



Changes to the change order and claims process in 2013 EJCDC General Conditions

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In 2013, the Engineers Joint Contract Documents Committee (EJCDC) issued updated construction contract documents that include significant changes to the previous version, the 2007 EJCDC C-700 General Conditions. In addition to a general reorganization and updates to the insurance and bond provisions, the EJCDC made important modifications to the General Conditions' change order and claims provisions. Owners, design professionals, construction managers and contractors often rely on institutional knowledge and their experience with contract forms in issuing formal notice, making claims, and requesting or approving change orders. The EJCDC's modifications, however, create a number of pitfalls for those who do not take note of these changes and modify their project administration processes accordingly. Failure to do so could result in a waiver of rights.

A. Claims and Change Order Process Under the 2007 C-700 General Conditions

The 2007 EJCDC C-700 General Conditions has a relatively straightforward claims and change order process that is both familiar to construction professionals and largely consistent with other contract forms. Under the 2007 General Conditions, change orders and claims are interrelated and, therefore, both governed by Article 10.

Generally, any change to the contract price or contract times must be made by change order, based on a recommendation from the engineer. As with most contract forms, under the EJCDC's 2007 General Conditions, a change order can result from: (1) any changes to the work ordered by the owner, (2) defective work by the contractor, (3) a differing site condition, (4) a work change directive, and (5) a resolution of claims. In the 2007 General Conditions, the forgoing scenarios often have different notice requirements. For example, a change order for additional time or money stemming from a differing site condition requires "prompt notice" to the owner, whereas a deductive change order related to the owner's correction of defective work requires prompt notice from the engineer to the contractor of the

defect, followed by seven-day notice from the owner before it commences any repairs.

The claims process in the 2007 General Conditions is covered in Paragraph 10.5. A claim serves as both an appeal of the change order process and the manner in which parties resolve disputes, with the resolution then liquidated by change order. All claims must be made within 30 days “after the start of the event giving rise thereto,” and all supporting documentation for the claim must be provided within 60 days after the start of the event. The engineer may deny the claim in whole or in part, approve the claim or defer it. If the engineer’s determination is not appealed through the dispute resolution process within 30 days, it is final and binding.

For example, upon discovering a differing site condition, the contractor must “promptly” notify the owner and engineer in writing. The engineer reviews the notice and condition and then issues findings and recommendations to the owner, providing a copy to the contractor. The recommendation may be adopted through a change order or appealed by the owner or contractor by issuing a claim. As noted, that claim must be made in writing within 30 days of the contractor’s discovery of the condition. The engineer then issues a second recommendation, this time on the claim, which can be appealed to the dispute resolution process within 30 days. In practice, due to the time limitation, the contractor will likely submit its claim prior to any determination on the part of the engineer.

B. Modified Claims and Change Order Process Under the 2013 C-700 General Conditions

The prior version of the EJCDC’s General Conditions has three notice “pitfalls” for both the owner and contractor: (1) the initial “prompt” notice of the event necessitating a change order, (2) the written notice of a claim within 30 days of the event, and (3) the appeal of the engineer’s claim determination within 30 days. A party’s failure to issue appropriate notice can result in a waiver of rights. The EJCDC’s 2013 changes to the General Conditions adds yet another crucial step, requiring the contractor to issue a “change proposal” if it wants an adjustment in time or money. The change proposal essentially takes the place of the initial claim, and the claims process now takes the form of a mandated settlement negotiation between the parties.

Also, under the 2013 General Conditions, the contractor, but not the owner, must make a formal change proposal to: (1) obtain an adjustment to the contract times or contract price, (2) appeal an initial decision by the engineer, (3) contest a set-off, or (4) seek other relief under the contract documents. A change proposal must be issued to the engineer no later than 30 days after the start of the event giving rise thereto. The engineer then reviews the proposal, and within 30 days, either approves or denies the request in whole or in part. Unless the contractor appeals the engineer’s determination within 30 days, the engineer’s recommendation is liquidated by

change order. The contractor's appeal is now made through the claims process found in Article 12.

A claim is made directly to the adverse party, who is required to consider the materials provided in good faith. The parties then attempt to resolve the claim through an exchange of information and direct negotiations. The party receiving the claim may either deny it or approve it in whole or in part. That determination is binding unless it is appealed within 30 days using the dispute resolution procedures now in Article 17. Importantly, while the contractor is required to first submit a change proposal seeking time or money, the owner proceeds directly to the claims process. Accordingly, an owner's claim is no longer subject to review by the engineer.

The 2013 C-700 General Conditions added a step for contractors, removed a step for owners and created a mandatory negotiation referred to as a "claim." It remains to be seen whether this new "claim" process is beneficial to a project; however, it certainly gives owners more leverage. Not only are owners' claims no longer subject to review, contractors must appeal any denial of a change proposal directly to the owner, without input from the engineer. The notice pitfalls are also significantly different, now consisting of: (1) prompt notice of the event giving rise to an adjustment in time or price, (2) for contractors, a change proposal within 30 days of the event, (3) a contractor's appeal of the change proposal determination through notice of claim within 30 days, (4) an owner's claim for equitable adjustment within 30 days of the event giving rise to the claim, and (5) any appeal of claim determination through dispute resolution within 30 days.

Each of these changes impacts the rights and risks of the contractor and owner on a construction project governed by an EJCDC contract. Owners and contractors, and the representatives of each, should take note of the 2013 changes to avoid inadvertently waiving rights and to properly pursue their rights in the event of a dispute. Further, form contracts, and specifically the provisions related to claims, dispute resolution, timing and notice, should always be modified to address the specific needs of the parties and the project as well as the law of the jurisdiction where the project is located.