

PROFESSIONAL ASSOCIATION DOCUMENTS

The Engineers Joint Contract Documents Committee (“EJCDC”) Standard General Conditions of the Construction Contract C-700 states that:

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

In contrast, the American Institute of Architects’ (AIA) General Conditions of the Contract for Construction, Document A201, has a different approach. There are three options to handle a change during the construction phase of a project. These options are 1) a Change Order, 2) a Construction Change Directive, and 3) a Minor Change of the Work. The AIA A201 Article 7 states:

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

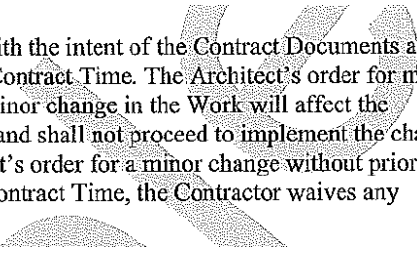
§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.



AS A REAL-LIFE EXAMPLE

To illustrate how these three options may play out, consider this scenario of a change to the required access for an American Disabilities Act (ADA) ramp to the new seating at a high school stadium.



Photo by Eric Pempus

A concrete landing and pathway at the bottom of the wheelchair handicap ramp was poured with incorrect dimensions. The error was discovered after an aluminum ramp was installed. To comply with ADA dimensions for wheelchairs access, the concrete contractor had to extend the size of the access area more than one foot and five inches in two directions on the ground. See below.



Photo by Eric Pempus



Photo by Eric Pempus

Using the three A201 Article 7 options of 1) a Change Order, 2) a Construction Change Directive, and 3) a Minor Change of the Work, consider the following:

Change Order (CO)

By agreement between Owner (in this instance—a school district), a concrete Contractor and the Architect for the ADA project, a change in the time to accomplish the work and extra cost for the labor and materials could be arrived upon. This agreement could happen even before the work is accomplished, or shortly thereafter.

Construction Change Directive (CCD)

Should there be a disagreement for the change in the concrete landing and pathway, the Architect would prepare a written directive for an adjustment of the time for the work, or the cost for the labor and material, or both. To complete the stadium seating project by the first high school football game of the season, at a later date, the Owner, Contractor and Architect would negotiate the final resolution of the time and cost involved. This keeps the project on schedule.

Minor Change in the Work (MCW)

If the change in the expanded concrete landing and pathway was such the contractor felt that the work was inconsequential, and there was no disagreement of time or cost, everyone would go on with other work to complete the stadium seating project with no issues.

RESULT OF THE ADA ACCESS CHANGE

Unfortunately, not knowing the result of the change, one could only assume that there was some sort of a Change Order. The extra excavation, concrete and reinforcing steel needed to comply with the ADA's landing and pathway requirements, and the impending fall high school football schedule, was a relatively significant cost. For example, when two different concrete slabs are poured next to each other, there is a possibility of differential settlement between the adjacent pours. To combat this effect, the contractor needed to drill and stall horizontal reinforcing rods (rebar) to tie together the two concrete slabs.

I Googled the school board's meeting minutes during and after the concrete construction but could not discover if there was a cost for the change (there were several board resolutions that I cannot find that were probably involved). Fortunately, the error was discovered before the concrete contractor had finished other work for sidewalks at the site, so perhaps the impact on the project schedule was not major. In fact, the change was accomplished in plenty of time. As the author of this risk management article, I visited this stadium from time to time walking the track, to see the project unfold to its completion.

About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

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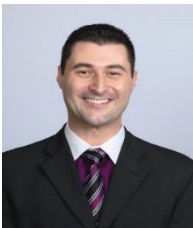
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