

Acceptable Product Submittals

A surprising dichotomy: Architects say approval of products that are not specified should be documented as contract modifications, but most simply note acceptance on the submittal or the substitution request form. Simple acceptance method is preferred for substitutions that do not change the Contract Sum.

With nearly a 10% response from over 600 surveyed, the results show a clear majority about every issue.

- Non-specified products are reviewed as substitutions 69%
- Non-specified products are accepted by notation on the submittal or a substitution request form 65%
- Separate review procedures are required for substitutions and acceptable products 82%
- Acceptance of non-specified products should be documented as a contract modification 68%

When operating under AIA A201 General Conditions of the Construction Contract, accepted substitutions are required to be documented as a contract modification. AIA A201 permits only two methods to modify the contract: Change Order or Architect's Supplemental Instructions (ASI).

Change Orders or Construction Change Directives are required to modify the Contract Time and Contract Sum (AIA A201 §3.4.2). Eventually Construction Change Directives result in Change Orders when the terms and cost are finally negotiated. Substitutions require the consent of the Owner, which dictates the use of a Change Order.

If a substitution does not affect time or price, then an ASI may be issued to document a minor change in the work (AIA A201 §3.4.2 and §7.4). ASIs do not require the Owner's consent prior to issue.

Specific comments to survey questions indicate that the use of Change Orders to accept substitutions is dependent on a change to the Contract Sum. The specifications Division 01 section specifying product options and substitutions procedures can set the rules for a simplified procedure when a non-specified product proposed by the contractor does not change the Contract Sum.

AIA's MasterSpec® Division 01 includes procedures for reviewing "comparable products" when the specification is written as an open type, allowing the contractor to propose products that are not specified. This allows architects to accept the comparable product without invoking the need for a Change Order. But if the spec includes a closed list of products, then other proposed products must be reviewed as substitutions. MasterSpec® specifies that comparable products are accepted through the submittal process.

ARCOM's SpecText® Division 01 permits substitutions only when explicitly specified. For closed specifications, no substitutions are permitted. And when no product is named, any product meeting the spec may be proposed without being considered a substitution. SpecText® does not include an alternative method for approving products that are not specified.

To allow a simplified approval method for contractor proposed products, modifications to Division 01 documents will be required. Clearly state the procedure that the architect will use to accept proposed products that are not specified when the product is not considered a substitution.

Thank you to all that responded to the survey. By random selection from all entries, the following will be receiving a \$25 gift card: Joe Emanuele, Matthew Wermuth, Kevin Aires, and Modesto Bigas-Valedon.