



By Keith A. Bannon

THE NEW CCDC 2 STIPULATED PRICE CONTRACT 2008

THE LONG AWAITED CCDC 2 STIPULATED PRICE CONTRACT 2008 BECAME AVAILABLE FOR USE. HERE'S A LOOK AT FIVE AREAS OF CHANGES TO THIS STANDARD CONSTRUCTION CONTRACT.

The CCDC 2 Stipulated Price Contract 2008 replaces the 1994 version with which owners, architects and contractors had become very familiar. Because the general sections of the contract have not changed, a review of some of the more notable changes to the contract should provide those familiar with the old contract with a comfortable working knowledge of this document.

Notable changes were made to the contract in the following areas: Progress Payment; Mould; Insurance; Indemnification; and Waiver of Claims.

The following is a summary of these changes that should assist in the future use of this document.

GC 5.3 Progress Payment

The Consultant must now notify the Owner of the Contractor's application for payment. Previously, this notice was not required until the application was certified. More importantly, the Owner's payment becomes due 20 calendar days after the Consultant's receipt of the application, where it previously became due five days after certification.

This change should place greater emphasis on the Consultant's timely review of applications for payment.

GC 9.5 Mould

The inclusion of this general condition is entirely new to the CCDC 2 and is a reflection of the industry's heightened awareness and concern with mould.

Both the Owner and Contractor have an express obligation to report to the other party in writing any mould found on the project. If the cause of the mould is in dispute, it becomes the Owner's responsibility to retain an independent qualified expert to investigate and determine responsibility. Upon the finding of the expert or the agreement of the Owner and Contractor, the responsible party is obligated to remediate the mould.

GC 11.1 Insurance

The new insurance requirements are contained in CCDC 41 – CCDC Insurance Requirements, which are included in the new contract by reference. The contract will incorporate the most recent version of the CCDC 41 at the time of bid closing. Moving the insurance requirements to a separate document will allow for its more frequent amendment to keep pace with industry changes.

For now, the minimum insurance required was increased from \$2,000,000 to \$5,000,000.

GC 12.1 Indemnification

The Owner and Contractor now indemnify each other from and against all claims, including those of third parties. In addition to this new mutual indemnification, the biggest change to the indemnification provision is the omission of the Consultant.

Consultants must now negotiate their own indemnification, within their own contracts.

GC 12.2 Waiver of Claims

The Contractor must give "Notice in Writing of claim" to the Owner by the fifth day before the expiry of the lien period or the Contractor waives and releases the Owner from all applicable claims.

The Owner must also provide the same notice or waive its claims; however, the Owner can rely on the added exceptions of claims for substantial defect in the work or its warranty provisions.

The "Notice in Writing of claim" must include the following:

1. a clear and unequivocal statement of the intention to claim;
2. a statement as to the nature of the claim and the grounds upon which the claim is based; and

“ A review of some of the more notable changes to the 1994 version of the CCDC 2 Stipulated Price Contract should provide those familiar with the old contract with a comfortable working knowledge of the updated document.

3. a statement of the estimated quantum of the claim.

It has been suggested that the time period imposed by this general condition may be contrary to the Construction Lien Act, R.S.O. 1990, c. C.30, because it ends the lien period prematurely. If successfully challenged, the time period would be amended by the court to conform to that Act.

The requirement of notices in writing was modernized throughout the entire contract. These notices need no longer be delivered by hand or mail, the parties may now use facsimile or "other form of electronic communication" – i.e. e-mail. Notices sent by electronic communication will be deemed received that same day, if sent during normal business hours.

For those looking for a complete user manual to this contract, CCDC has also updated its guidebook in CCDC 20 - 2008 A Guide to the Use of CCDC 2 - 2008 Stipulated Price Contract. **B**

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