

"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?

The Contract versus the Real World

Most Construction Contracts

Require a written Change Order signed by both parties before starting any additional work.

Limit Applications for Payment to base contract and approved Change Orders.

Contemplate consequential and liquidated damages for delay.

Provide for a waiver of the subcontractor's right to request a change order in the absence of immediate notice.

What Happens in the Field

Scheduling issues require the subcontractor to start extra work immediately, while "the paperwork will catch up."

Subcontractors devote time and materials to extra work without the ability to submit an invoice.

Subcontractors lose time through no fault of their own while negotiating changes with the GC.

Subcontractors either don't recognize the scheduling impact of an event or work to make up time, rather than submit a notice right away.

A Successful Change Order

- What is Success?
 1. Get Paid
 2. Avoid Claims and Disputes
 3. Build a Record
 4. Preserve the Relationship

Make it easy for the Contractor/Owner to give you what you want

Remember N.E.D.D. - 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



Proof of Change Orders

- Packets for EACH Change Order
 - » N.E.D. – Notice, Entitlement, Damages
 - » Proof of the change
 - » Request time extension where appropriate
 - » Communications regarding change order
 - » If you proceed without a change order, confirm in writing directive to proceed and that you are proceeding



Notice

N.E.D.D.

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

Example Notice Clause

Subcontractor shall provide Contractor with written notice of any circumstance or direction given by Contractor which ~~Subcontractor may regard as a change, addition and/or omission or which may otherwise serve as the basis for a request for an~~ increase in Price or extension of time within 5 days of the receipt of the direction or the occurrence of the event giving rise to such a request. Such written notice shall provide a full explanation of the circumstances or direction and the extent of the increase and extension sought, including a detailed breakdown and analysis supporting such request. Failure of the Subcontractor to provide such written notice shall constitute a waiver of Subcontractor's right to any such increase or extension.

Subcontractor acknowledges that the General Contract may include provisions whereby Contractor is required to provide notice, information, reports and analyses in the event that Contractor intends to pursue or which may affect Contractor's right's to an extension of time or increase in Contractor's price to the Owner, whether by way of change order or otherwise, and that the failure to provide such notice, information, reports and analyses may result in a waiver or forfeiture of the right to such an extension or increase. Accordingly, Subcontractor agrees that Subcontractor shall provide all such notices, information, reports and analyses to Contractor, in the same form, content and manner as Contractor is required to provide to Owner under the General Contract in the event that Subcontractor intends to pursue an extension of time or increase in Price. Subcontractor shall provide all such notices, information, reports and analyses to Contractor not later than 3 business days prior to the time by which Contractor must submit corresponding notice, information, reports and analyses to Owner so that Contractor can pursue like

Example Notice Clause

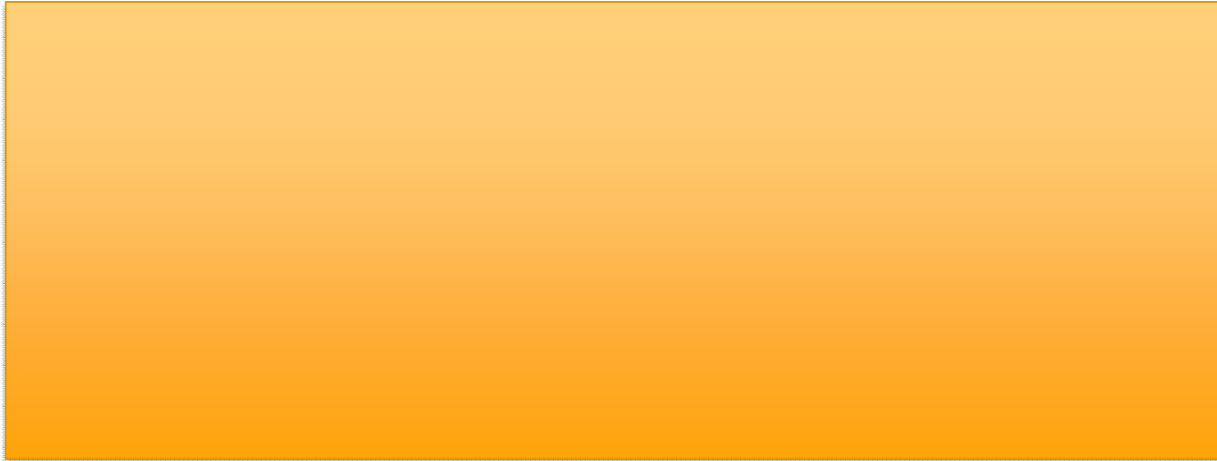
The Subconsultant may be ordered in writing by the Contractor, without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Contract Sum and the Contract Time adjusted accordingly. The Subconsultant, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Contract Sum and Contract Time for such revised Work in a manner consistent with requirements of this Agreement. Failure to submit a Claim with all necessary supporting documentation within three (3) days of the Subconsultant's knowledge of the Modification shall constitute a waiver by Subconsultant of any claim for a revision to the Contract Sum or the Contract Time.

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.

Notice Was Timely Given

April 9, 2018



Kyle:

Upon preliminary review of revised IFC design drawings for Permit Package 4 received on April 4, 2018 (see attached), [redacted] Steel would like to provide [redacted] with an Order of Magnitude for the forthcoming Pending Change Order X14.



Entitlement

NEDD

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

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

Contract Terms = 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

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



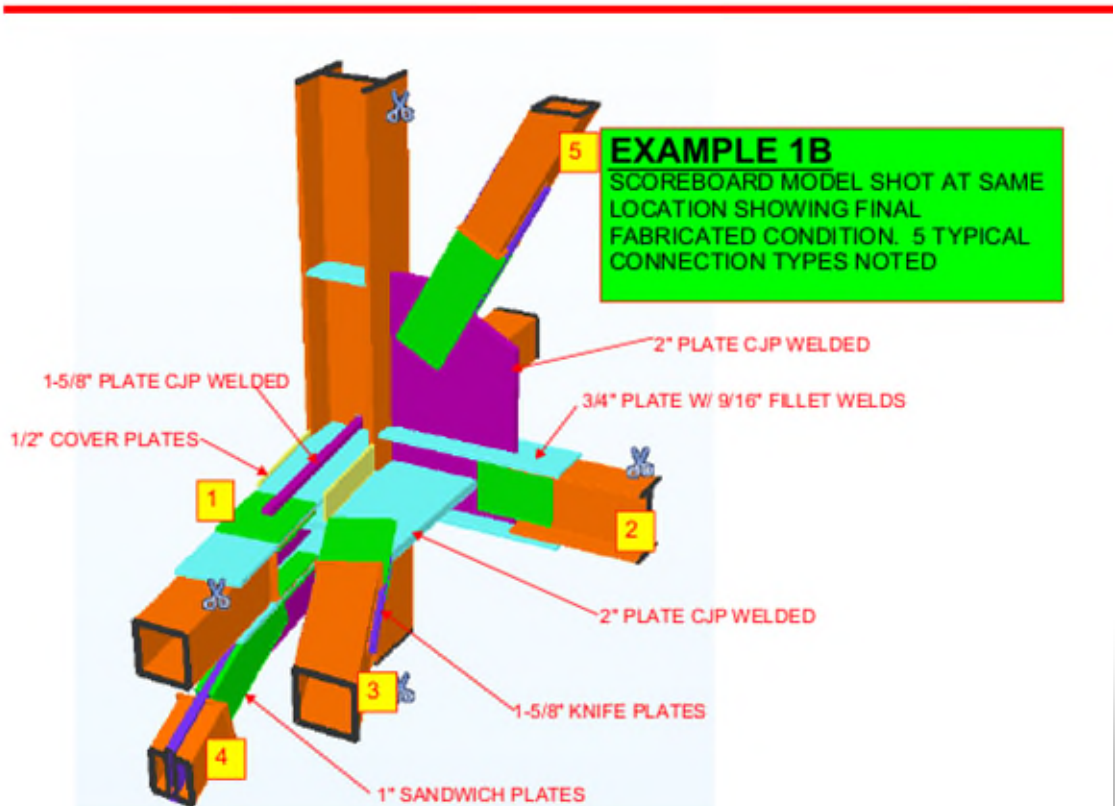
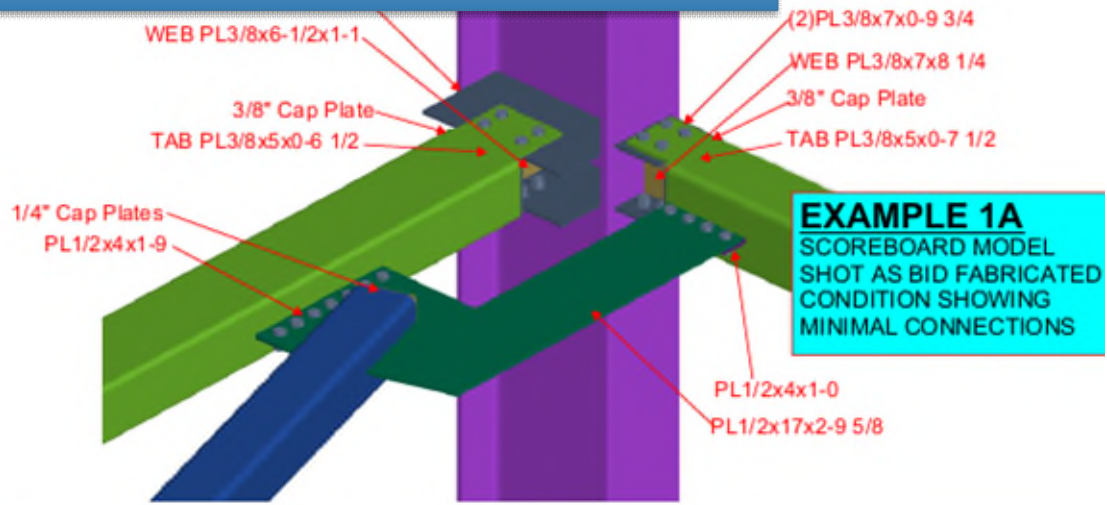
What is in your scope?

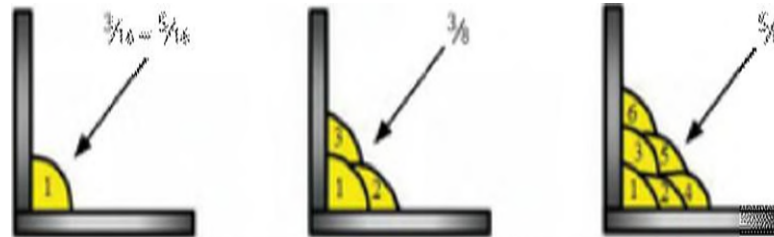
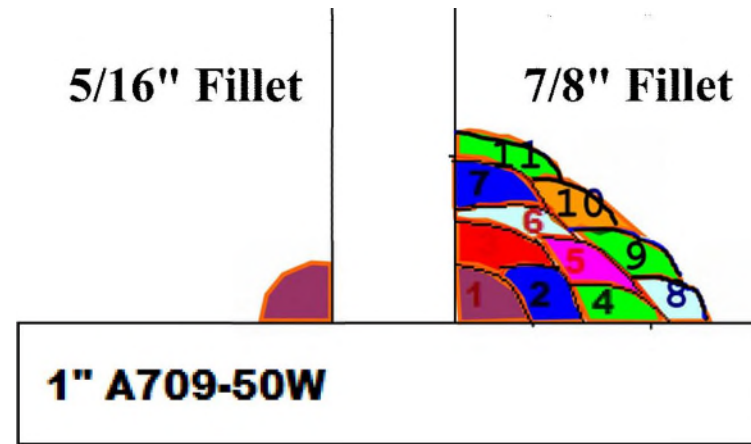
The Subconsultant may be ordered in writing by the Contractor, without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Contract Sum and the Contract Time adjusted accordingly. The Subconsultant, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Contract Sum and Contract Time for such revised Work in a manner consistent with requirements of this Agreement. Failure to submit a Claim with all necessary supporting documentation within three (3) days of the Subconsultant's knowledge of the Modification shall constitute a waiver by Subconsultant of any claim for a revision to the Contract Sum or the Contract Time.

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. 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.

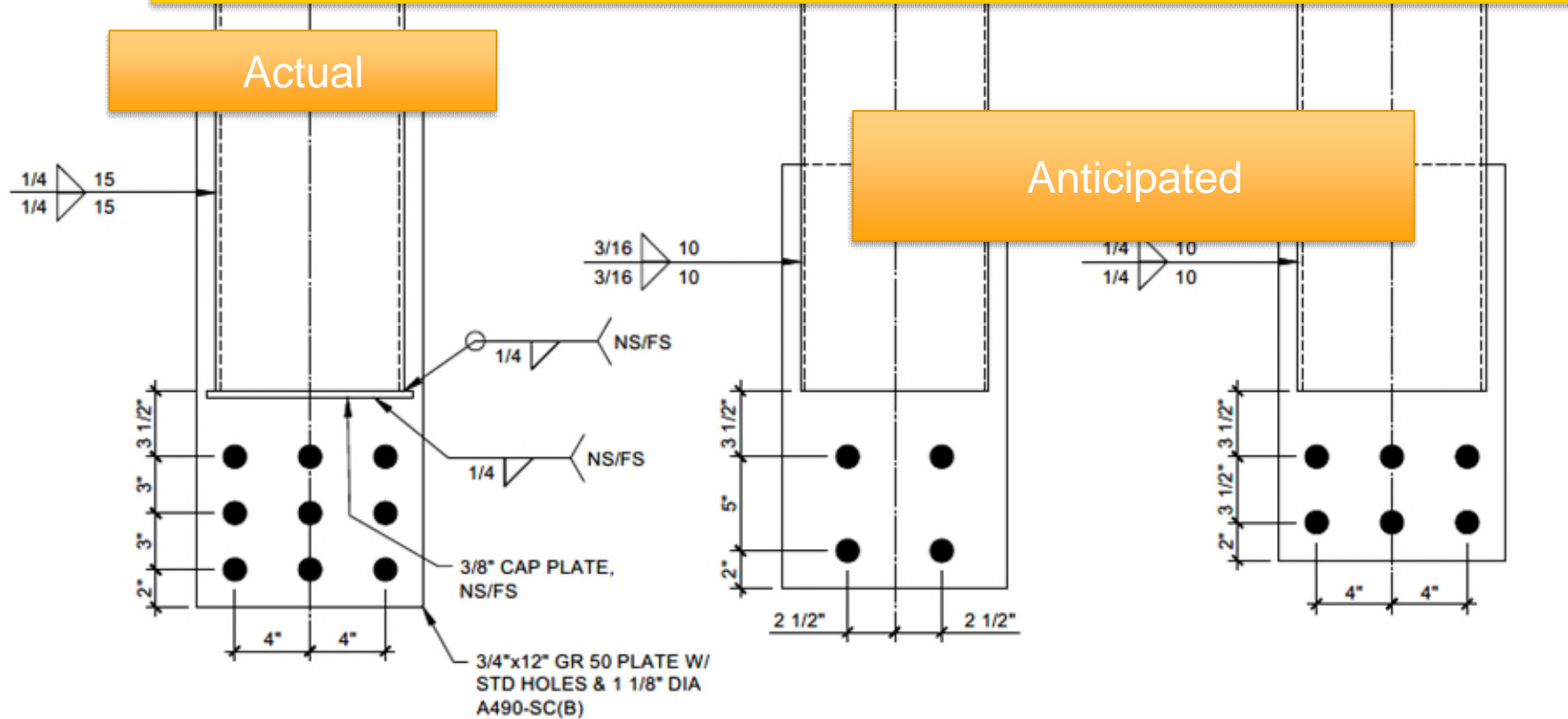
flat	convex	concave	d or r dimension
			
.032	.041	.036	1/16
.072	.093	.081	1/8
.129	.165	.145	1/4
.201	.258	.226	5/16

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



1046 Connections

$\phi R_n = 270$ k HSS
 $\phi R_n = 295$ k Bolted Conx
 $\phi R_n = 334$ k Welds (24% Oversized)
 Cap Plate Weld = 52,212" 1/4" Fillet

1038 Connections

$R_u = 154$ k
 $\phi R_n = 201$ k HSS
 $\phi R_n = 181$ k Bolted Conx (44% Bolts)
 $\phi R_n = 167$ k Welds (38% Weld Volume)
 5,190 Fewer Bolts
 69,200" Less 3/16" Fillet

8 Connections

$R_u = 198$ k
 $\phi R_n = 201$ k HSS
 $\phi R_n = 271$ k Bolted Conx (67% Bolts)
 $\phi R_n = 223$ k Welds (67% Weld Volume)
 24 Fewer Bolts
 160" Less 1/4" Fillet

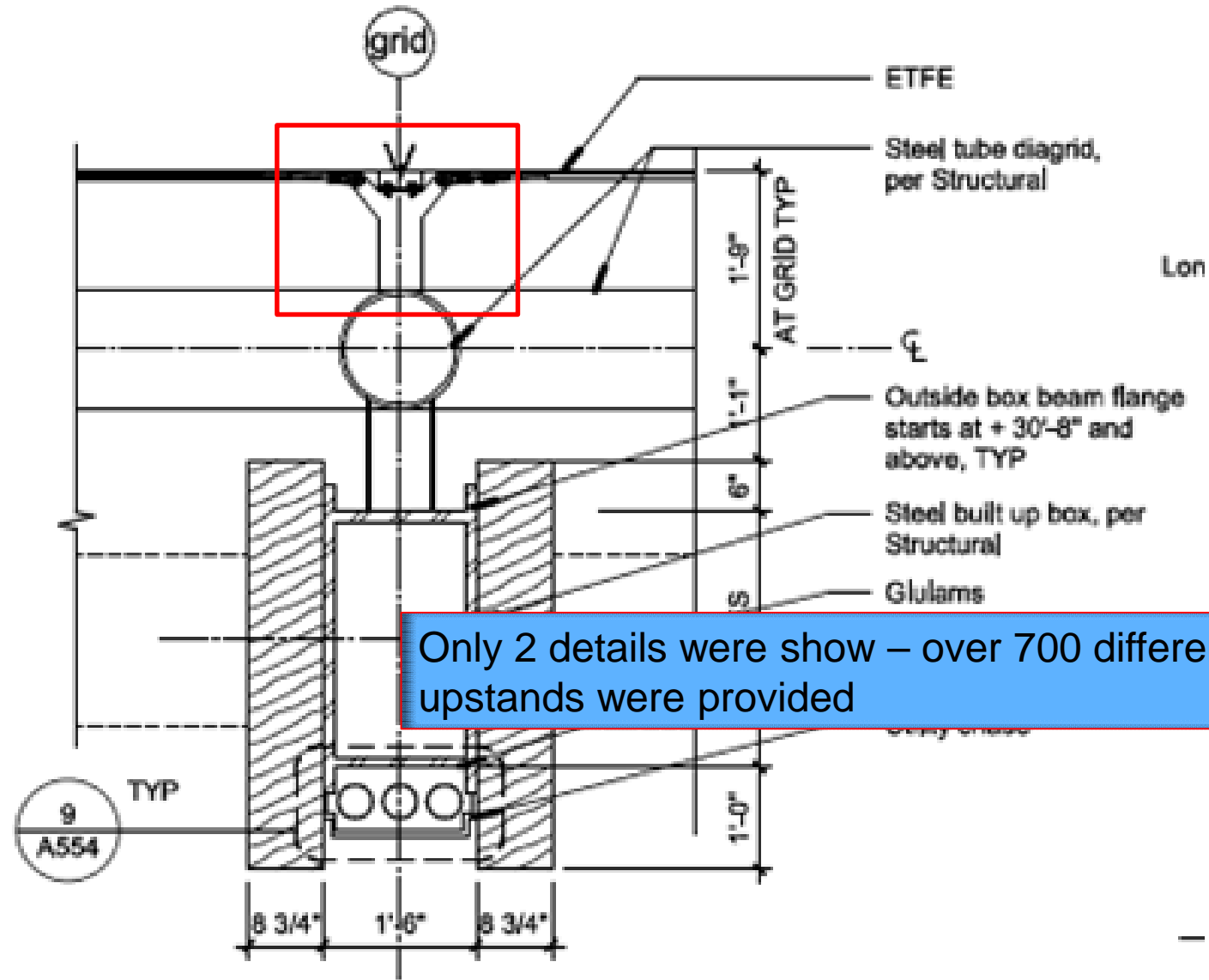
1/8" = 1'-0"



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

REDESIGNED USING ANALYSIS MODEL FORCES

Model Files Used:
 20180303_NLVS_West
 20180304_NLVS_East
 20180305_NLVS_North



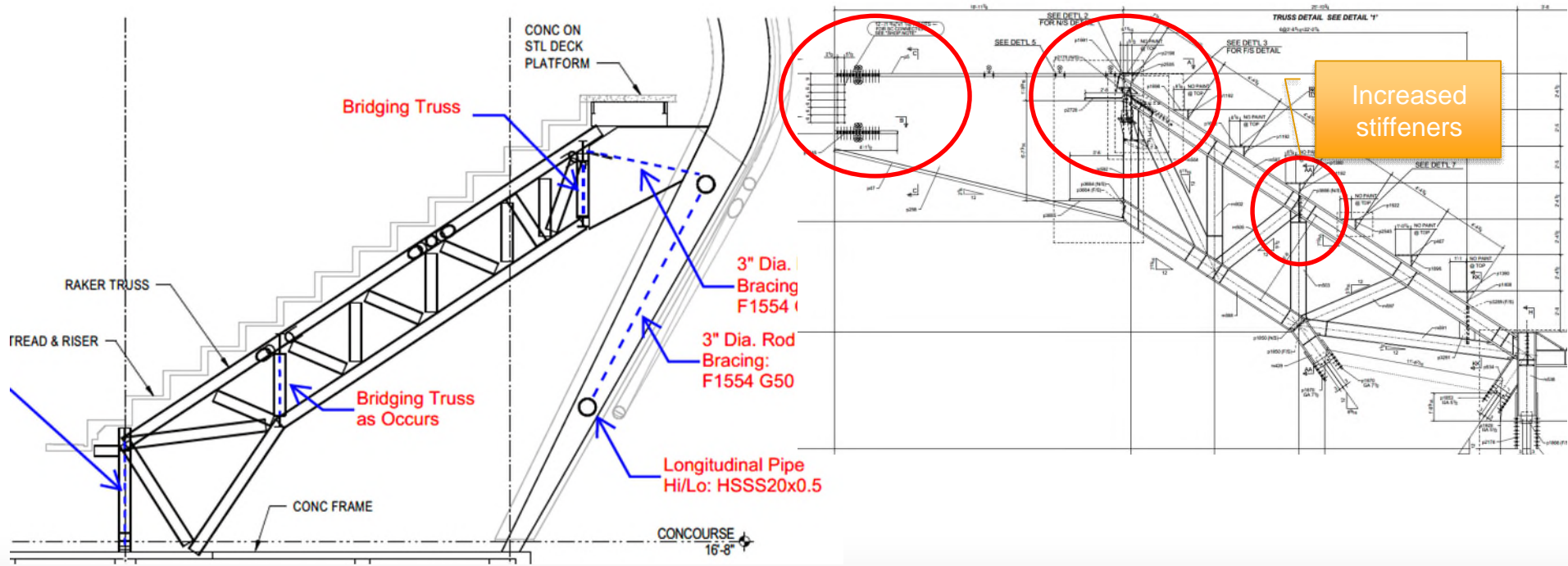
7
A554

CROSS SECTION - TYPICAL

1/2" = 1'-0"

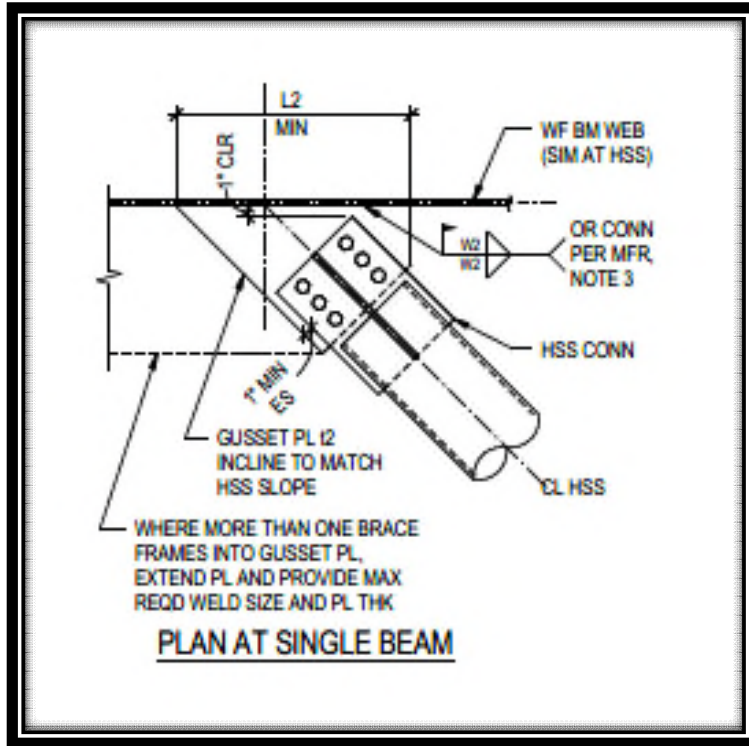
Changed welding requirements and increased connection material

RAKER TRUSSES - BASIS OF RFP

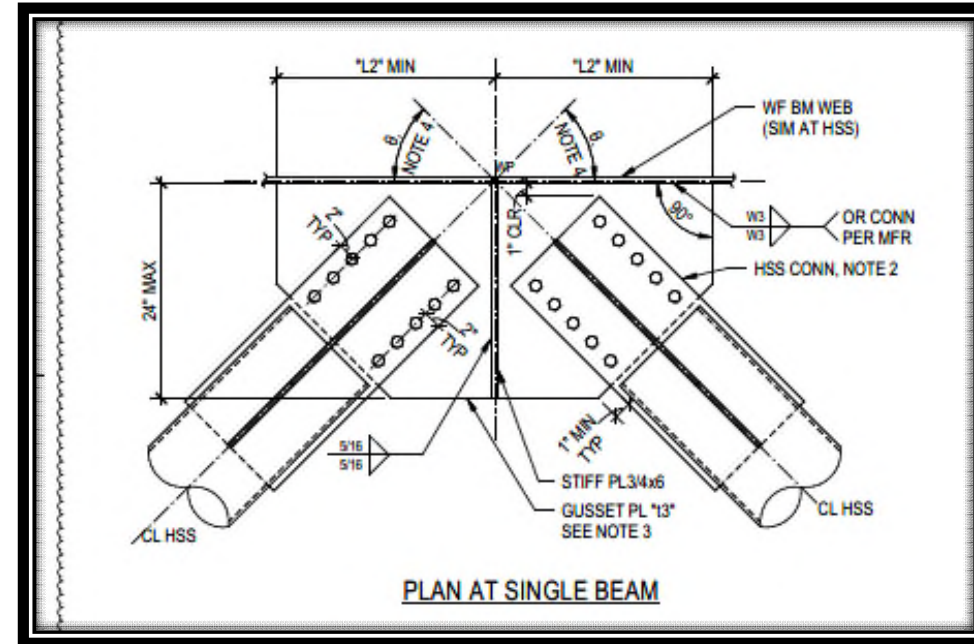


Bowl Steel Connections

RFP



Revised



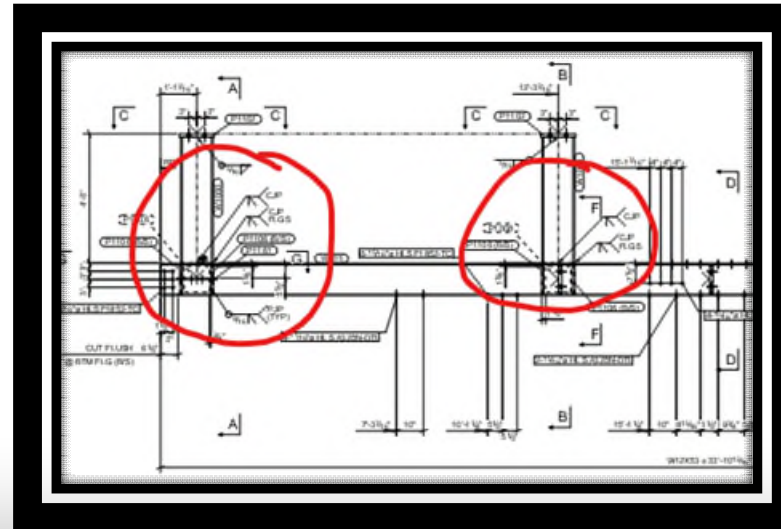
Bid Document 26173-000-S0-0000-NE001 VS Actual Shop Drawing

Bid Document 26173-000-S0-0000-NE001

WELDS

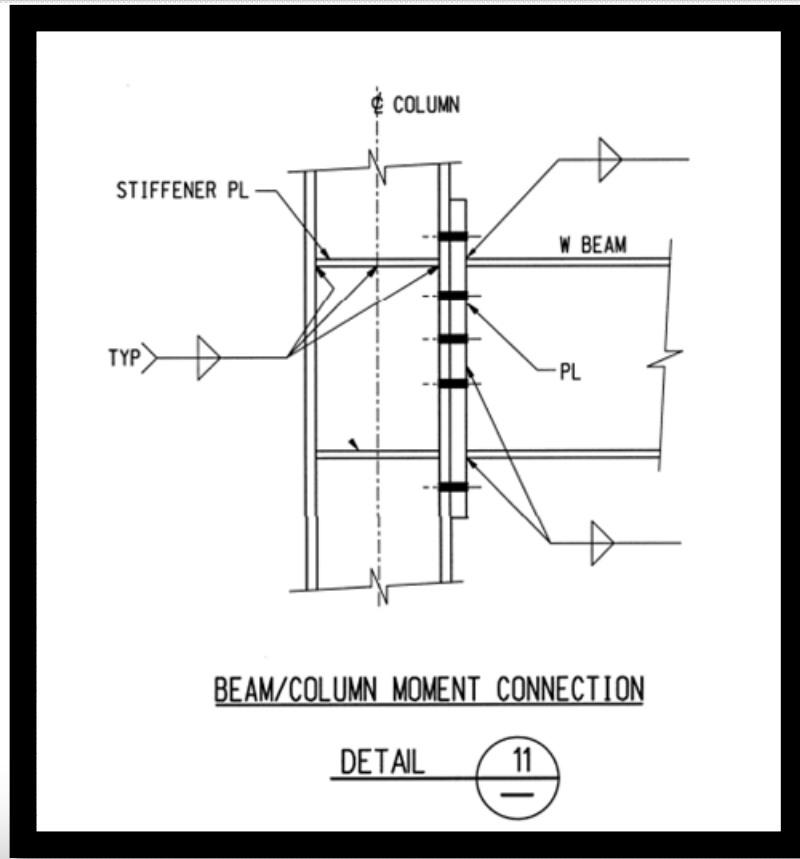
1. WELDS TYPICALLY ARE TO BE FILLET WELDS.
2. PARTIAL PENETRATION WELDS ARE ALLOWED AS AN ALTERNATE FOR FILLET WELDS LARGER THAN $\frac{1}{2}$ ".
3. FULL PENETRATION WELDS ARE NOT PREFERRED.
4. FIELD WELDS ARE NOT PREFERRED, UNLESS NOTED OTHERWISE.

Shop Drawing 111B1500

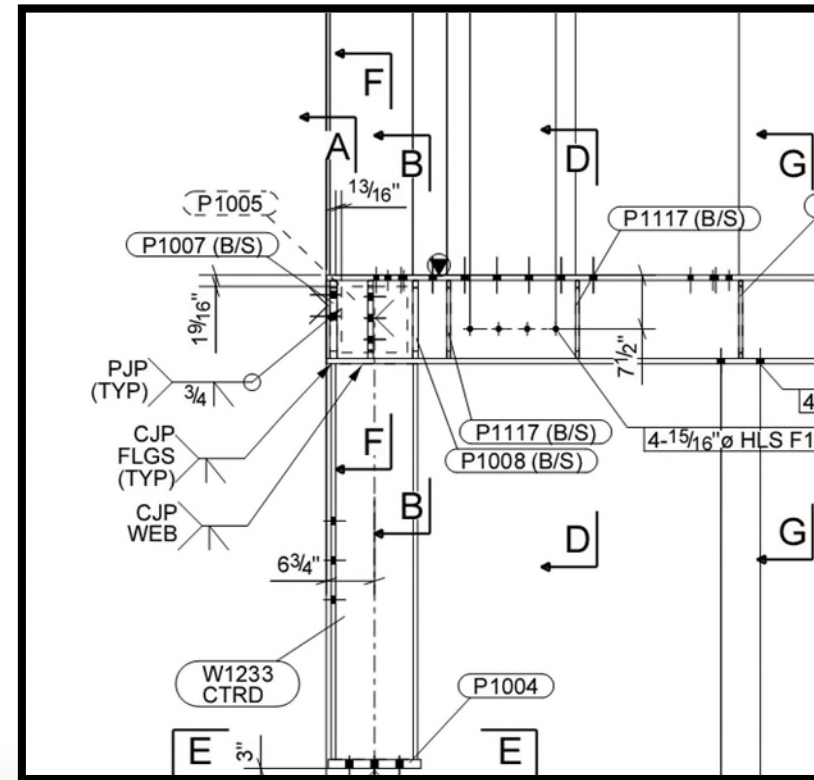


Bid Documents Showing Moment Connection VS. Actual Shop DWGS

Bid Document 26173-000-S0-0000-NE003



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

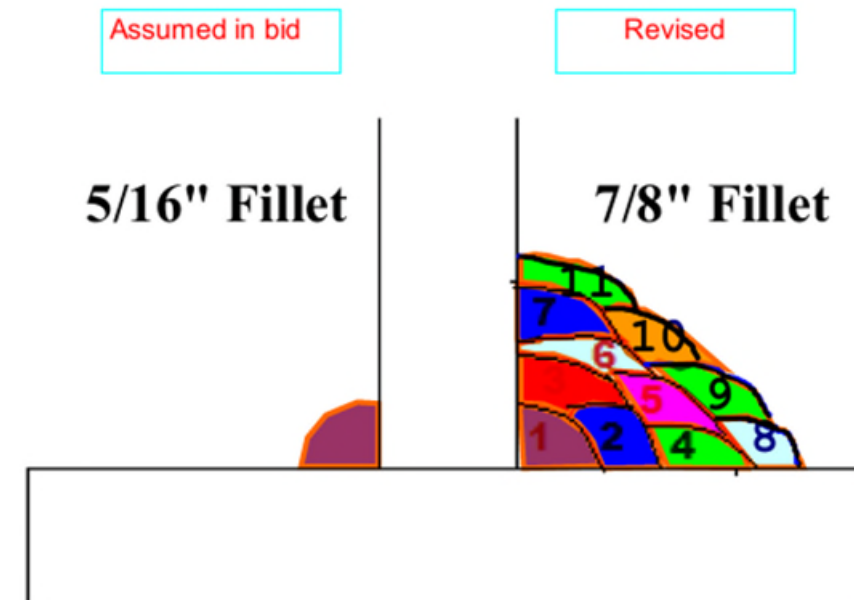


Damages



NEDD

- N = Notice
- E = Entitlement
- D = Damages
 - Unit Price adjustment –provide for adjustment?
 - Time and Materials
 - Lump Sum
- D = Don't Waive Your Claims



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

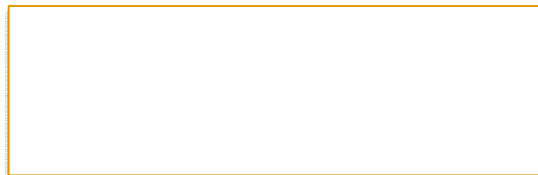
Proof of Damages

- Track Actual Costs
 - Set up phase codes
- If tracking is impossible, put the Contractor on notice immediately – prior to work to discuss how to evaluate change cost:
 - Offer ROM
 - You may have to:

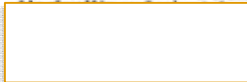
Analysis of As-Fabricated Shop Drawings - Estimate/Subcontract Sum = Damages

- » Not Total Cost Claim (Actual Cost – Estimate)
- » Modified Total Cost Method Supports this Analysis
- » Impossible to track actual change in weld requirements
- » Bid Reasonable (expert testimony)
- » Actual Cost Reasonable (fact & expert testimony)
- » Lack of Responsibility for added cost (fact & expert testimony)

Document Expenses



Please remit to:
WARE INDUSTRIES

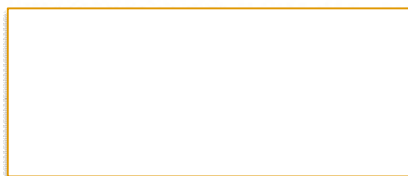


TRANSACTION			
ORDER #	TYPE	NUMBER	PAGE
419957	Shp	1060277	Page 1 of 1
REFER TO THIS NUMBER ▲ ON INQUIRIES			
DATE	DUE DATE	TERMS	
10/13/2010	11/30/2010	2% 10th net/30th	

888-757-9000 | 800-627-4661
 908-757-9251

Invoices

SHIP TO:



Labor
 Materials
 Equipment

CAIRO, GA 39828

RECEIVED

ACCOUNT NO.	P.O. NUMBER	SALES PERSON		SHIPPED VIA		B/L NUMBER				
176550	WIT BARRACKS	Steve McDaniel		p/u						
LN	ITEM CODE	QTY SHIPPED	UNIT	SIZE	LINEAR FEET	DESCRIPTION/COMMENTS	PRICE	MLF	PER	AMOUNT
1	6005T16	24	PC	3.75	90	6 TRACK 16GA (600T125-54) 3ft 9in.	3.74	997.00	E	\$89.73
2	6005S16	32	PC	12.15	390	6 SW STUD 16GA (600S162-54) 12ft 2.25in. UnPunched	14.06	1,154.00	E	\$450.06

CAIRO, GA 39828

FIRST FEDERAL BANK FOR GEORGIA COUNTY
 64-19880612

11/10/2010

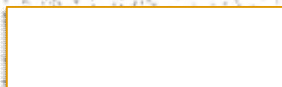
PAY TO THE ORDER OF



\$2,224.77

Two Thousand Two Hundred Twenty-Four and 77/100

DOLLARS



MEMO

Checks

VOID AFTER 90 DAYS
 TWO SIGNATURE REQUIRED OVER \$3000.00

AUTHORIZED SIGNATURE

106670

Payroll & Daily Reports

Name and Address	Soc Sec No. Class Mar Exemp.	Hours Worked This Job							Tot	Pay Rate	Gross Pay This Job All Jobs	--- Deductions ---		Check # Net Pay	
		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		
[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		
										+0.348FR.		94.09	55.79		
	1 O:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	1285.67	46.16	439.25	846.42	
											+0.000FR. 40hrs				
	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		
											+0.396FR.	42.66	57.86		
	0 O:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	615.38	23.96	211.11	404.27		
										+0.000FR. 40hrs					
	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		
										+1.300FR.	80.48	49.98			
	1 O:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	1102.02	54.96	307.40	794.62		
										+0.000FR. 40hrs					

ID extra time v. scope time

ID amount paid

DAILY COST CARD

No. [REDACTED] RATE _____

NAME [REDACTED]

TIME IMPRINTS	TIME USED	JOB NO.
		Total
	10 1/2	
		Lunch
	NO	
		0.1
21 APR 16.51	2 1/2	17-1800-06 Arenas
21 APR 5.92		Res
TOTALS	8.0	17-1800-06 Arenas
DATE	FOREMAN O.K. [REDACTED]	

1940L

DUWE METAL PRODUCTS INC. DAILY/WEEKLY TIME SLIP

NAME [REDACTED] WEEK ENDING 4-21-17

DATE _____

S	M	T	W	Th	F	S
8	8	8	8	8	8	8

CLOCK NO. 42783


RATE SIW LOCAL NO. 8

JOB		DAY	HOURS		DESCRIPTION
NAME	NUMBER		REG	PREM	
Humphreys	16-2892-01	M	8		STAIR
		T	8		↓
		W	8		↓
		TH	8		↓
	-04	F	8		ELEVATOR
		SA		8	↓ AILW
					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	76.66	2.000 25185		
		P/R	04/15/17	LAB	SH20	201.76	8.000 25185		
		P/R	05/27/17	LAB	SH20	50.44	2.000 26902		
		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:	1,181.61			

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 Contractor 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 [REDACTED] 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 [REDACTED] 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.

[REDACTED] 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

This release shall apply only to work for which payment has been received in full; shall not apply to retention; shall not apply to unbilled changes or to claims which have been asserted in writing or which have not yet become known; and shall be conditional upon receipt of funds.

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1. Unpaid contract amount
2. Retainage
3. Unpaid change orders

This release shall apply only to work for which payment has been received in full; shall not apply to retention; shall not apply to unbilled changes or to claims which have been asserted in writing or which have not yet become known; and shall be conditional upon receipt of funds.

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 Change Order includes compensation for all effects, delays, inefficiencies or similar demands associated with this Project [including Change Order No. 3]
 - 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 Change Order amount
 - » Really? What about Change Order No. 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 project manager to follow up on the approval of the change weekly
 - Document any agreements reached in writing
- The four most powerful words
 - “This is to confirm”

Prior to the Change Order Work

- 7.3 CONDITIONS PRECEDENT TO CHANGE ORDER WORK. Seller shall suspend performance of any change, whether directed by Buyer or suggested by Seller, unless the following conditions precedent are satisfied:
 - (1) Seller is thereafter released in writing by Buyer to perform said change,
 - (2) Buyer and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change,
 - (3) Buyer has timely paid all amounts owed under the original scope of Work in accordance with the Contract,
 - (4) Buyer has reviewed and paid for all Changes within thirty (30) days of issuance of the change order request, and
 - (5) Buyer shall continue to make payments in accordance with the Contract Documents
- (“Conditions Precedent to Performance of Change Order Work”).

Changes to Contract Time

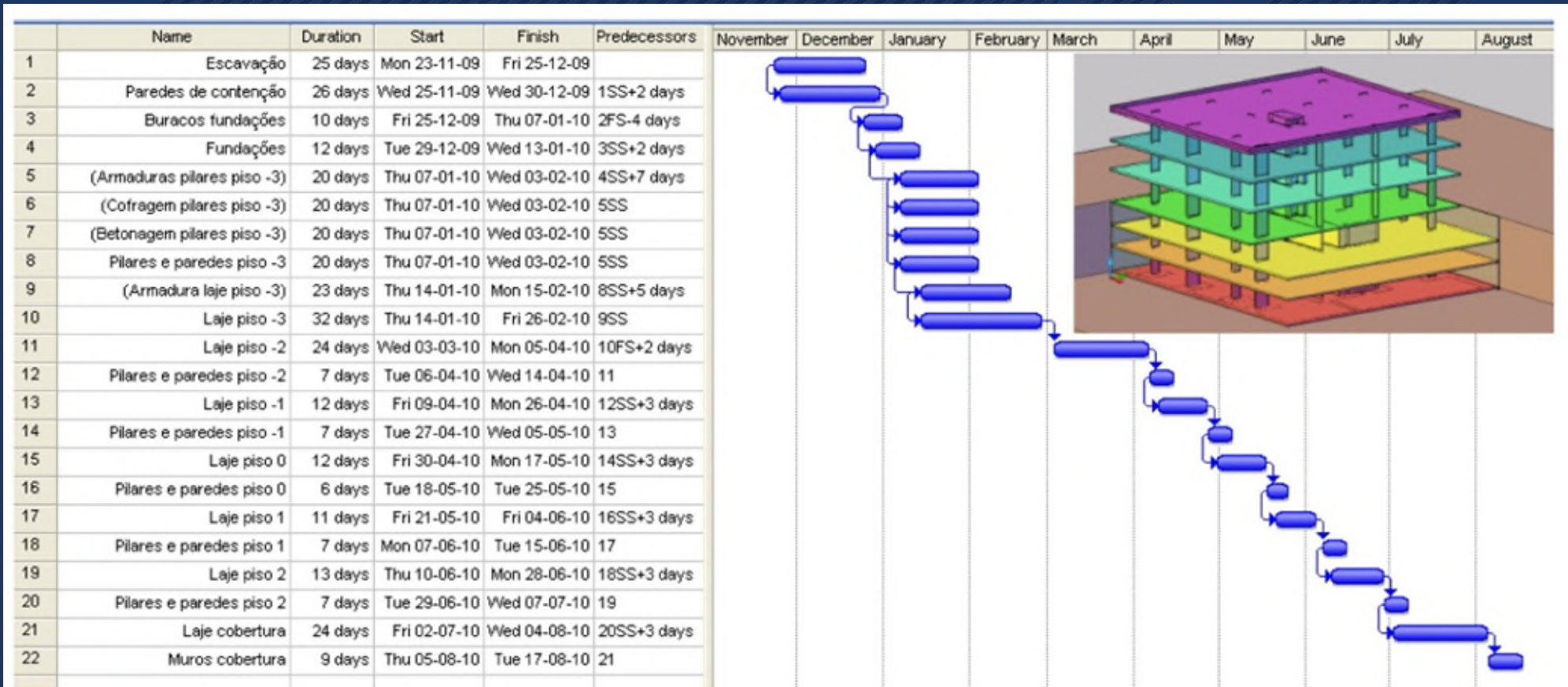
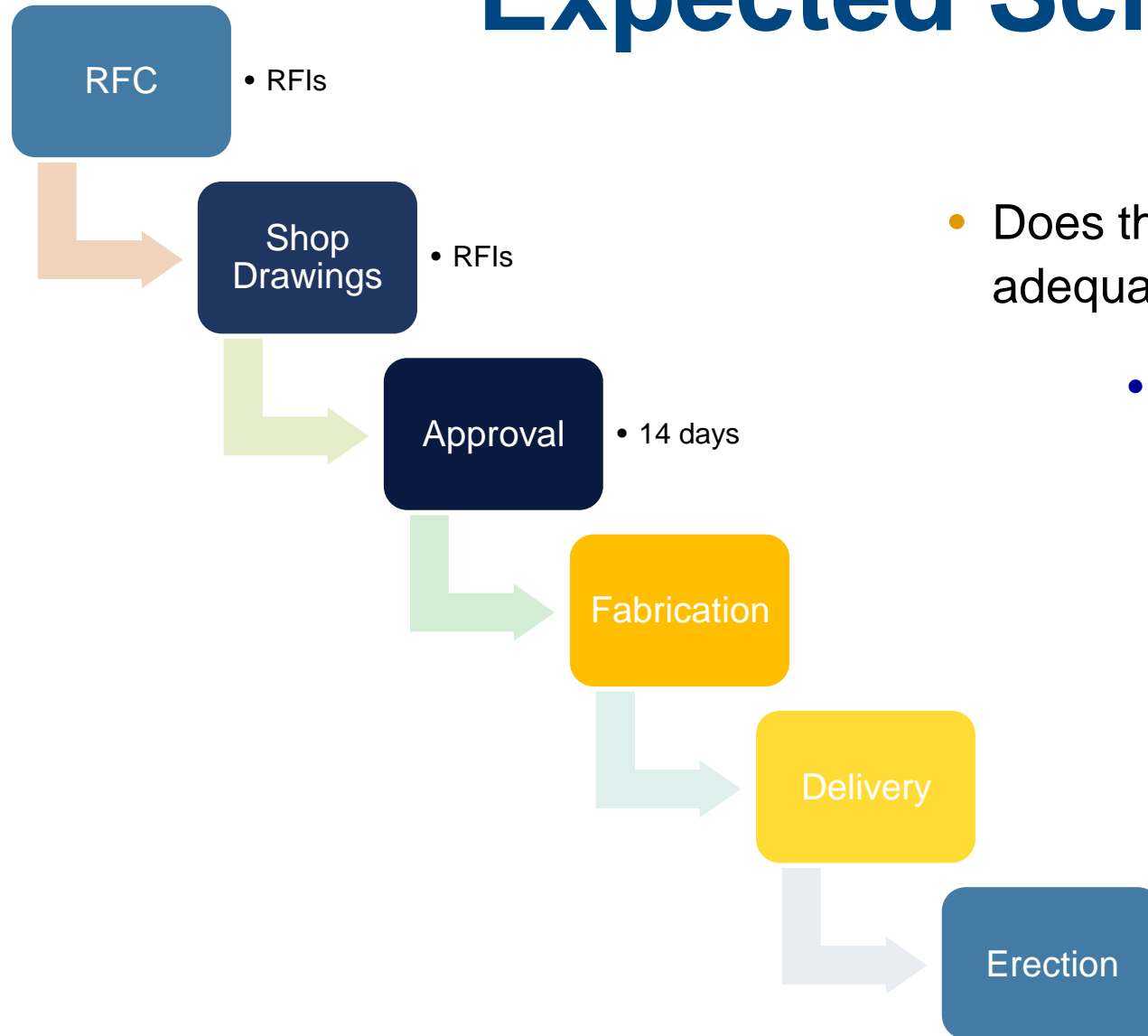


Fig. 6. Construction schedule using Gantt chart and 3D model of building structure.

Expected Schedule

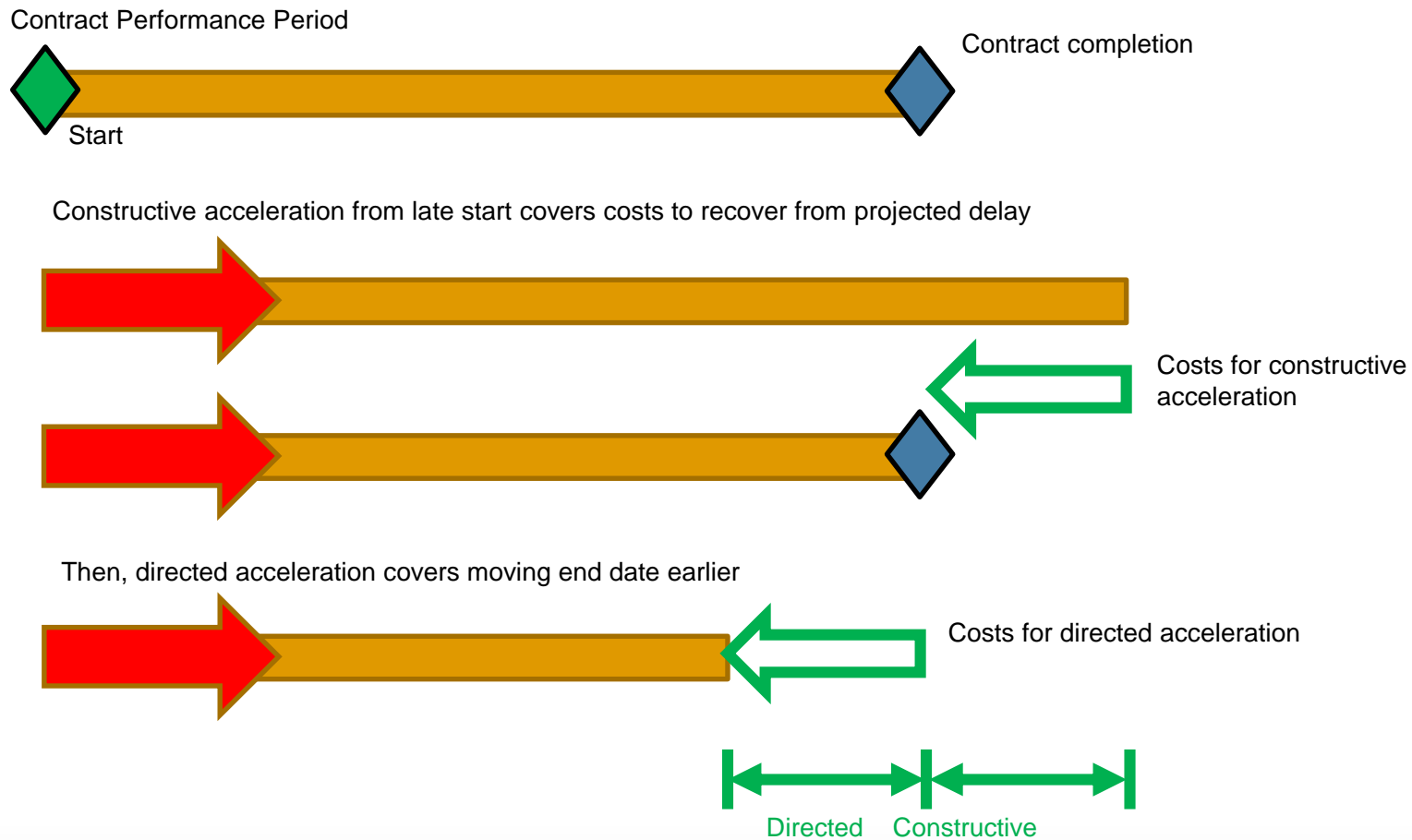


- Does the Project Schedule have adequate durations?
 - Didn't see it? Can't Live with It?
 - Don't Bid
 - Take exception to it in your bid.

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

TO CONTRACTOR (Name and address):

█

CHANGE ORDER NUMBER: 001

DATE: █

ARCHITECT'S PROJECT NUMBER: █

CONTRACT DATE: █

CONTRACT FOR: General Construction

OWNER:

ARCHITECT:

CONTRACTOR:

FIELD:

OTHER:

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



Entitlement

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

Code of Standard Practice

Code of Standard Practice for Steel Buildings and Bridges

April 14, 2010

Contract
Documents



Specifications



IBC & CoSP

Ways you can
use the code.



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 absences 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.

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.

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.**"



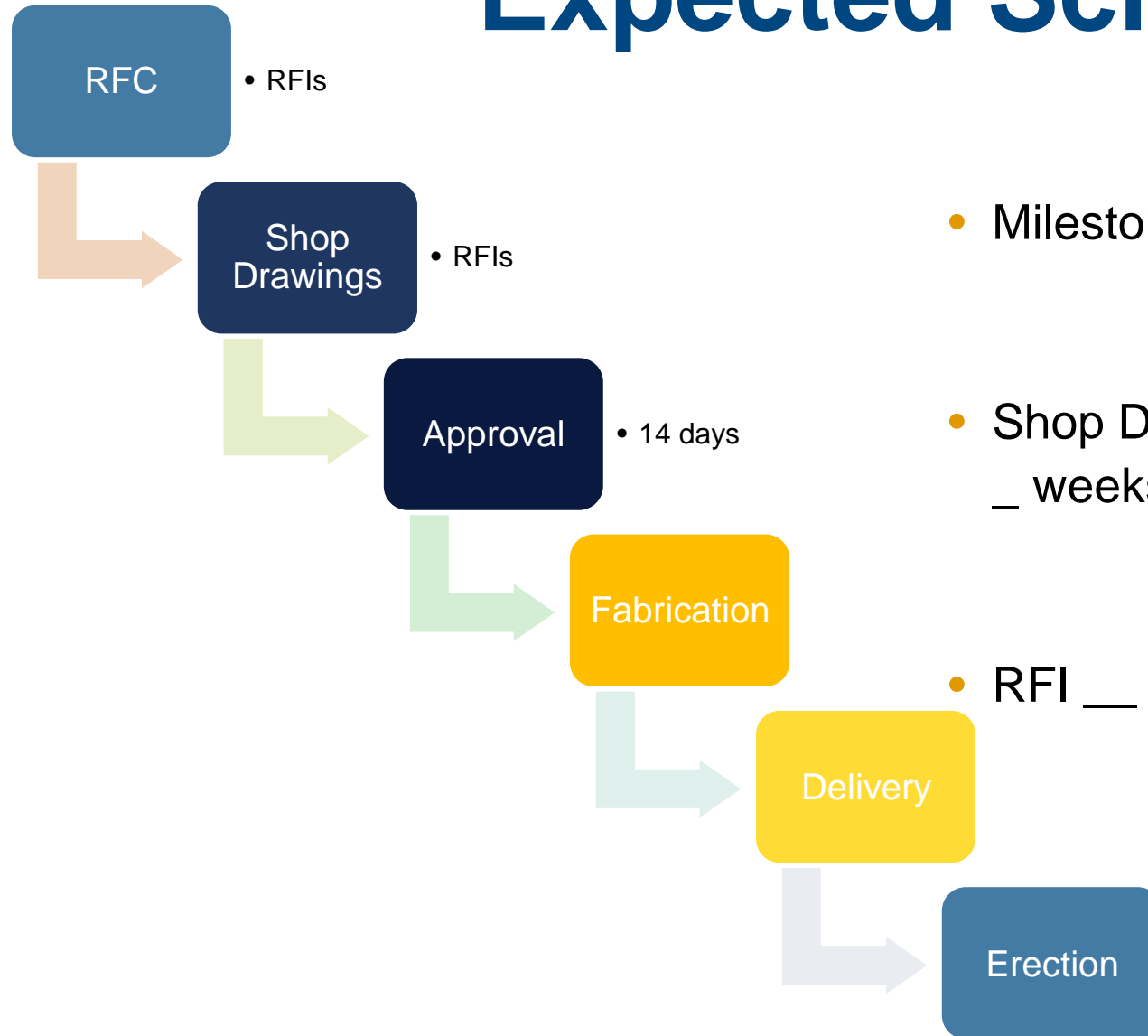
CoSP 9.5.3 – Delays to Fabricator

- “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.”



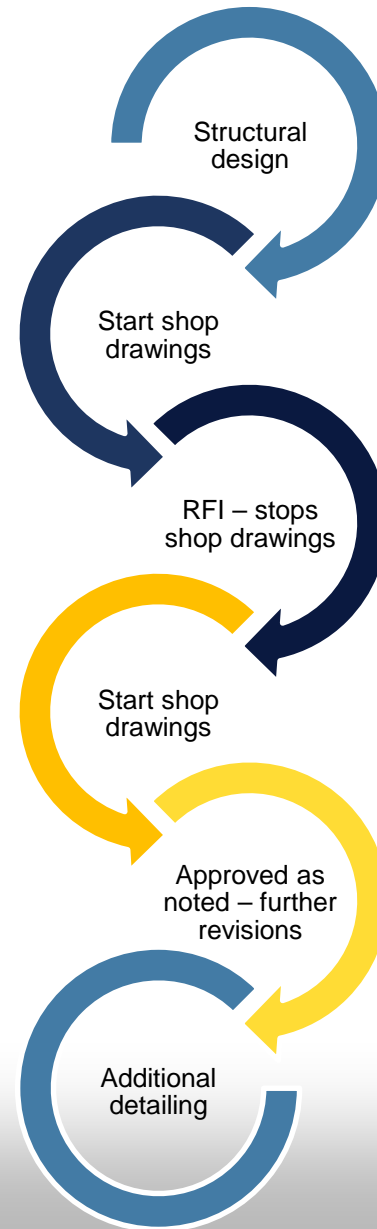
Factual Entitlement

Expected Schedule



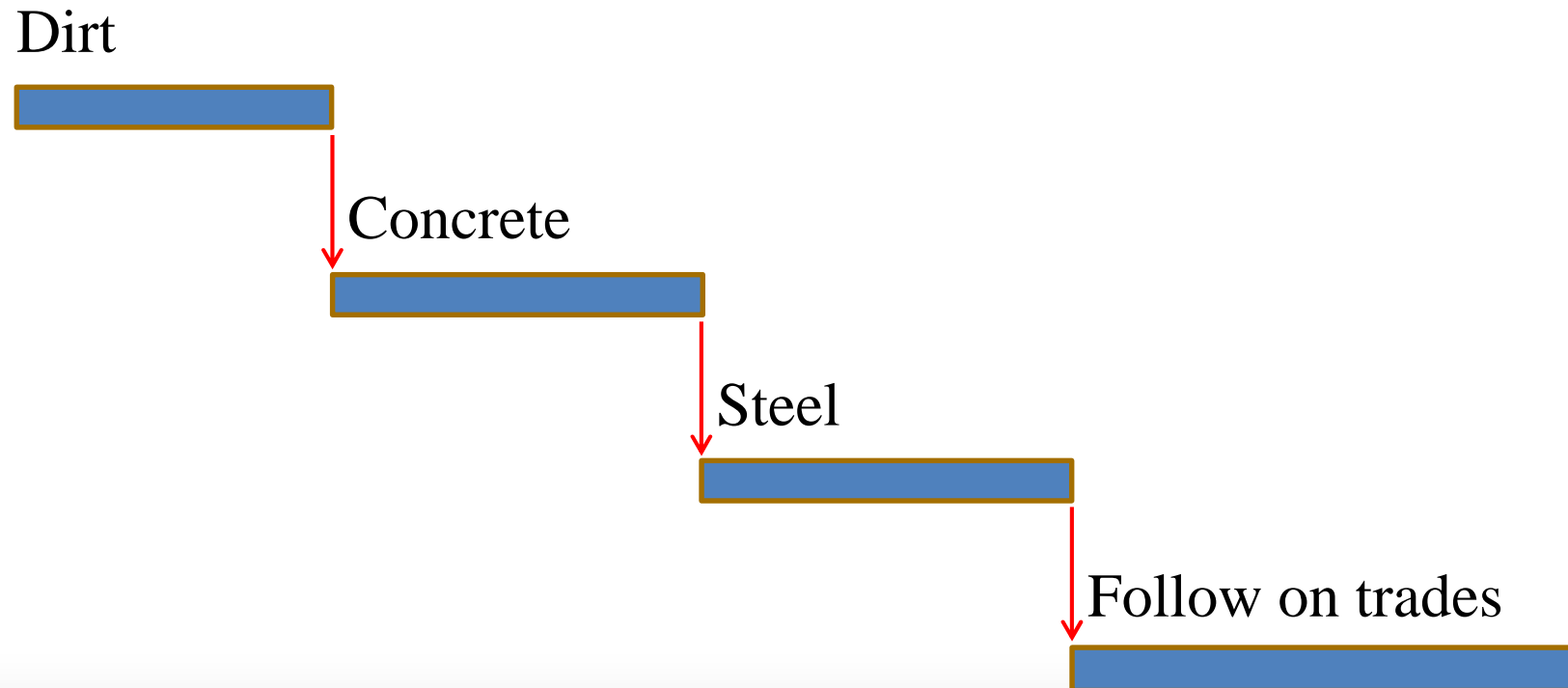
- Milestones contingent on:
- Shop Drawing Return _ days and _ weeks prior to fabrication
- RFI __ days/hrs

Actual Schedule



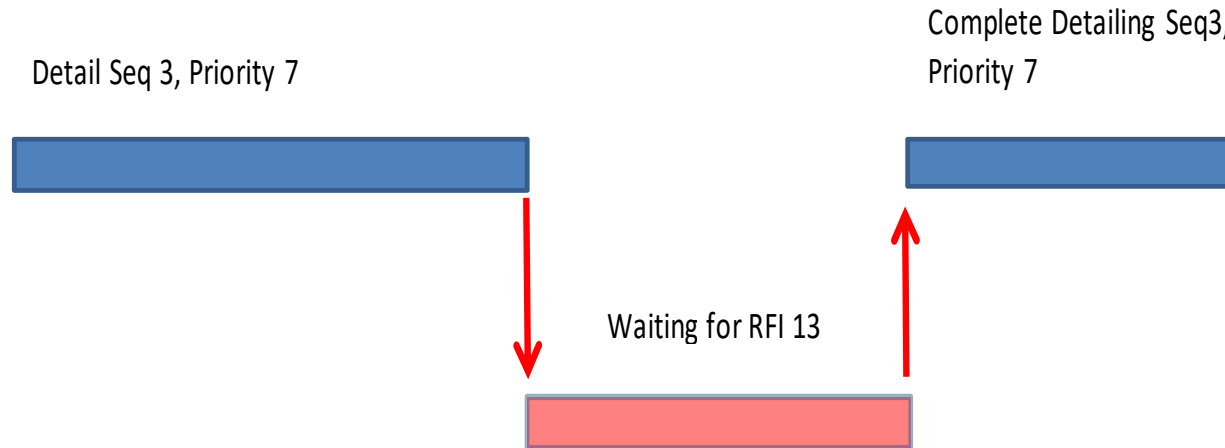
Claims for Delay - Fabrication

- The general Critical Path for all jobs is:



Time Impact Analysis - Procedure

- FRAGNET
- This can be as simple as:



“Use your Tools”

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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