

2013 Construction Series

Highlights



2013 C-Series Highlights

- Revisions, enhancements, and coordination of all 20+ C-series documents
- Added three new documents:
 - C-111, Advertisement for Bids
 - C-451, Qualifications Statement
 - C-521, Subcontract
- Focus and substantive changes to:
 - C-200, Instructions to Bidders
 - C-410, Bid Form
 - C-700, General Conditions
 - C-800, Supplementary Conditions
- More robust Commentary, C-001

- Revisions presented in detail in June 2012
- **C-700 Highlights:**
 - General Reorganization
 - Improvements to changes and claims procedures
 - Updated Insurance and Bonds
 - Differing Site Conditions

NON-TECHNICAL CHANGE ORDERS

- As before, changes to the Work involving the design (Drawings, Specs) or other technical matters must be supported by the Engineer's recommendation. This will be accomplished through Engineer's signature on the Change Order form, as before.
- Owner and Contractor may enter into contract changes that are non-technical (for example, a change to an insurance or indemnification provision) without Engineer's input, recommendation, or signature.

BONDS

- Expressly stated: If Contractor fails to provide bonds, Owner has right to exclude Contractor from Site, and terminate Contract
- New clause: Upon request, Owner shall provide copy of Payment bond to any sub or supplier claiming to have furnished labor or materials

INSURANCE HIGHLIGHTS

- Insurance companies must have AM Best rating of A-VII or better
- Owner and Contractor must provide copies of required policies and endorsements upon the other's, or any additional insured's, request
- **Added** Contractor's pollution liability requirement, covering contamination caused or worsened by Contractor
- **Added** Contractor's Professional Liability insurance requirement

INSURANCE HIGHLIGHTS continued

- In general, Contractor's insurance policies shall:

contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least **10 days** prior written notice has been given **to Contractor**. Within three days of receipt of any such written notice, **Contractor shall provide a copy of the notice** to Owner, Engineer, and each other additional insured...

INSURANCE HIGHLIGHTS continued

- Commercial General Liability (CGL)
 - Completed operations remain in effect for 3 years
 - Specific form endorsements required for Additional Insureds—Owner, Engineer
 - Various CGL provisions relocated from Supplementary Conditions to Insurance section of GCs (Article 6)
 - **Deleted** “eliminate the exclusion for property under Contractor’s care, custody, control” (impossible to get, and no longer needed)
 - In SCs, deleted separate coverage limits for Contractual Liability (always is the same as general CGL coverage)

INSURANCE HIGHLIGHTS continued

Builder's Risk

- Expanded list of causal events to be covered
- Flood coverage required. “If it’s a risk, why not insure against it?”
- Option for providing flood coverage through separate policy
- Specified exception to standard workmanship, design, materials exclusions: must cover “ensuing losses” from these causes

INSURANCE HIGHLIGHTS continued

- More Builder's Risk
 - Conformed policy duration—until Work is completed. Typical BR policies will not extend “until final payment is made” (old wording)
 - “loss payees” term replaced with “named insureds”
 - Owner, Contractor, Subs are named insureds
 - Engineer, Suppliers, and all “employees, agents, etc.” are not named insureds
 - Waiver of subrogation continues to protect Engineer, Owner, Contractor, and others, from claims by Builder's Risk insurer

INSURANCE HIGHLIGHTS continued

- More Builder's Risk
 - Purchaser of BR insurance pays deductibles
 - Purchaser of BR is fiduciary for settlement of claims against the policy
 - BR insurer may pay claims by joint check to named insureds
 - Responsibility for purchasing BR may be switched from Contractor to Owner via Supplementary Condition

INSURANCE HIGHLIGHTS continued

- More Builder's Risk
 - Installation Floater is presented in the SCs as a possible alternative to Builder's Risk insurance
 - Installation Floater is purchased by Contractor. Provides insurance against loss while items to be installed are in transit or stored at Site. Intended for projects where the risk of loss is low once a portion of the Work is installed (e.g., a pipe installation project)
 - Includes waiver of subrogation

DIFFERING SITE CONDITIONS

- Proposed new clause provides default definition of Technical Data
 - Data contained in boring logs
 - Water level data
 - Other factual, objective information in geotechnical report
- Default definition applies only if Owner and Engineer fail to identify specific Technical Data in the SCs

C-800, Guide to the Preparation of Supplementary Conditions

- Added “conformed Contract Documents” option
- Allows for details and expansion regarding working hours
- Addresses possible use of construction-phase representative other than Engineer
- Provisions limiting mark-ups on Subcontractor work under cost of work clause (27% limit) moved to General Conditions
- Added optional “prevailing party pays attorneys fees” clause

C-800, Guide to the Preparation of Supplementary Conditions

New SC: Geotechnical Baseline Report

- Owner and geotech establish baselines of subsurface conditions, by interpreting best available data
- If actual site conditions vary from baseline, there is a differing site condition, Contractor entitled to change in price, times
- Intended to induce better bids, simplify DSC administration
- Geotechnical Baseline Report and related data collection are Contract Documents
- Elements of typical EJCDC DSC clause are retained to deal with conditions that are not addressed in GBR

C-050, Bidding Procedures and Construction Contract Documents

- Significantly reorganized
- Added NTUs
- Added alternatives for Owner to indicate design engineer's role during construction (e.g., as "Engineer")
- Various changes to coordinate with 2013 C-Series documents
- Better coordinated with C-051 and C-052

C-051, Engineer's Letter to Owner Requesting Instructions Concerning Bonds and Insurance

- Organization and language improvements
- Added NTUs
- Coordination with related documents

C-052, Owner's Instructions to Engineer Concerning Bonds and Insurance

- Revised in accordance with insurance provision revisions of C-800
- Added provisions for alternative types of insurance (pollution liability, excess/umbrella liability, installation floater, etc.)
- Organization and language improvements
- Coordination with related documents

C-111, Advertisement

- New EJCDC document
- Includes discussion on use and topics covered in an Advertisement or invitation to bid
- Includes template-style model language for Advertisement for Bids with NTUs, including alternative provisions for printed Bidding Documents and electronic Bidding Documents

C-200, Instructions to Bidders

- Deleted deposit and refund from standard language and moved to a note
- Moved time and location of pre-Bid conference to Advertisement, C-111
- New note concerning digital documents
- Additional alternative language and notes on Bidder qualification and reference to C-451, Qualifications Statement
- Revised language to coordinate with C-700 and/or Agreement, including:
 - Technical Data
 - Bidder's Representations
 - Substitute and "Or-Equal" items
 - Subcontractors and Suppliers

C-200, Instructions to Bidders

- Expanded language on Site Visit and Testing by Bidders
- Added Cost Plus Bids to Basis of Bid
- Added specific language and notes on Price-Plus-Time Bids to Basis of Bid and Evaluation of Bids
- Revised article on Contracts to be Assigned by deleting most language and referencing Procurement Documents
- Deleted optional article on Partnering

- Added Price-Plus-Time bidding option
- Addressed bidding procedures for cost-plus contracts
- Improvements to format and Notes to Users

C-451, Qualification Statement

- New EJCDC document
- Compilation of info from several examples of similar documents provided by users throughout the nation
- Intended to be edited (added to or subtracted from) based upon local needs/requirements/Laws & Regulations
- Intended for use as a bidder's qualification statement or for a more general prequalification

C-510, Notice of Award

- General modifications to make editing easier.
- Language modifications to match other documents.

C-520, Agreement Between Owner and Contractor (Stipulated Price)

- Eliminated “Suggested Form of” in title
- Designation of both designer and Construction Phase Owner’s Representative in case they are not the same
- Inclusion of Bonus Clause in Liquidated Damages section
- Special Damages Clause in Liquidated Damages section to cover increased construction observation/inspection/construction admin costs
- Provisions for Milestones instead of just Substantial Completion
- Refinement of list of Contract Documents

C-525, Agreement Between Owner and Contactor (COST PLUS)

- Eliminated “Suggested Form of” in title
- Designation of both designer and Construction Phase Owner’s Representative in case they are not the same
- Inclusion of Bonus Clause in Liquidated Damages section
- Special Damages Clause in Liquidated Damages section to cover increased construction observation/inspection/construction admin costs
- Provisions for Milestones instead of just Substantial Completion
- Refinements to list of Contract Documents

C-550, Notice to Proceed

- General modifications to make editing easier.
- Language modifications to match other documents.
- Deleted paragraph referencing insurance.

- General modifications to make editing easier.
- Language modifications to match other documents.
- Deleted references to “tentative” and “definitive” to match General Conditions wording.

C-940, Work Change Directive

- General modifications to make editing easier.
- Modifications to make Work Change Directive, Change Order, and Field Order more consistent in appearance.

C-941, Change Order

- General modifications to make editing easier.
- Modifications to make Work Change Directive, Change Order, and Field Order more consistent in appearance.

C-942, Field Order

- General modifications to make editing easier.
- Modifications to make Work Change Directive, Change Order, and Field Order more consistent in appearance.

C-521, Subcontract

- First edition of the Subcontract
- Meant to be congruent with C-700 and EJCDC, but not dependent on them for definitions etc.
- Combination of “Agreement” and general terms/conditions

Key terms:

- Prime Contract is incorporated by reference
- No contractual relationship or privity with Owner
- Sub not a third party beneficiary of Prime Contract
- Flow down of obligations
- Tied to Contractor’s progress schedule

C-521, Subcontract

- Payment: due ten days after Contractor's receipt of \$\$ from Owner ("pay when paid"—ultimately if no \$\$ received from Owner, Contractor would be obligated to pay Sub)
- Contractor has final authority regarding conflicts and coordination problems between Subs
- Safety duties to Sub's own workforce, and to other persons and property at the Site
- Duty to report accidents and near misses to Contractor

C-521, Subcontract

- If change in Sub's work resulted from change to Prime Contract, increased compensation is limited to share of proceeds from Owner
- Insurance, Indemnification provisions track C-700
- Bonds—required only if expressly stated
- Dispute resolution independent of Prime Contract, but Contractor can pull Sub into arbitration with Owner
- Sub's representations track C-series