

Workshop Overview

Critical Thinking Skills for Managing Contract Changes in the Design Phase Workshop
(1-day)

Background

Designing construction contracts is a critical part of every DOT's mission. 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. DOT and consultant designers are tasked with preparing contract documents that express the owner's intent clearly enough during the bidding process to avoid disputes and minimize changes.

Since many DOT and consultant designers aren't actively involved in administering construction contracts, it can be challenging for them to understand precisely how their contract documents are interpreted during the bidding phase, misinterpreted during active construction, and ultimately form the basis of contract disputes and changes.

It would be helpful for these designers to understand how contract intent 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 and inherent challenges with low bid contracting.

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 DOT and consultant designers 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 designer 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 1-day workshop is to provide DOT and consultant designers with a realistic perspective of the challenges they face preparing construction contract documents.

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) and the host DOT's Standard Drawings, Standard Details, and CAD standards along with contract plan preparation standards. An emphasis will be placed on Standard Drawings, Standard Details, or any other contract plan standards that have caused (or could be causing) disagreements, disputes, and changes.

The workshop also focuses on the *Spearin Doctrine* and how the landmark Supreme Court decision can impact a DOT in the event of "defective" contract documents.

The workshop includes an understanding of common work items involved in disputes and changes (earthwork, drainage, utilities, structure foundations, pavement, etc.). For these work types, there will be an effort to understand associated risks, how to identify these risks, and how to present work in contract documents differently to manage risks.

Finally, the workshop will capture how contract documents can either incentivize or disincentivize mathematically unbalanced bidding. Small scenario discussions and examples will be used to better understand how modifying contract documents during the pre-bid phase can limit the potential for unbalanced bidding. The host DOT will provide specific work types and examples from past challenges to make the discussion more pertinent and more relevant to state-specific issues.

The ultimate goal of this workshop is to minimize changes and disputes by presenting clear contract documents and making it easier for DOT contract administrators to administer every contract in a fair and equitable manner.

1-Day Workshop Agenda

**8:00-8:15 Course & Participant Introductions

8:15-8:45 Introduction to Basic Concepts (Contract, Claim, Change, Risk, etc.)

8:45-10:00 Contract Language vs. Contract Intent, Effect of Experience on Contract Interpretation, Low Bid Challenges, Implicit Concepts Affecting Contract Interpretation and Spearin Doctrine (effect on project design)

10:00-10:15 Break

10:15-11:00 Risk Identification and Classification in Construction Work

11:00-12:00 Risk Mitigation Techniques

***12:00-1:00 Lunch*

1:00-2:30 Risk Identification Scenarios

2:30-2:45 Break

2:45-4:00 Unbalanced Bidding – What Causes it, and How to Avoid or Manage it

4:00-4:30 Final Discussion, State-Specific Issues

**4:30 Adjourn

** - Starting/ending times and lunch time/duration can be adjusted to best fit with designer schedules and/or DOT preference