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Editorial: Time to Cool Heads on Construction Claims

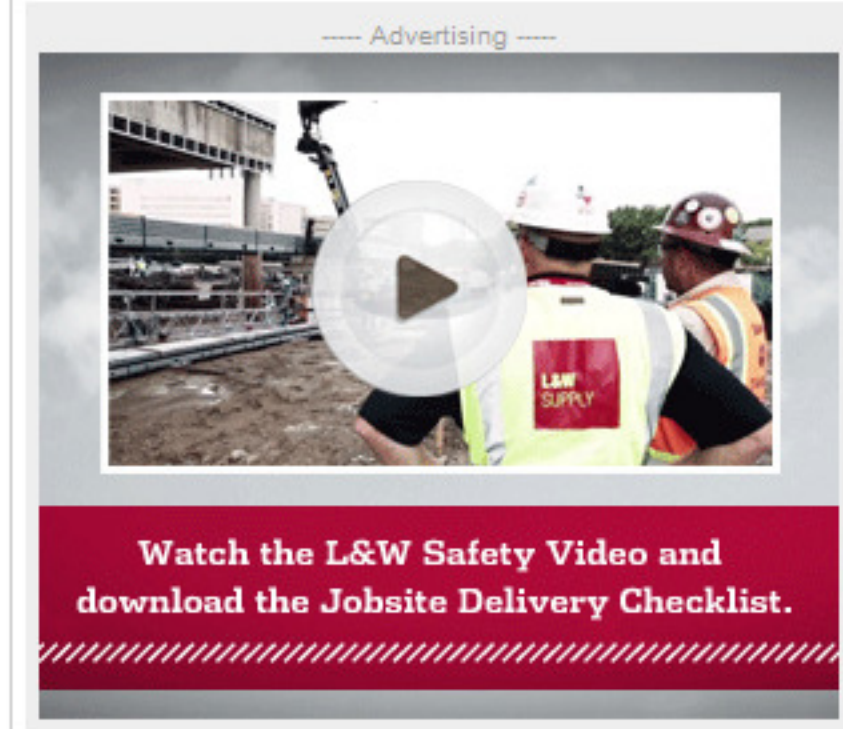
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By the Editors of ENR

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Model contract documents are a starting point for what construction project team members consider fair treatment, so the five-year updates to the Engineers Joint Contract Documents Committee family of model contracts are important. The EJDC model contracts, which go on sale this month, contain significant modifications in the change-order and dispute-review process.

These changes have the potential to head off the kinds of poisonous conflicts that ruin so many projects and threaten to bring losses and possible ruin to the companies involved.

EJDC model contract documents are written cooperatively by the three major engineering associations that endorse and market them: the American Society of Civil Engineers, the American Council of Engineering Companies and the National Society of Professional Engineers. The model contracts represent what those associations think is best for the industry.

One of the most important changes made is in the C-700 document, which covers general conditions and re-imagines the change-order and dispute review process.

During the initial discussions about the model-contract updates, which included contractors, there were concerns that even the smallest issues related to scope changes or differing site conditions would lead to claims. The goal of the new changes is to resolve issues within the project team before they reach arbitration or administrative procedures.

Resolving Changes Early

To eliminate some of the problems and create an interval in which thought and patience can prevail over worry and anger, the authors created a new step in which a requested change is first labeled as a change proposal, not a claim. This tactic should help diffuse alarm and anger. Under the new version, the contractor puts forward the reasons for the extra costs and time requested. Supporting data must be presented within 15 days of the initial change proposal. The engineer reviews it and, within 30 days of receipt of the supporting data, makes the initial recommendation to the owner. The engineer's decision is final and binding unless the contractor or owner appeals, triggering negotiations.

Under the old way of handling such changes, once the claim was filed and the engineer made a final decision, contractors or owners who disagreed with the engineer had only 30 days to file for arbitration or go to court. With time ticking away on that built-in deadline, a contractor or owner who took no further action had only claims as a path to resolution.

Other model contracts have addressed these issues, and the EJDC model contracts alone won't avoid all conflicts. However, what the EJDC contracts could provide is a little extra space and time for cool heads to prevail, sidestepping costly legal battles.

Keywords: Engineers; Contracts; Documents; EJDC; Change Orders

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