

A Constructive Guide to RFI and Submittal Reviews

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Senior Structural Engineer & Design Manager
Black & Veatch Federal Business
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Construction Division
USACE Europe District

15 May 2024 | 1630



MODERATOR



Charysse Knotts
PE, PMP, LEED AP, F.SAME
Black & Veatch
Director Europe Federal Programs

Fun Facts

- Mining | Petroleum | Environmental Engineer | 40 years in AEC Industry | 35 years Federal programs
- Professional racecar team owner and crew chief | Favorite sports team (after Mike Knotts Racing) is Team Ferrari
- Avid SCUBA diver and EXTREME skier | Travelled to all 7 continents and over 66 countries
- Has a collection of over 50 giraffes



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SPEAKER

Nick Erwin, PE
USACE Europe District
Construction Division



Fun Facts

- Avid Golfer, skier, bowler and self-professed gym rat
- Mechanical Engineer by training and licensure but has spent the majority of his career in construction contract administration
- Life goal is to hit 50 countries and all 50 states. ~66% of the way

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SPEAKER



Larry Taber
PE, CxA, F.ACI, CQM-C
Black & Veatch Federal Business
Senior Structural Engineer & Design Manager

Fun Facts

- Has been called a concrete nut for his love of concrete
- Travels with Bob the Minion; Bob has been to about 33 countries so far
- Stained glass work is one of his more unique hobbies; along with history, home improvement, and traveling
- Can mirror write (backwards writing)



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A Constructive Guide to RFI and Submittal Reviews

Covering the Do's, Don'ts, and Tips for Effective Reviews



Learning Objectives

Understand what an RFI should and should not be used for

Identify different types of submittals and who needs to review them

Learn how using proper language matters and when to use different styles

Know the power of front-end specifications and referencing Contract Documents





Topics Covered

- Definitions, Responsibilities, Trends and Other Helpful Background
- Things You Should Do
- What You Should Avoid
- Tips for You

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Poll: What's YOUR Story?

Live Content Slide

Poll: Gonna Need Some Background Information Too



A Disclaimer Before We Start.

Nothing presented herein replaces settled construction law or documents such as established regulations, like the Federal Acquisition Regulation, codes, specifications, and industry requirements.

Any conflicts presented are unintentional and do not establish a revised precedence or authority on the subject.

Views presented here are the personal views of the presenters and not necessarily those of the Department of Defense or its components and shall not be used as a basis for claims, or without consent.



Definitions, Responsibilities, Trends and Other Helpful Background



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Some Definitions to Start With

- **What is a “submittal”**
 - Written or physical information provided by the responsible contractor to the contract holder (Owner/Government [USG]) and design team (Engineer/Architect) conveying a specific element of construction such as shop drawings, product data, samples, design data, or test reports
 - Unified Facilities Guide Specification (UFGS) 01 33 00 and USACE ER 415-1-10 cover in detail
- **And what about a Request for Information (RFI)?**
 - A formal procedure to record, track and monitor contractor questions concerning a particular construction element on a project
 - Used to clarify intent and interpretation of plans and specifications
 - NOT an authority for contractor to proceed with a changed condition or to modify a contract – important point



RFIs are sometimes called Contractor Information Requests (CIRs)

So Then, What is a Shop Drawing?

- **Federal Acquisition Regulation (FAR) Part 2 Definitions**
 - See also FAR 52-236-21 Specs and Drawings for Construction
 - Submittal Description – SD-02

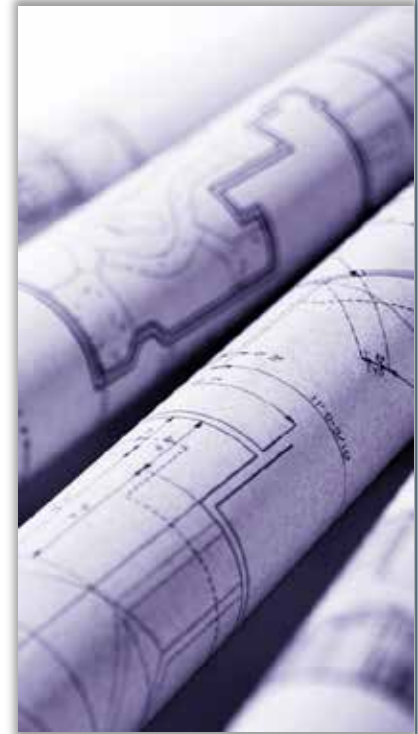
Drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

- (1) The proposed fabrication and assembly of structural elements.**
- (2) The installation (i.e., form, fit, and attachment details) of materials or equipment.**

UFGS Specification 01 33 00 shortens this definition

Submittals – The US Government Way

- See USACE document ER 415-1-10 for procedures and more detail
- Form 4025-R is typically used as cover sheet – lots of information!
- Two main categories of submittals: **Government Approved (GA)** and **For Information Only (FIO)** – different criticality and USG involvement
 - GA – more critical; ensures Government gets quality and safety needed
 - 30-day review time is typical, with additional 14 days if a variation
 - Review codes are typically A, B, C, or E
 - FIO – less critical and reliant on contractor QC program to ensure quality
 - 14-day review time is typical
 - Review codes are typically F or X; Government does not check all
- **Variations and Substitutions to be handled in submittals only**
 - Contracting Officer (KO) or ACO involvement required



In Design-Build work, Designer of Record (DOR) Approved, or DA, submittals also exist



An Alphabet Soup of Review Codes

- UFGS 01 33 00 Specification and USACE ER 415-1-10
- Several “Action Codes” to use, depending on contract and review type
 - Design-Bid-Build
 - Design-Build
 - GA/DA
 - FIO
 - A, B, C, E, F, and X are most common
- Codes A and B represent completed GA submittals, Code F is completed FIO submittal
- Codes C and E require additional submissions for GA submittals, same for Code X on FIO



Alternate codes in UFGS 01 33 00 are “A,” “AN,” “RR,” “NR,” or “RA”

Use of Submittals Across the Globe Varies

- **Submittals common in CONUS may not be elsewhere – understand this!**
 - i.e. Detailed structural calculations not commonly provided in Europe
 - Local subcontractors may not think to include them in bid
 - Pre-construction planning submittals also less common – delays early hurt more
 - Contractor approach leans towards skipping to field installation and checking once complete
 - Causes more field modifications and as-built information
- **European contractors, especially in Central and Eastern Europe, expect contract documents which are more build-to-print**
 - Less emphasis on the submittal process by them
 - When required by USG, can cause contractor delays and cost overruns in project, especially if not included in local subcontractor's bid

Communicate submittal expectations clearly in pre-bid; point out requirements



Understanding Roles and Responsibilities

- **Everyone has a part – respect and understand this**
- **Design-Build (DB) projects have different contractual relationships**
 - Have RFIs between engineer and contractor without USG involvement
 - DOR involvement in submittal reviews for extensions of design increase
- **Design-Bid-Build (DBB) projects – RFIs between Primes and Subs**
- **Contractor Quality Control (QC) leads the submittal and RFI processes**
 - Government provides Quality Assurance only –spot checks of FIO submittals
 - Critical submittals will get more detailed reviews by USG and DOR
 - It is not the Government's role to ensure correctness of a submittal
 - Responsibility ultimately belongs to the Contractor QC group



Check out the USACE/NAVFAC CQM-C Training Course for detailed information!

Cost and Abuse of the RFI – A Trend

- **2013 Navigant study “Impact & Control of RFIs on Construction Projects”**
 - Average cost to owner per RFI: \$1,080 in 2013 dollars (\$1,465 in 2024)
 - Average time spent per RFI: 8 hours
- **RFIs are sometimes used to:**
 - Document agreements with no questions being asked
 - Posture or pre-litigate positions on disagreements
 - Perform work using response, then seek change order
 - Substitute products or methods, sometimes inferior
- **Easily-answered or questionable RFIs sometimes generated intentionally**
 - Attempt to make design look deficient for claims
 - Overwhelm reviewers to slow response times for justifying delay claims



Don't be afraid of using serial letters – simply a formal communication tool

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Poll: How Has Your Submittal and RFI Experience Been?

Things You Should Do



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Momma Said, Watch Your Language

- **Use mandatory, assertive and concise language – terse in mood**
 - Creating a legal document – treat it as such
 - The word “please” can be interpreted as direction instead of just being nice
 - Don’t use “should” – only a recommendation with no force behind it
- **Quote scripture and verse in a comment or response**
 - Contract Document references (specifications/drawings) are best to use
 - Next best are codes or standards, followed by standard industry practice
- **An experienced opinion is good, but form responses using facts and requirements**
- **Be focused and detailed in a response; being open-ended or vague causes mis-interpretation or another round of comments and wasted time**
- **Clearly state your concern with facts and what is needed for an acceptable resolution**
 - “I don’t like it!” is not appropriate or helpful to get past issue



Where Does a Design Analysis Fit?

- **Normally not in the contractor's contract**
 - Not written in mandatory language
 - Should not be given to contractor
- **DOR and USG should review when responding**
 - Useful for understanding intent
 - Ensure reviewers have it available – important
- **Beware of differences and conflicts**
 - Design Analysis is guidance and intent only



A Design Analysis is sometimes also called a Basis of Design

The Contractual Do's

- **Involve the Contracting Officer (KO) or Administrative Contracting Officer (ACO) if responses are contentious or may lead to a change**
 - Simple items can involve a Contracting Officer's Representative (COR)
- **Check all relevant specifications and drawings for applicable information**
 - Amazing how many notes are missed unless you are looking for them
- **Remember no design is perfect and the law, including the FAR, does not expect it to be**
 - Handle design or contract issues honestly
 - Trying to force a fix in a response causes tension and ultimately does not age well if legal actions are taken later
- **Include referenced documents with reviews if not easily obtained by interested parties (emails, meeting minutes, etc.)**



Best Practices are the Best Kinds of Practices

- **Avoid leading contractor to a specific solution if multiple ones may exist**
- **Make sure you are answering the question asked at a minimum**
 - If more is needed to avoid follow-up questions, answer those too
- **Be professional and always assume positive intent – this is a business**
 - People generally are trying to do the right thing
- **Document your correspondence**
 - Consider using USACE Resident Management System (RMS) or NAVFAC eCMS
 - People move off projects – their emails and memories go with them
- **Cross-reference** with other applicable submittals and RFIs for easier tracking
 - Leaving breadcrumbs to follow later saves time and provides consistent responses
- **Understand that contract requirements are both a minimum and a maximum**
 - Different interpretations will occur, but base reviews on the contract, not desires



Time Keeps on Ticking... Into the Future

- **Review submittals and RFIs shortly after getting them for formatting**
 - Check for corrupt files, incomplete cover form, missing signatures
 - Verify no obviously missing content too – easier to fix now
 - Determine who needs to review and distribute quickly, if needed
- **Be aware of time-sensitive items and do your best to accommodate**
 - Neither side should abuse the system though
 - Contractors should plan enough ahead but errors do occur
 - Reviewers should understand critical path and where they fit
- **Understand Subject Matter Experts (SMEs) are often busy**
 - If help is needed, give them warning if possible
 - Alert them to deadlines and ask for extensions, if needed
 - Do a preliminary review and then schedule a meeting with SME



Just a Few More Do's

- **RFI responses should use a Bottom-Line Up Front (BLUF) approach**
 - Convey the most important information first – do you agree or not?
 - Write in clear logical manner with good formatting for easy reading
 - If more information is needed, is the RFI the right spot to provide it?
- **Verbal discussions or preliminary meetings work well to resolve conflict**
 - Always follow up with written communication for documentation
 - Email for small issues, serial letters for the bigger ones
- **Be reasonable, fair and understanding – even when the other side isn't**
 - Try to imagine where the contractor is coming from
 - Can you help them as partners on the project?
 - Understand when a contractor's first language is not English
 - If you can understand their intent or meaning, do not penalize for poor grammar or syntax



What You Should Avoid



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Sketches Can be Sketchy

Audience Participation!

Avoid a rough sketch if words can suffice

Sketches have a way of becoming a part of the contract

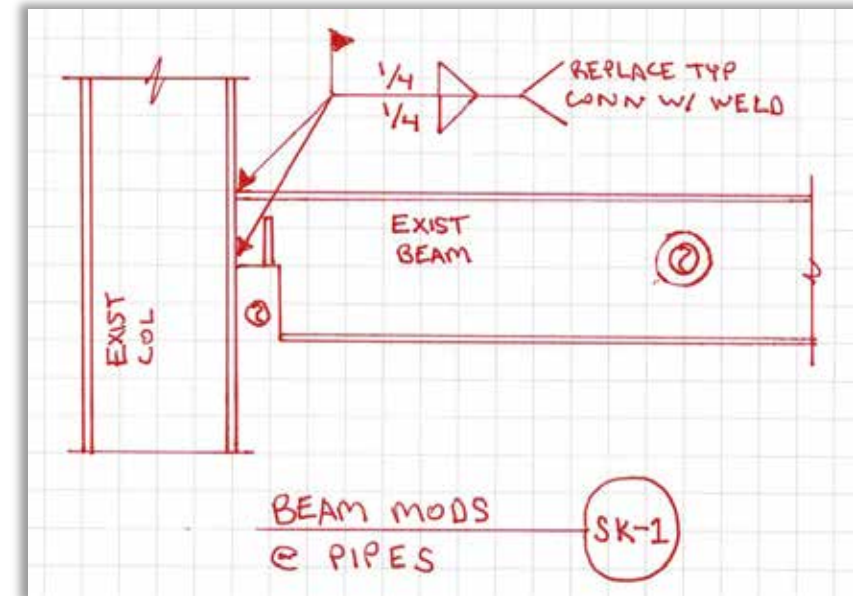
-- Original sketch developer may not have intended this

If providing, step back and look at it for potential legal issues or missing information – remember, your response is creating a legal document

Issue: Two pipes conflict with beam, contractor submits RFI asking what to do

Questions for this sketch:

- 1) Could this modification reasonably have been described in words?
- 2) What information is missing and needed to safely perform this work?
- 3) What are the contract implications?



Emotions Run High Sometimes

- **Do not get emotional, sarcastic, defamatory, or dramatic in a response**
 - It does not help and will not look good in the future
 - Yell at your computer or vent to a colleague if needed – don't write it down
 - A team approach is the most productive, but at least be professional
 - Dramatic, sarcastic and hyperbole language does not read as intended
 - Especially to someone who is not a native English speaker
- **Responding “Contractor has been told X times” is unproductive**
 - Better to re-iterate the prior comment or contract requirement
- **Avoid using specific names of companies or people**
 - Helps to reduce defensive posturing and attitude
 - Typically use “Contractor,” “Government,” “DOR,” “Engineer”, etc.
 - Keeps response clear when names or positions change



Contractual Nopes

- **Never intentionally require something which is clearly beyond the contract**
 - Becomes a constructive change to the contract
 - If questionable or an interpretation is needed, discuss with KO of ACO for a decision
 - If response will clearly change the contract, indicate a contract modification is forthcoming and contractor shall not start work until modification is in effect
- **Avoid dictating means and methods unless contract already dictates them, and then only enforce as written**
- **Never give direction or perceived direction in a response**
- **RFIs shall not be used to approve a variance or products**
 - Submittals have set procedures in place for this
 - Common issue – but RFIs do not alter contract



The Don'ts of Submittal Reviews

- **Avoid getting too deep into the design of performance-based items**
 - Instead, verify if the contractor's designer is meeting the performance requirements stated in the contract
 - Also verify contractor's designer is taking responsibility for their work
 - Contract may or may not have required signed and sealed work
 - Contractor QC to check for subcontractor exclusions
- **A C-coded submittal is approved but needs corrected and re-submitted**
 - Avoid a completely new review on a re-submittal, unless justified
 - Check against prior comments unless revisions are extensive or impactful
 - A reviewer might notice something missed in a prior review – it happens
 - Deal with it honestly, comment if needed – understand contractor impact
 - Goal is not to have a perpetual review cycle



Some Other Don'ts

- **Don't delay a response unnecessarily – are you done with it?**
- **DORs don't make final determinations or comments**
 - Typical role is to make recommended comments to the Government
- **Contractors should not abuse the RFI form checkboxes for schedule and cost claims**
 - It happens on projects not going well more than it should
 - Government needs to address claims in each response
- **Don't require a re-submittal because of a different issue or item**
 - The other item should be tracked in the submittal register
 - If the prior item was already approved, consider revising old submittal
- **Don't hold an otherwise good submittal hostage for tracking only**
 - OK to point out issues with other related items for cross-reference
 - Tracking is needed if issue would be lost otherwise
 - Consider making an additional submittal register item or deficiency instead



Tips for You



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Communicate!

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- **Understand a submittal or RFI is a formal communication tool**
- **Good, open, and clear communication between parties before, during, and after reviews is important and healthy**
 - Follow proper channels though
- **All parties are responsible**
 - **Government/Owner** – ensure comments are clear and helpful
 - **Designer** – provide interpretations if needed; be concise in comments
 - **Contractor** – ask good questions; follow-up if don't understand
- **A communication collapse can be dangerous, and quality/cost/schedule suffers**



The Good Idea Fairy Has Arrived



- **Develop standard and documented processes, databases, file name rules, email header formats, email templates, and review forms EARLY**
 - Promotes consistency for easier searching later when needed
 - Processes should allow for easy tracking and be auditable
 - Understand limitations of different systems between USG, DOR and contractor
 - Not everyone has access to RMS and ProjNet has some limitations
- **Establish an email project account as a repository for emails**
 - A person's emails get lost or difficult to access when they rotate off project
 - Assign a specific person(s) to monitor and maintain project account
 - Develop procedures on when to copy the project account
 - All important decisions, notifications, issues, potential claims, etc.
 - Submittal or RFI processing (i.e., assignment and completion emails)



Things to Consider on Your Next Review

- **Number all comments for easier discussion and tracking in re-submittals**
 - Do one final check before returning though
- **Provide individual action codes for each comment**
 - Allows focus on major comments first
 - Are some drawbacks to address:
 - Minor comments might get ignored or unresolved in re-submittals
 - Becomes difficult to justify a worse overall action code if submittal has many minor comments but no major ones
- **Avoid making comments within the body of a submittal**
 - They get lost or missed



Some Review and Response Form Tips

- **Consider adding a key words list to top or bottom of form**
 - Easier searching later, especially if consistent
 - Consider creating a regularly edited standardized list to pull words from
- **Before returning, check for:**
 - Obvious spelling or grammar issues
 - The question asked has been answered, plus any other obvious ones
 - Did you avoid slang and contractions, especially on an OCONUS project?
 - Be sensitive to non-English speaking parties
 - Adjust your response for cultural sensitivity and avoid public disrespect
 - Attachments are attached – commonly missing
 - File name and submittal/RFI number are shown correctly
 - If you were getting the response, would it make sense and could be acted on?



The Power of the Front-End Documents

- **Front-end documents are Division 00 and 01 of the Specifications**
 - Form legal basis of project from start to finish, including Commissioning
 - Contains many important requirements for submittal and RFI review
 - Will often find yourself searching them, looking for a clause to help
- **Recommended to read through them at start of project**
 - Re-read for EACH project – can be different, especially OCONUS vs. CONUS
 - Consider making notes or a table of specific requirements which might be commonly cited in your reviews
 - Includes things like order of precedence and requirements for use of English language, variances, quality control, as-built information, etc.



And the Tips Just Keep Flowing

- **Preliminary informal reviews can be helpful, but don't be excessive**
 - Becomes hard to track and sets non-enforceable expectations
 - Document all comments in writing, even if preliminary
 - These reviews are outside of official process, which allows more freedom – but the process is there for a reason and works
- **Submittal review meetings can save everyone time and frustration**
 - Prior to completing your review – if missing information
 - Will a 10-minute call early in the review fix the issue?
 - After a review – to discuss comments for a better re-submission
 - Especially if there are clear differences in expectations
 - Explaining differently with more words in a meeting setting typically helps the contractor focus on corrections
 - Don't forget the meeting notes!



Final Thoughts

- Submittals and RFIs are critical to quality and safe construction within budget
- Good communication is important
- Understand the roles of different players
- No design or document is perfect, and the legal system does not expect it to be
- Be timely and reasonable – avoid emotion
- Standardized forms and processes really help – develop them early
- Don't forget those front-end documents

Final Thoughts – Negotiation Creed

*Keep strong, if possible. In any case, keep cool.
Have unlimited patience. Never corner an opponent, and
always assist them to save face. Put yourself in their shoes
– so as to see things through their eyes. Avoid self-
righteousness like the devil – nothing is so self-blinding.
Cure yourself of two commonly fatal delusions – the idea of
victory and the idea that war cannot be limited.*



B. H. Liddell Hart (1895-1970) | English soldier, military historian
Deterrent or Defense (1960) | Advice to statesmen (edited for gender neutral language)



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Q&A

Come talk with us in the Exhibit Hall!

**Black & Veatch – Booth #415
Right across from SAME Booth**

- Charysse Knotts | KnottsC@bv.com
- Nick Erwin | nickstuarterwin@gmail.com
- Larry Taber | TaberLH@bv.com