Questions and Answers from Tech Tuesday Webinar on *Authority of the Engineer* Aug 19, 2025

1. When you refer to the "the Engineer " does this mean only one person or can the "the Engineer " designate his responsibility to others? (Consultant - Florida)
   ANSWER: The Engineer *could* "designate his responsibility to others" provided this is done in writing.

2. What is the extent intended to "equip the testing facility"? power, space and access or more? (Association - Virginia)

   ANSWER: The "extent intended to 'equip the testing facility'" expressly refers to the contractor having:

   - "A telephone with a private line;
   - A copying machine; and
   - Broadband internet connection (for 1 computer). If the Engineer determines that broadband internet service is not available, provide a fax machine at no additional cost."

3. If a contractor has a few failed QC tests and the QA shows the same issues, but the project is accepted by the owner is there any recourse for the owner to file a claim a year after construction is completed? (Consultant - Texas)

   ANSWER: Provided the owner was *informed* of both the failed QC and QA tests, as well as the fact that the failed areas were *not re-worked*, the owner *could* have NO "recourse." If the owner was so informed, under literally all public construction projects, the owner *can* 'accept' such non-conformance and thereby 'waive' the right "for the owner to file a claim a year after construction is completed."

4. So the gist of this Webinar is to NOT Trust anything the Engineer says verbally! (Consultant - Iowa)
   ANSWER: Because people 'forget, misinterpret, leave and sometimes lie,' a contractor should NOT rely upon what "the Engineer says verbally." ALWAYS document any 'verbal' communication immediately 'in writing.' The contractor should communicate in an email to the Engineer: "I am confirming my understanding of what you told me verbally. EXPLAIN YOUR UNDERSTANDING. If I have misunderstood what you stated,

communicate that in writing to me immediately. Otherwise, I will rely upon my understanding as accurately summarizing what you told me and will proceed on that basis."

5. What is the weight of email "written authority" versus "signed letter from Engineer on letterhead"? (Consultant - Colorado)
   ANSWER: As I stated, the Engineer (not the inspector) can 'vary the terms of what the contract otherwise requires.' If the Engineer does not communicate in writing per a "signed letter from Engineer on letterhead," an email from you as set forth in the Answer above for Q. 4 is sufficient

6. Does a submittal review stamp that designates the materials as reviewed with verbiage along the lines of "this review is only for general conformance with the design,...." still constitute "approval". in a previous role as a structural engineer on building projects, I was told to never "approve" a shop drawing, we only review. (City - Iowa)
   ANSWER: What "a submittal stamp" constitutes is a 'question of what the contract says." For example, per the KDOT specs which I analyzed for the webinar, the contract expressly states that "drawings" and "plans" are what the "Contractor is required to submit for approval." As such, per these specs, the Engineer *must* 'approve' the drawings/plans for the Contractor as a contractual 'prerequisite' for to perform the related work.

7. Tom discussed having the Engineer sign off on the subgrade prior to paving. Difficult for the Engineer to do because conditions can change daily due to heat, rain events etc. How would you address a situation where the grade was constructed, passed all tests, but between building the grade and paving, the subgrade or aggregate base is exposed to a rain event and is now not acceptable or meeting the specifications? What is the responsibility of the Contractor at this time? What should the Engineer do at this time given the situation? (Consultant – Minnesota)
   ANSWER: Per the KDOT specs, which reflect 'standard practice around the country,' "KDOT will not pay for the replacement and refinishing of the treated subgrade if the material loses the required stability, density or finish before the next course is placed." This reflects the standard specification that while 'adverse weather' may (depending on what the contract says) justify a time extension, insofar as the owner did not cause the rain event, it is a non-compensable event. NOTE: This would be a compensable event IF the contractor would NOT have experienced the rain event (and its adverse impact on the subgrade) but for an 'owner-caused delay' (i.e. the contractor would have placed the next course on the subgrade before the rain event occurred).

8. What are your thoughts on a contractor's right to have an extension to the completion date of a "Contract Completion Date" contract if they did not start work until 2-3 months after a Notice to Proceed was issued? (City – Iowa)

   ANSWER: If an event occurs which contractually entitles a contractor to a time extension (i.e. causes work on the critical path to take longer to complete) AND the contractor would have been so delayed EVEN IF IT HAD MOBILIZED ON A TIMELY BASIS, then the contractor should receive a time extension UNLESS THE CONTRACT EXPRESSLY SAYS OTHERWISE. Per the KDOT specs, the contract does NOT EXPRESSLY SAY OTHERWISE.

   - NOTE: I have successfully asserted on contractors' behalf that if the contractor is late mobilizing for the same period of time that it is late completing the project, the owner should not be able to assess liquidated damages.
   - This assumes that there was NO LOSS OF USE/EXTRA ENGINEERING FEES/OTHER RELATED COSTS being incurred during the time frame when the contractor is late mobilizing.
   - This argument has been successful (and I believe appropriate) because liquidated damages must be based on a 'reasonable forecast of what actual damages an owner could incur for project delay.'
   - If a contractor completes the project in the 'anticipated time frame, albeit starting and finishing late, then if this delay would not be costing the owner anything more, then the owner should not be able to assess liquidated damages (since LD's would not correspond to any actual damages).

9. When a contractor submits delay claims and wants to charge for idle equipment, can they expect a full day's worth of idle time for every piece of equipment on site as not every piece of equipment is being used all day/every day on a project. Many pieces of equipment are only sporadically used on a given work day. (City - Iowa)

   ANSWER: This is a very interesting question which I have addressed many times. My position is that a contractor *should* be able to charge a full day's worth for idle equipment, even if it was not used in whole or part for the day. I believe that is appropriate because:

   - Contractors bid the equipment costs on a *full workday basis.*
   - So for every additional day the equipment must remain on the project, this is costing the contractor: the equipment could NOT be working a *full workday elsewhere.*

- And, whether this approach is appropriate is dependent on what the contract as well as court decisions provides, as well as how the Engineer instructs the Contractor to respond to the delay.
- Per my experience, contracts normally do not so limit the compensability of idle equipment as you suggested.
- Per the KDOT specs, for example, the only limitation on compensability is that the equipment is that "the "Engineer orders the Contractor to keep the equipment on the Project."
- So, under the KDOT specs, it the Engineer 'allows' the Contractor to demobilize the equipment, then it would not have to pay for the related idle costs.
- Having said that, my position is that IF the contractor has another project then available for which it CAN use the equipment, the owner should only have to pay for the cost of the additional de-mob/re-mob. But if there is no other pay item work available on another project for that equipment, then the owner should have to pay for a full day of idle equipment for every day that the contractor cannot earn pay item revenue to pay for that equipment.
- NOTE: When a contractor has another project on which the equipment can be used during the delay, I always advise contractors to explain IN AN EMAIL TO THE ENGINEER:
    - "If the contractor demobilizes to another project to minimize the cost of delay, the contractor will not remobilize to the delayed project site UNTIL THE RELATED WORK ON THAT OTHER PROJECT IS COMPLETED."
    - "This may result in the equipment not being able to remobilize until AFTER the project delay ends."
    - "As a consequence, the contractor will not agree to demobilize unless the Engineer agrees that the Contractor will be entitled to a time extension that includes the additional time between 'when the delay ends' and 'when the work is completed on another project to which it was sent.'

10. Can I view this presentation on ACPA's website later on as I missed the beginning? (Agency – Manitoba)
    ANSWER: The presentation will be available on the CP Tech Center website (https://www.cptechcenter.org/webinars-and-videos/)