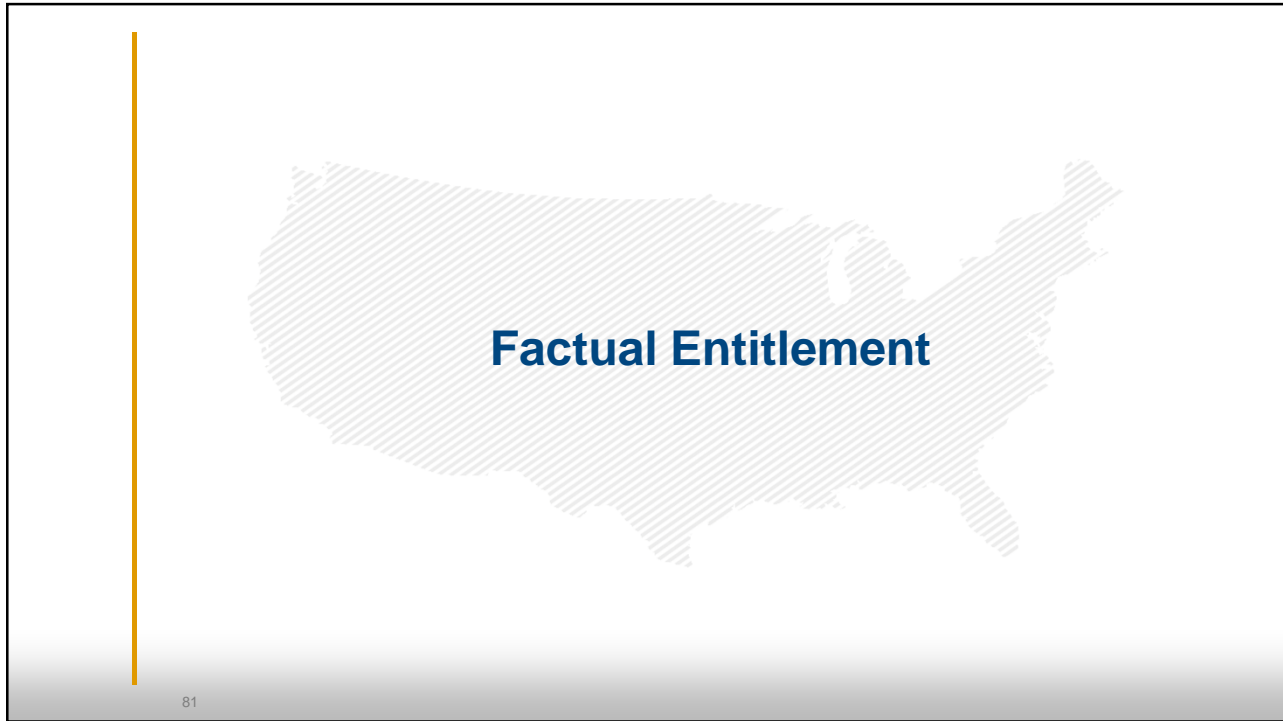
CoSP 7.2 Job site conditions

- The owner's designated representative for construction shall provide and maintain the following for the fabricator and erector:
 - (A) Adequate access roads into and through the job site. . .
 - (B) **A firm, properly graded, drained, convenient and adequate space** at the job site . . .
 - (C) Adequate storage space, when the structure does not occupy the full available job site, to enable the fabricator and erector to operate at maximum practical speed.
- Otherwise, the owner's designated representative for construction **shall inform the fabricator and erector of the actual job site conditions . . . Prior to bidding.**"

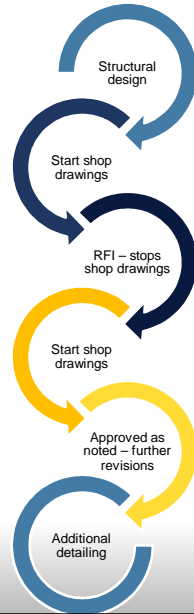


CoSP 9.5.3 – Delays to Fabricator

- "If the fabrication or erection is significantly delayed
 - due to revisions to the requirements of the contract,
 - or for other reasons that are the responsibility of others,
- **the fabricator and/or erector shall be compensated for the additional costs incurred.**"

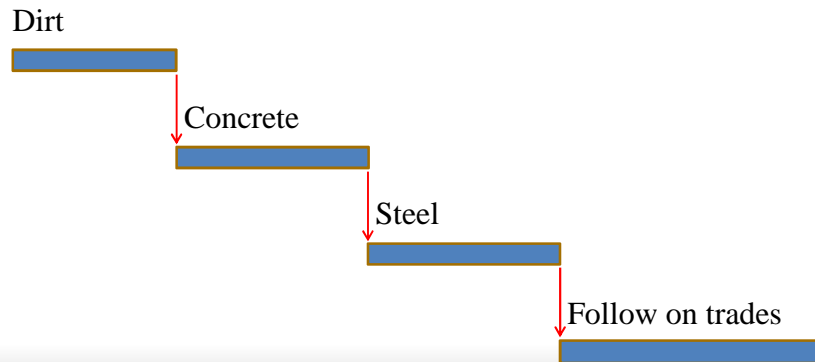


Actual Schedule



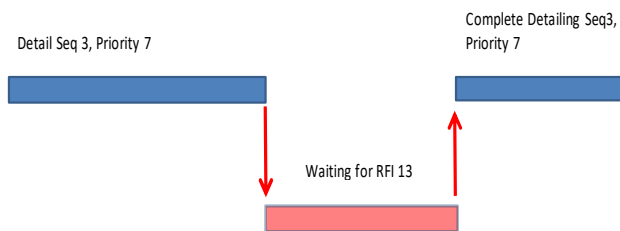
Claims for Delay - Fabrication

- The general Critical Path for all jobs is:



Time Impact Analysis - Procedure

- FRAGNET
- This can be as simple as:
-



"Use your Tools"

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Claim Overview

- Undisputed Amount Owed
 - Original Contract Balance \$___
 - Undisputed Change Orders \$___
 - Retainage (\$___)
 - Amount Paid (\$___)
 - Undisputed Amount Due \$___
- Amounts in Disputes
 - » Change Order Claims
 - » Backcharge Claims

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