

RiskTopics

Managing submittals and substitutions

Zurich Resilience Solutions - Risk Engineering

Key guidance points on managing the submittal and substitution process and avoiding associated exposures due to non-compliance.

Introduction

Material, product, and equipment submittals are a part of the construction administration process that is intended to provide verification that the Design Team's specifications and criteria have been met. Contractors, Subcontractors and Vendors may request substitutions for originally specified items either as function of value engineering, availability and sometimes their familiarity with certain items over those specified. While most contracts contain specific requirements for the submittals process, errors in actual submissions and the review and approval process can still result in instances of non-conformance, poor performance, failures and construction defects leading to a variety of claims.

Guidance

Consider these steps:

- Having clearly written procedures for the submittal process is essential. Contracts and project specifications should be reviewed prior to acceptance and execution to verify that submittal procedures and responsibilities are fully detailed and understood by all parties. A comprehensive Submittal Log organized by the contract specifications is vital to the process. Concerns with the submittal process and requested clarifications should be documented and communicated with the Design Team and Owner / Developer.
- Specifications should clearly identify those items that are proprietary (where no substitutions are allowed), and clearly define parameters for any substitutions.
- Turnaround times for review and return of submittals by the Design Team and Consultants should be clearly defined and key practices would include providing line-item designation in the CMP schedule for tracking of all submittals. Subcontract agreements should include specific language and requirements to provide timely submissions and response.
- Construction Managers, General Contractors, Subcontractors and Suppliers or Vendors should implement a process that allows for joint and/or progressive review all submittals to verify compliance with specifications before they are submitted to the Design Team for additional review and processing. This is the first step in verifying basic compliance with specifications and may also be the initial point of presenting substitutions as legitimate value engineering efforts or addressing issues related to product availability, procurement / sourcing difficulties and even issues related to product performance that may not have been known at the time they were specified for a project. Submittals directly to the Design Team from Subcontractors, Suppliers or Vendors should never be allowed.

- Cost benefit considerations for substitutions should always be detailed and reviewed with the Design Team, Consultants and Owner in cases where credits may be due. Similarly, some substitutions may result in procurement time savings that support the project schedule, even if there is no cost savings. This information may be critical to acceptance of substitutions.
- In cases where substitutions are requested, The Construction Manager, General Contractor and submitting trade, supplier or vendor should jointly review the request to determine its validity and to verify that all supporting documentation is complete prior to submission to the Design Team. Often, the information required to support a requested substitution surpasses that of the originally specified item because it may be unfamiliar to the design team and the cost-benefit or applicability for use may require additional review time and expense to properly consider. Attention should also be focused on the potential for counterfeit products and materials sourced either foreign or domestically.
- The preliminary submittal process should be tracked by the Construction Manager or General Contractor and logged with clear indication of the review and approval process and status relative to readiness for further submittal to the Design Team. Unapproved submittals must be clearly logged, notated, and returned for resubmission. For certain projects it may be beneficial to modify the current Submittal Log to reflect specifically required documents and list the parties responsible for reviews by division or work scope. Additionally, the Submittal Log should clearly indicate the reasons for rejection, particularly in the case of a substitution. Project Manager level approval and sign-off should be required for all submittals being approved and forwarded to the Design Team.
- Specific activities accounting for the time required for both the submittal and approval process should be included in the project CPM schedule. Actual turnaround times should reflect the Submittal Log. Account for additional time spent on potential multiple review cycles of substitutions and be prepared if the Owner ultimately requires the original specification.
- The intended and specific use of the submitted change or substitution should be clearly stated to avoid any confusion with the Approver. Generic type material specifications are often used by Designers without stating the specific application for that material.

For example, a variety of reinforcing bar chairs might be used on a project including both galvanized and stainless steel. The Contractor submitted galvanized as part of their entire reinforcing submittal package without specifically stating that it was a substitution for the stainless. The Designer returned the galvanized submittal with no comments. The Contractor subsequently used galvanized where stainless was required in the walls of a concrete water tank. The galvanized eventually rusted resulting in costly rework and claims.

- In cases where the Construction Manager or General Contractor has Design-Build responsibility, it is critical that specified products are reviewed jointly with sub-consultants and trade contractors alike to verify applicability for use and that required performance expectations will be met.
- Use of third-party consultants with specialized knowledge of certain products, and peer reviews of designs and related products may also be warranted, particularly if new, emerging or untested designs or products are being considered.
- All Submittals returned by the Design Team should be thoroughly reviewed by the Construction Manager or General Contractor, logged as appropriate and then returned to the submitter with clear indication of status and any resubmittal requirements.
- Under no circumstances should subcontractors, suppliers or vendors be given or accept verbal approvals to procure, release and/or utilize products that are not fully approved by the Design Team. Again, this should be properly documented in the Submittals Log by the Construction Manager or General Contractor.
- 100% verification of material and product deliveries should occur at the project site and at any off-site storage facilities prior to utilization in the field. All items should be checked against approved submittals at the Project Manager / Assistant PM level and logged as compliant. Periodic in-plant inspections for verification should also be done.

Conclusion

Establishing enhanced procedures and protocols for the management of the Submittal and Substitution process is essential to the mitigation and reduction of claims resulting from the use of unapproved materials, products and equipment that do not meet design and performance specifications. It is important to consider that material and product claims can have wide-reaching effects, and engage multiple insurance coverages including Professional Liability, General Liability, Pollution, Subcontractor Default Insurance and Worker's Compensation.

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