

HOW TO WIN CONFLICTS AND OMISSIONS WITH PLANS AND SPECS EVERYTIME

By
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In order to deal with Defective or Incomplete or Inadvertent Errors in Plans & Specifications, owners and their architects have put in provisions in the contract usually in the General Conditions of the contract under the heading of “Order of Precedence of Documents”, which is listed as shown below (similar language in other contracts):

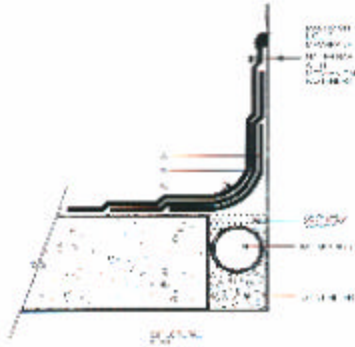
- Contract between Owner and GC
- Special Provisions
- General Provisions
- Specifications
- Details on Drawings
- Plan Drawings

This means that if the contractor has a **CONFLICT** between the Plan Drawings and Details on Drawings, then the Details on Drawings prevail. If there is a conflict between the Drawings and Details on Drawings and the Specifications, then the Specifications will prevail. The higher “Order of Precedence of Documents” governs or prevails. It is sort of like a poker hand where 3 of a kind beats 2 pairs, etc.

This only works if you have a **CONFLICT NOT AN OMISSION**.

CONFLICT is defined as the Details on Drawings show one thing to construct and the Plan Drawings something different to construct. **OMISSION** is defined as the Details on Drawings show one thing to construct and the Specifications are silent and do not indicate anything.

To illustrate this further, SDC & Associates’ client encountered a problem on the last day they were waterproofing a hospital. The waterproofing subcontractor had completed all his work on the project, which consisted of installing waterproofing membrane on the footing and turning it up the wall, similar to the sketch shown below:



The inspector on the project told the sub that he did not follow the detail shown above. This detail states that this is a **TYPICAL TERMINATION DETAIL** and small print states “Powder-Driven Pin and Washer @ 18” O.C. through continuous anchor strip”. The inspector told the sub that his work is not done until he fulfills this requirement.

The sub reviews the specifications and finds no requirement for installing a Powder-Driven Pin and Washer @ 18” O.C. through continuous anchor strip. There is no material specified for an anchor strip.

The sub writes a RFI whose answer is “The continuous anchor strip shown on the below grade waterproofing details is a 16 gauge metal strip. Submit samples”.

When you review specifications, you should understand how specifications work as follows:

- Section 1 – States Scope of Work and related Specification Sections
- Section 2 – Specifies the materials to be used on this project and submittal requirements [Nothing specified that is in the Detail on Drawing]
- Section 3 – States Installation Procedures. In this case, it states to install the waterproofing membrane in accordance with the manufacturer’s recommendations

The sub goes to the manufacturer who is horrified and says: (a) NO! NO! NO! You cannot follow this detail; (b) You want to do what? Shoot thru the waterproofing membrane and damage it; (c) This will VOID THE 5 YEAR WARRANTY.

The architect states that this is not acceptable and that the manufacturer must provide the 5 YEAR WARRANTY. So, the manufacturer devised a method to install a 2nd layer of waterproofing membrane to cover the holes created by shooting thru the waterproofing membrane. The sub installed this additional work, having no choice to do so.

The sub’s Project Manager sent a fax asking for a Lump Sum of \$15,000.00 for this extra work, without submitting any back-up. This was rejected by the owner and architect stating that “since anchor strip is shown on contract drawings it is part of your contract”.

There is other verbiage that deals with **OMMISSIONS** in the “Order of Precedence of Documents”, one of these states that “**If some thing is shown on the drawings but is not in the specifications – it is part of your contract**”. What do you do?

This is the basis of the denial of this Claim by the owner and the architect. Suppose, if you have wood base shown in Room 101 and the owner states install wood base per the contract. You simply say that since the wood base is not in the specifications, I do not know the quality of the wood base to be furnished and installed and your architect was negligent in not providing this information to me. Therefore, my obligation is to install the cheapest wood base available on the market; pine wood base. The owner will invariably say that they want oak or mahogany wood base and now you can get a change order for the material difference between pine and oak or mahogany.

The second verbiage that deals with **OMMISSIONS**, states that **"If something is specified in the specifications but is not shown on the drawings – it is part of your contract"**. What do you do?

Suppose the specifications specifies oak wood base and the owner states that he wants you to install this and you argue that it not shown anywhere and you argue that you do not have to install it. In order to prevail in this situation, you must explain what the purpose of drawings is for, which is to:

- Do take-off of quantities for the bid
- See locations for installation of specified materials

You must explain that since the owner's architect was negligent in not showing the location of the oak wood base on the drawings, there was no way for you have taken off the quantity needed to install. So, propose to give them 1 Linear Foot of oak wood base and ask the owner where he wants it installed. By giving the owner 1 Linear Foot of oak wood base; you have satisfied the contract requirements. If the owner wants you to install more quantities, then you can get a change order for the extra quantities and work.

Now, getting back to the "Order of Precedence", where is the **CONFLICT** in the documents for you to enable to win the Entitlement for Merit of this claim. GIVE UP??? This was our challenge when we took over this case for our client about a year after the work was performed.

The **CONFLICT** is between the **Detail on the Drawing & the Specification**, which is:

- Detail on the Drawing show a **TYPICAL TERMINATION DETAIL** and states "Powder-Driven Pin and Washer @ 18" O.C. through continuous anchor strip
- Specifications Section 3 under Installation Procedures, states to install the waterproofing membrane in accordance with the manufacturer's recommendations, which has **TYPICAL TERMINATION DETAIL**, which the sub followed and installed his waterproofing membrane by

Therefore, under the "Order of Precedence", **Specifications prevail over Detail on Drawings**. We explained this to the owner and the architect and we won the Entitlement for Merit for this case, despite the Architect's protests.

There is built in mechanism in the contract to solve **CONFLICT** problems; the Architect and the Owner did not use it in this case and the sub being unaware of this **CONFLICT** solving mechanism did not use it either. The owner problem here is that the Architect and

the Owner argued that this was an **OMMISSION** problem, when in reality it was a **CONFLICT** problem.

We re-priced this change order from \$15,000.00 to \$52,753.01. When we won the Entitlement for Merit, the owner wanted to pay the sub \$15,000.00 which we rejected but the \$15,000.00 cost proposal became a thorn in our side, the owner offered us that settlement at least 3 times. We told the owner that the sub's Project Manager gave an off the cuff guesstimate which grossly incorrect and that is the reason that this Project Manager does not work for the sub anymore.

You need to price change orders in great detail, show the process step by step and price step by step. Using this methodology, we settled on \$40,095.24. The owner wanted to keep the settlement below \$40,000.00. I asked the owner, when they can pay us, the owner said within 5 days and we settled on **\$38,903.67**. When you get paid is part of negotiations as well. The settlement could have been higher if we did not have to deal with the initial \$15,000.00 cost proposal; so never give off the cuff guesstimates.

Why were we successful?

- **ENTITLEMENT FOR MERIT**: Using the Order of Precedence of Documents
- **QUANTUM**: Clearer pricing

One last thing, how do solve **CONFLICTS**:

1. **BETWEEN DRAWINGS AND DRAWINGS**
2. **BETWEEN SPECIFICATIONS AND SPECIFICATIONS**

The rulings have been that the most stringent of two requirements is what you should have bid. Sorry, can't help you here.

If you have a problem like this where the reflected ceiling plans show 12 lights and the electrical drawings show 8 lights, how **many lights do I need to install?** The answer is 12 **BUT** how many of the 12 lights are build able; according to the Spearin Court Case of 1918, when an owner issues a set of contract documents for bid, the owner gives an Implied Warranty that these contract documents are not defective and are complete and suitable for building a project. In this case, 4 of the 12 lights are not build able, since you do not know what the conduit and wiring requirements are; what panel board are these lights connected to and whether any of these lights are to be on the emergency system. So, if you argue this correctly, you can get paid for wiring the 4 lights as a change order.

So, now go out there and solve all the drawing and specification conflicts and win everytime.

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