

Guidelines for Design Professionals Preparing Project Specifications

Specifying Product Substitution Requirements (Part 1)

Many Design Professionals (DP's) do not understand how to correctly specify procedures for product substitutions. In order to correctly approach this subject let's first look at what a substitution is:

A substitution is defined as the DP's approval of materials, products or equipment for use in place of those specified.

In order to effectively control substitutions coming in to the DP's office during bidding and construction, procedural requirements for Substitutions must be clearly stated in the Project Manual that is prepared by the DP.

Do not confuse substitutions with Alternates: An "Alternate" or "Alternate Bid" is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work is accepted. So an Alternate is a formal request for a change in the Work which is accompanied by an amount to be added to or deducted from the Bid amount.

Since many projects utilize standardized documents prepared by the American Institute of Architects (AIA), let's see what those documents say about substitutions.

AIA A701-2018 - Instructions to Bidders: Fortunately, the latest edition of this document does a much better job covering substitutions than previous editions. Here is what the 2018 edition contains:

ARTICLE 3 - BIDDING DOCUMENTS

3.3 Substitutions

3.3.1 The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. Where "brand name or equal" is stated in the Bidding Documents, the listing description is not intended to limit or restrict competition.

3.3.2 Substitution Process

3.3.2.1 Written requests for substitutions shall be received by the Architect at least ten (10) days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

3.3.2.2 Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

3.3.2.3 If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

3.3.2.4 No request to substitute materials, products, or equipment for materials, products, or equipment described in the Bidding Documents and no request for addition of a manufacturer or supplier to a list of approved manufacturers or suppliers in the Bidding Documents will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten (10) days prior to the date for receipt of Bids established in the invitation for bids. Any subsequent extension of the date for receipt of Bids by addendum shall not extend the date for receipt of such requests unless the addendum so specifies. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the Work of other contracts that incorporation of the proposed substitution would require, shall be included.

3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

3.3.4 If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.

3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

Considerations with the Use of AIA A701-2018 - Instructions to Bidders

AIA Document A201 states that unless otherwise specified the Instructions to Bidders is not part of the Contract Documents, so it is not applicable after award of Contract.

AIA A701 only permits substitutions prior to receipt of Bids. Some Owners or Design Professionals may wish to allow for substitutions after Bids are received, or even after award of the Contract. In this case the Design Professional must also include substitution procedures in Division 01 – General Requirements.

Allowing for substitutions within a stipulated time period after award of Contract, usually 30 to 90 days, gives the Contractor or Construction Manager an opportunity to look at prices without the crush that occurs during bidding, potentially opening up some valid cost savings.

AIA A201-2017 - General Conditions of the Contract for Construction: This document has very little to say on the subject.

ARTICLE 3 – CONTRACTOR

3.4 Labor and Materials

3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

ARTICLE 7 – CHANGES IN THE WORK

7.3 Construction Change Directives

7.3.8 ...When both additions and credits covering related Work or substitutions are involved in a change...

Reasons for substitutions: Why should we even look at substitutions? We have selected products that we want; shouldn't we just get those? Look at this from several perspectives:

The Owner often wants to allow for open and competitive bidding, which typically leads to lower prices.

The Contractor or Construction Manager wants to utilize their previous experience with products, both good and bad. They may have a valid reason to look at products other than those specified.

We may find out after documents are issued that the specified product is not available, for various reasons; it went out of production, there was a fire at the manufacturer's facility, or the lead time is too long.

What are the concerns that the Owner and Design Professional have about accepting substitutions?

The potential for use of inferior or inappropriate products.

The time, and therefore cost, to evaluate substitution requests.

A potentially longer bidding process to allow for the submittal and evaluation of proposed substitutions.

The potential for loss of control over the Project due to the use of unfamiliar products.

In Part 2 of this Spec Topic we will look at:

Timing of substitutions.

Substitution procedures.

How products are specified.

Substitutions terminology.

Consideration of substitutions.

Project Manuals should include the following coverage of substitutions:

Section 01 20 00 - Price and Payment Procedures should cover substitution procedures in general. Being located in Division 01 - General Requirements means that these provisions apply to all other Divisions.

Each section where manufacturers are listed should include the following statement, edited to designate how substitutions are to be handled in each section:

Substitutions: [Refer to Division 01.] [Not permitted.]

Our *SimpleSpecs*[™] system includes two documents that can assist in specifying product substitutions:

01 20 00 - Price and Payment Procedures: Includes general requirements for product substitutions.

01 25 19 - Substitution Request Form: For incorporation into a Project Manual to provide a format for product substitutions.

For information on the *SimpleSpecs*[™] Master Guide Specification System visit www.zerodocs.com.