



The Protocols of Construction: Submittals and Shop Drawings

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Documentation of the project, from concept through closeout, is one of the most important tasks an architect undertakes to ensure a successful project. In prior articles we addressed the protocols for documenting the contract and RFIs. Once construction phase services begin, and the architect is reviewing the contractor's submittals, the importance of implementing protocols remains critical.

The submittal review process established in the Contract Documents and emphasized during the post-bid/pre-contract negotiations with the Contractor, with the architect acting as the Owner's representative, should set timelines for submittals of critical path material and equipment, and the architect's response time. Effective coordination, timely actions, and established procedures adhered to by all the stakeholders benefit the project and allow the architect to plan their construction phase services. An effective submittal review process provides checks and balances intended to keep the project on schedule and in conformance with the design intent. Abuse of the process by the contractor or the architect's (or their consultant's) failure to timely do their part creates risks for the design professional. Disputes on a project often focus on the submittal review process, highlighting the need for the architect to hold the contractor to their requirements in the Contract Documents, adhere to the procedures themselves and meticulously document their reviews.

The contractor raising the architect's "approval" of submittals is a common attempt to convert a construction defect into a design malpractice claim. That "approval" is, however, limited. The A201 General Conditions for the Contract for Construction § 4.2.7 provides that "The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals...but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents." The Supreme Court of Virginia has held that designer approval of a defective submittal neither relieves the contractor from the obligation to perform its work safely and in strict conformance with the Contract Documents nor entitle the contractor to recover damages. *D.C. McClain, Inc. v. Arlington County*, 249 Va. 141 (1995).

Contractors tend to avoid referencing the A201 § 3.12.6 requirement placed upon them that "by submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto . . . and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents." Enforcement by the architect as the owner's representative of § 3.12.6 should go far in avoiding many potential construction defect disputes the contractor would seek to frame as a design issue based upon the architect's "approval" of submittals.

The A201 § 3.12.4 General Conditions specify that "Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in



the Contract Documents for those portions of the Work for which the Contract Documents require submittals.” Some contractors will provide product data without shop drawings, perhaps in conjunction with RFIs, with the purpose of having the “helpful” architect prepare shop drawings or add installation details not included in the Contract Documents. The architect should be attuned that providing such detail moves from design intent to contractor means and methods, taking care to maintain the distinction by avoiding the temptation to give such assistance to the contractor. Industry standards and the A201 § 3.3.1 are clear that the contractor “shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures.” The architect should not provide submittal review comments or contributions that go beyond conformance to the design intent and Contract Documents requirements.

The submittal review process also plays a role in maintenance of the critical path schedule, requiring both timely submission by the contractor and timely responses by the architect. The experienced architect will triage submittals, not allowing them to accumulate, in short order after receipt identifying those that are premature or out of sequence, incomplete, missing the contractor review stamp, or are RFIs in disguise. Improper submittals should be immediately returned to the contractor for correction. Likewise, submittals for which the contractor is requesting an expedited review, requiring a design consultant’s review, or which are otherwise complete and in sequence should be prioritized, given the attention they are due and returned within the time agreed upon for the design team’s response. A good habit is to include the submittal schedule as a discussion point in each progress meeting minutes.

Incorporating triage into submittal review early and consistently facilitates the process by defining the parameters of what is expected by the architect, informs the contractor of significant omissions, documents from the outset issues with the contractor’s adherence to the agreed-upon process and permits the architect to give due attention to those submittals that are complete, appropriate and require review. Collaboration and cooperation are key for a successful submittal review process and, by extension, project outcome. The contractor balking at providing timely, complete and appropriate submittals at the outset is unlikely to change their approach later in the project. While overuse of the “Revise and Re-submit” stamp without sufficient explanatory comments or good cause may create its own issues, avoiding conflict over the contractor’s abdication of its responsibilities by accepting improper or incomplete submittals exposes the architect to unnecessary risk on issues that are properly within the contractor’s scope.

In providing construction phase services, the architect can set the tone and expectation that the contractor will adhere to the agreed upon submittal review process by enforcing the roles as described by the A201 General Conditions. Doing so at the outset of construction and then reinforcing it throughout construction will help manage the risks to which the architect is exposed, while advancing everyone’s interest in achieving a successful project outcome.

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