

Critical Thinking Skills for Managing Contract Changes

Workshop Overview

Contract Administration Workshop (3-days)

Background

Administering construction contracts is a staple in every DOT's diet. The individuals that administer these contracts (often called Resident Engineers, Project Engineers, Project Managers, etc.) have a unique and challenging task.

A contract, in its most basic form, is an expression of intent. How the contract is portrayed to contractors during the bidding process can have unintended consequences that lead to disputes, changes, and potentially claims.

It is incredibly helpful for these DOT contract administrators to understand how contract intent is expressed, how it can be misinterpreted by bidding contractors, and how they can best avoid misrepresenting contract intent. This understanding begins with gaining an appreciation for the perspective of a bidding contractor.

Although every DOT is quick to tell a contractor to "bid it like you see it" during the bid advertisement period, it is often difficult to bid a significant amount of risk into a low bid contract with numerous bidders. Understanding this concept should help contract administrators understand why there is a practical limit to the amount of unknown risk that can be bid into a low bid contract. The goal for every contract administrator is to represent the contract work as clearly as possible and to define the risks as clearly as possible so that risk can be effectively bid into the contract.

Workshop

The goal of this 3-day workshop is to provide contract administrators (and other personnel involved in DOT construction contracts) with a realistic perspective of the challenges they face administering a construction contract.

The entire workshop is presented in the host DOT's Standard Specifications with a focus on the General Specifications (the 100-series using AASHTO Guide Specification language). Each administrator will become more comfortable with what is in their Standard Specifications that can assist them in administering contracts, and as importantly, what information is NOT included in their contract but still affects their ability to administer contracts.

The workshop uses small scenario discussions to challenge contract administrators to work in the “gray areas” of their contract where the DOT’s intent is often not perfectly clear. The purpose in working these areas is to provide an improved confidence in contract administration decision-making and to help contract administrators understand there is often a delicate balance between administering a contract and managing a working relationship with a contractor. The ability to balance the needs of the contract with the needs of the relationship can often mean the difference between a successful job and a job riddled with disputes.

Every DOT has unique challenges related to their contracting community, materials, climate, etc. and the goal of this workshop is to focus on the biggest challenges faced by the DOT. In addition, the workshop focuses on areas of contract administration where the DOT struggles to maintain consistency across the state. These inconsistencies often lead to unclear expectations for bidding contractors.

These areas of inconsistency often include topics such as:

- ✓ Administration of contract time
- ✓ Assessment of liquidated damages
- ✓ Dealing with adverse weather
- ✓ Addressing changes in the character of work
- ✓ Owner-caused inefficiencies
- ✓ When to consider owner-directed changes
- ✓ Damage to constructed facilities

A key point for this workshop is to be as clear as possible with all documentation and to complete all necessary contract analysis work during active construction so that if a dispute evolves into a claim, the administrator’s time to manage the claim is minimized.

The goal of this workshop is to avoid changes and disputes by presenting clear contract documents and administering every contract in a fair and equitable manner. If more detailed information is desired to address submitted claims, the National Highway Institute (NHI) offers a course dedicated to claims (NHI 134037A Managing Highway Contract Claims: Analysis and Avoidance).

Workshop Agenda

Day 1

8:00-8:30 Course & Participant Introductions

8:30-9:00 Introduction to Basic Contract Administration Concepts

9:00-9:30 Spearin Doctrine (and its effect on project design)

9:30-10:00 Risk Identification in Contract Documents

Break

10:10-11:30 Risk Identification and Mitigation Techniques

11:30-12:00 Risk Identification Scenario & Group Discussion (Appendix A)

Lunch

1:00-2:50 Constructability Review, Pre-Bid Meetings, Bid Questions, & Bid Tabulation Review

Break

3:00-4:00 Contract Language vs. Contract Intent, Effect of Experience on Contract Interpretation, Implicit Concepts Affecting Contract Interpretation

Day 2

8:00-10:00 Explicit Clauses Affecting Changes (Notice, Change in Character and Nature of Work)

Break

10:10-12:00 Explicit Clauses Affecting Changes (Change in Character and Nature of Work, Differing Site Conditions)

Lunch

1:00-2:50 Explicit Clauses Affecting Changes (Differing Site Conditions, Suspensions Ordered by the Engineer)

Break

3:00-4:00 Explicit Clauses Affecting Changes (Deletion of Work, Damage to Work)

Day 3

8:00-10:00 Delay & Disruptions

Break

10:10-12:00 Addressing Contract Changes & Identifying Changed Work Versus Original Contract Work

Lunch

1:00-2:50 Discussion of Contract Administration Scenarios – Including Host State Scenarios

Break

3:00-4:00 Continued Discussion of Contract Administration Scenarios – Including Host State Scenarios

End Workshop