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RiskTopics

Request for information (RFI) process

RFI's are an inevitable part of the process when it comes to construction projects. If managed properly, the RFI can help reduce risk as well as the potential for delays and claims.

Introduction

Construction Manager (CM) at risk projects with a Guaranteed Maximum Price (GMP) are often finalized on a set of working drawings which may be around 50% complete. Even hard bid projects based on "100%" drawings are very seldom complete. The RFI is a standard part of the process in finalizing a design. This Risk Topic explores ways to minimize the impact of RFI's on change order requests, schedule delays and claims.

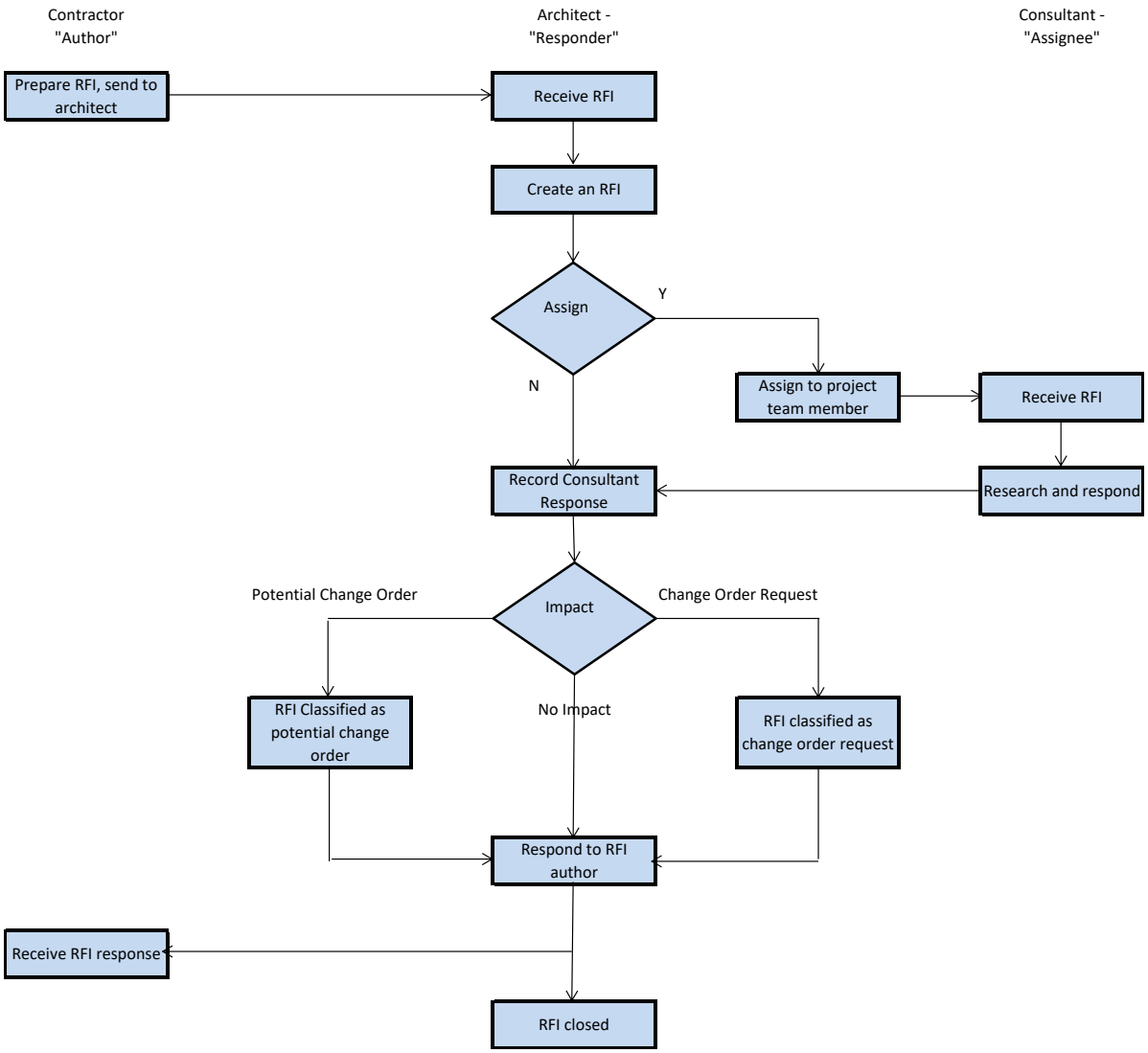
Discussion

Even "for construction" drawings of architects and engineers have always been in some degree, conceptual. Additional information has typically been required by the Contractor from the Designer during the construction phase. In the good old days of construction, this information was transferred informally during face-to-face meetings or by telephone. Designers were much more participatory on-site, and either spent the entire day at the jobsite or visited multiple times per day. Contractor questions and field conditions were reviewed at the site by designers. Changes were made by the designer redlining and initialing the drawings. No documentation of the discussions was needed or prepared. The proliferation of claims in the 1970s, along with the advent of professional liability insurance, gave birth to the need for increased documentation. The casual questions, once simply asked and answered, needed a method for documenting the "what, why, and when." Thereby, the birth of the Request for Information.

The RFI was developed as communication tool to facilitate the resolution of the following design document issues:

- Clarifies contractor questions of design documents
- Contractor submits and designer responds
- The process can vary from project to project
- Supports advancement of the project
- Can document the history of the project
- Can lead to contractor initiated change orders

Typical RFI process:



As a general rule, the RFI is a useful tool that provides both the designer and the contractor a means to facilitate the flow of information that is needed to complete the project. However, sometimes RFI's can lead to claims. Some of the ways this may occur are:

- RFI's involving clearly identifiable issues that should have been addressed prior to construction (either the pre-bid or pre-construction phase).
- RFI's submitted solely to establish and document a claim based on allegedly defective design
- Numerous and excessive RFIs intended to overwhelm the Designer
- Claim that the Designer does not provide a timely response and delays the work
- Claim that insufficient or unclear RFI response delays the work
- An effort to mask Contractor's own delays, or at least to establish concurrent delay, that would absolve Contractor of delay damages or shift delay exposure to the designer
- Contractor performs work associated with RFI, and without prior notice or approval, seeks a change order afterward.

Contractor claims are typically for:

- Additional work
- Additional indirect costs
- Acceleration costs
- Extended general conditions
- Delay costs
- Material escalation costs
- Offset liquidated damages

Owner claims against the Designer are typically for:

- Consequential costs or liquidated damages due to delayed completion
- Increased interest and expenses
- Work performed pursuant to RFI response, which the contractor claims constitutes a change directive
- Increased construction costs resulting from RFI responses
- Delay damages including lost profits, overhead and management costs
- Cancellation of liquidated damages against the contractor, due to the changes and disruption caused by RFIs and the resultant responses

Other ways RFI's can be misused:

- Inappropriate questions such as a request for change
- Attempt to solicit Designer approval of means and methods
- Attempt to solicit Designer approval of safety procedures
- Substitution requests
- Claims of ambiguous response to previous RFI
- Providing inaccurate information to the designer
- Overwhelming the Designer with RFI's

Guidance

These five key practices below can be implemented to clarify the process for both the designer and the contractor.

Practice #1: Implement a project RFI protocol/procedure to address:

- What will, and will not, be accepted as an RFI
- Information clearly discernable by review of contract documents will not be addressed
- Define the documentation and supporting data required
- Time frame for response

- Confirm that the RFI response is not a change directive
- RFI responses will not address construction means & methods
- RFI responses will not address safety issues
- RFI's are not for proposed substitutes
- If RFI's will, or will not, confirm previous agreements between designer and contractor

Ideally, the terms and conditions language can be incorporated into the contractor's contract.

Practice #2: Develop an RFI Form which could include:

- Chronological number for the RFI
- Name of person/contractor requesting information
- Dates issued by and needed by contractor. Note, these dates should be realistic and not abused.
- Reference to applicable drawings and specifications
- Concise statement of issue and information requested
- Limit to one issue per RFI
- Notation and demonstration of potential effect to critical path scope
- Remark and justification for any potential increase in cost or time

Practice #3: Both the contractor and designer should consider developing an internal procedure for receiving, handling, prioritizing and responding to RFI's in a timely manner including:

- Single source responsibility to track RFI's
- Procedure to forward to specialty consultants and Owner
- Communicate to contractor when the RFI will be completed
- Establish time limits for designer and subconsultant review
- Diligently maintain and monitor RFI log
- Sub-consultants' contracts must identify procedures and timelines for review and response to RFI's
- Review with the owner, designer and contractor on a regular basis.

Practice #4: Develop and implement an RFI Log which could include but not be limited to:

- RFI Number
- Title of RFI
- Description of RFI
- Applicable specification and drawing reference
- Name of requester
- Date of receipt from contractor
- Date to/from sub-consultant

- Date to/from owner
- Original response due date
- Actual response date
- Date returned to contractor
- Name of RFI reviewer
- Summary of response
- Potential change cost or time extension

Practice #5: Upon receipt of RFI, the designer should consider these steps:

- Calculate response due date
- Notify contractor in writing of date received and when a response should be expected
- Review for compliance with protocol and return non-complying RFI's (be sure to state the reason for the return).
- Immediately enter the RFI into the log
- Forward response to contractor and copy appropriate parties
- Close the RFI (clearly indicate the closure on the RFI form)
- Contractor can disagree with response and initiate resolution in another manner

Claim Avoidance Strategies

- Establish procedures, including the RFI submission format, prior to construction
- Track receipt and return of all RFIs during the project and proactively detect trends
- Know the project schedule and internally prioritize the importance of response
- Do not sit on RFIs; accept and address, or reject promptly
- Ensure that RFIs are complete or otherwise reject them
- Do not accept RFIs that fail to conform to submission requirements
- Provide clarification of design documents only
- Include an "Order of Precedence" in the specifications, or contractor's contract, in the event of conflicting information, typically; 1.) Addendums, 2.) Drawings, 3.) Specifications, 4.) Special Conditions, 5.) General Conditions
- Provide clarity that the designer's response to the RFI is not a change order or directive authorizing an increase in cost or time
- Provide clarity that the designer's response to the RFI is not an acceptance of a substitution. Substitutions should be submitted via the submittal process.
- Do not accept RFI's that are a claim. Claims should be submitted as per the contractor documents with supporting information as required.

Conclusion

RFI's are a necessary part of the construction process. It is the responsibility of the designer to provide adequate information on the documents that has been verified and reviewed prior to issuance. If managed correctly, the RFI provides necessary information to the contractor to complete the work without delays to the project. If mismanaged on the part of the designer or the contractor, the process can lead to unnecessary delays and claims.

In the management of RFI's, both design and construction professionals must be intimately familiar with the contract provisions and how they impact the RFI process. Take all RFI's seriously, and do not ignore them. Do not react negatively or become baited into a letter writing campaign, whereby your own words can be used against you. Responses should be professional, constructive and in a timely manner. Answer narrowly but completely, acknowledge discrepancies and always use the construction documents as reference. Remember RFI's are discoverable in litigation.

References

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