

Standard Form Architectural Contracts

By Andrea W.K. Lee, B.Arch, LL.B
Glaholt LLP

Standard form contracts are employed on a variety of projects by owners, architects, engineers and contractors. Significantly, standard form contracts set the terms and conditions which are to govern a construction project from commencement to close out, including project budget, fees, method of project delivery, scope of services, responsibilities of the parties, use of documents, limitation of liability and dispute resolution.

Contracts such as the Royal Architectural Institute of Canada Canadian Standard Form of Contract for Architectural Services, Document Six 2006 Edition ("RAIC Document Six"), assist to avoid potential disputes and confusion by specifying the architectural services to be provided, including:

- a) analysis of the client's requirements;
- b) conduct of a financial feasibility and site evaluation study and estimate of construction cost;
- c) preparation of drawings and specifications;
- d) co-ordination of subconsultants;
- e) tender document preparation and bid receipt and review;
- f) receipt, review and process of requests for information, change orders and change directives;
- g) preparation of record drawings;
- h) attendance at site meetings, site inspection and testing;
- i) payment and substantial performance certification; and,
- j) project close out and warranty review.

Any services which were not contemplated at the time of execution of the contract may be defined as additional services with separate fee structures.

Most standard form contracts also define the duties and responsibilities of the client.

For example, GC 1 of RAIC Document Six requires the client to:

- a) provide all relevant project information upon which the architect is entitled to rely;
- b) authorize the architect or other specified person to act as the client's agent;
- c) review submissions from the architect and make decisions in a timely manner;
- d) obtain and pay for the requisite permits and approvals;
- e) notify the architect in writing immediately if any fault or defect in the project becomes apparent; and,
- f) engage subconsultants as required or as recommended by the architect and ensure that the subconsultants are insured.

The ownership of copyright and use of documents are also determined by most standard form contracts. GC 5 of RAIC Document Six provides that the copyright in the architect's work product belongs to the architect and remains the property of the architect whether the project is executed or not or the architect has been paid or not. The client may retain copies of the instruments of service for the purposes of its one-time use for the project but cannot sell or transfer the architect's work without the consent of the architect. The client may only use the architect's instruments of service when all fees are paid in full.

Another standard form contract employed by many in the construction industry is the Canadian Construction Documents Committee CCDC 2 Stipulated Price Contract 2008 ("CCDC 2-2008"). CCDC 2-2008 was released

in February 2008, replacing the widely used 1994 version. Some of the significant changes affecting the relationship between the client and architect are described below.

Under CCDC 2-2008, GC 5.3 Progress Payment, the consultant must now notify the owner of the contractor's application for payment and the owner must pay the contractor no later than 20 calendar days after the consultant's receipt of the application. This revision requires the architect to review applications and the client to make payment within a stricter time frame.

The 1994 version of the CCDC 2 contract, GC 12.1 Indemnification, provided that the contractor was to indemnify and hold harmless the owner and its consultant from claims by third parties. In CCDC 2-2008, GC 12.1 Indemnification, the consultant has been removed from the clause, and architects must now provide for indemnification within their own contracts.

For more information on CCDC 2-2008, the Canadian Construction Documents Committee has published a guidebook titled *CCDC 20-2008 A Guide to the Use of CCDC 2-2008 Stipulated Price Contract* which may be of assistance to architects, owners and builders. ■

