

CCDC 2 - 2008 Stipulated Price Contract Overview of the Changes in the 2008 Version and Recommended Supplementary Conditions

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Summary

CCDC 2 - 2008 Stipulated Price Contract became available in early 2008, after a number of years undergoing revision. The document includes a number of significant changes from the 1994 version, as well as some articles which have not changed from the previous version and continue to be of concern to architects.

Practices must familiarize themselves with the changes in content and procedures by means of thorough review of the CCDC Bulletin dated January 17, 2008, *Summary of Important Differences Between the 2008 and the 1994 Editions of CCDC 2 – Stipulated Price Contract*, [CCDC 20 - 2008 A Guide to the Use of CCDC 2 - 2008 Stipulated Price Contract](#) and the contents of this Practice Tip (PT) and the Ontario Association of Architects (OAA) *Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2, 2008*. (Refer to links provided under “References” section of this PT.)

Background

The Canadian Construction Documents Committee (CCDC) has completed an intensive review and revision process for CCDC 2 – the standard stipulated price construction contract which is used extensively on projects across Canada. Revisions reflect changing industry practice in some cases and improvements to existing articles for clarification.

The OAA supports and endorses the concept of standard industry documents as produced by CCDC and provides input through a representative acting on behalf of the Royal Architectural Institute of Canada (RAIC) who is a CCDC organization member.

The OAA established a review process of the CCDC 2, 2008 version and the Council endorsed its use on April 29, 2008 subject to the Recommended Supplementary Conditions issued by the OAA.

The OAA *Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2, 2008* have been developed in consultation and agreement with the Ontario General Contractors Association (OGCA) and are in alignment with supplementary conditions that have been established previously in consultation with specific owner groups and industry partners.

The OGCA has issued this same set of Recommended Supplementary Conditions to their members with the advice that they have been developed in consultation with the OAA.

It is unusual for either architects and/or clients to utilize CCDC contracts without any supplementary conditions. The publishing of these recommendations does not preclude the incorporation of additional items by clients and/or architects in order to address specific project conditions.

This PT does not attempt to undertake an exhaustive analysis of all the changes from the 1994 version, but highlights the significant content or procedure which affects the profession. Important differences and explanatory information pertaining to the 2008 version, which are contained in the CCDC guide documents, are not repeated except where the OAA recommendations are at variance. Therefore, practices should familiarize themselves with the CCDC guide documents in conjunction with this PT which identifies the differences through supplementary conditions and procedural cautions.

The suggested wording is not a substitute for involvement of legal counsel. Your client should be advised to discuss specific wording and requirements of all supplementary conditions with legal counsel.

The explanation for the concerns are listed below and referenced as individual items or in groups where the concern relates to more than one location in the text of the contract. The actual wording of the supplementary conditions appears in the OAA document titled: [Recommended Supplementary Conditions for the Stipulated Price Contract](#) - CCDC 2, 2008 dated August 11, 2009.

Overview of Supplementary Conditions

Negotiation, Mediation and Arbitration (GC 8.2)

The Alternative Dispute Resolution (ADR) (negotiation-mediation-arbitration) amendments relate to the procedure for resolution of construction disputes. The OAA continues to have serious concerns that where the architect is excluded from the arbitration process, he/she may be unable to defend his/her position and in effect is tried in absentia.

The **Recommended Supplementary Conditions** provide that, in the event of arbitration between the Owner and Contractor, the Consultant will receive notification, including any issues that may involve the Consultant. At that time, the Consultant, after consultation with his/her insurer and legal counsel, may elect to become a full party to the arbitration.

Indemnification of the Consultant (GC 1.1.2.2./9.2.7.4./9.5.3.4/ and 12.1.1.3)

The requirement for the Contractor and/or Owner to indemnify the Consultant in situations which were caused by the actions of either of the two parties to the Contract has been deleted and may be detrimental to the interests of the Consultant. The indemnification provisions for the Consultant existed in previous versions of the CCDC contract and the OAA recommends that it continue to be included by means of supplementary conditions.

Contractor's Standard of Care (GC 3.4.1/3.14/6.4.5/9.1.1.1/9.1.2/10.2.5/12.3.2)

In order to clarify the responsibilities of the Contractor, a Supplementary Condition GC 3.14 Performance by Contractor has been added and cross-referenced in the other paragraphs and sub-paragraphs noted above. The standard of care is the test currently utilized by the courts and the addition of this supplementary condition highlights its importance.

Other Concerns (listed in same order as Contract)

- Article A-6 – Article revised to delete “electronic communication” as an acceptable form of communication for *Notices in Writing* and to change the deemed date of receipt of such notices.
- Definitions – Added definition for *Submittals* which are not included under the new definition for *Shop Drawings*.
- Sub-paragraph 1.1.7.5: Added clarification of the priority of the *Contract Documents* in case of discrepancies.
- Paragraphs 2.2.4/5.3.1.1: Caution - Note the new requirement for Consultant to promptly inform Owner of the receipt of the Contractor's applications for payment.
- Paragraph 2.2.9: Added waiver by Owner and Contractor to protect Consultant against claims arising out of interpretations and findings which are consistent with intent of the *Contract Documents* and do not show partiality to either party to the Contract.
- Paragraph 2.2.10: Caution – Consultant should be aware that interpretations and findings are to be made in writing within a reasonable time.

- Paragraph 2.2.11: The Consultant is required to make findings with regard to claims for a change in Contract Price regardless of the size, quantity or number of claims. Caution - Negotiate the client/architect contract with the necessary provision to be able to obtain fees for making findings on claims where the size, quantity or number are extensive. (See *Instructions for Completing "The Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008."*)
- Paragraph 2.2.14: Added the words "which are provided" to clarify that the Consultant will review and take appropriate action upon Shop Drawings and Submittals that have been provided in accordance with the Contractor's obligations as defined in the Contract Documents.
- Sub-Paragraphs 2.4.1.1/2.4.1.2: Added sub-paragraphs to emphasize that Contractor is responsible for all defective work and cannot rely only on the Consultant to identify such items. Also, the Contractor must schedule the corrective action so as not to affect the Owner's day-to-day operations.
- Paragraph 3.1.3: Added paragraphs to reinforce Contractor's responsibility to properly co-ordinate the Work.
- Paragraph 3.6.2: Caution: The paragraph now clarifies that information and instructions provided by the Consultant to the Contractor's appointed representation are deemed to have been received by the Contractor. The converse of this is that if instructions are provided to a person other than the appointed representation, the Contractor may argue that the instructions were never received. The Consultant must be careful that instructions given to others are followed up with written confirmation to the appointed representative to avoid any risks to the Owner. Such instructions should be confirmed by means of Supplemental Instructions, Site Visit Reports, Minutes of Meeting, Contemplated Change Order, or other written format and copied to the appointed representative.
- Paragraph 3.8.4: Added new paragraph clarifying the Contractor's responsibility for safe on-site storage and protection of Products.
- Article 3.10: Added "Submittals" to the title and throughout the article as the process for handling Submittals is similar to Shop Drawings.
- Paragraph 3.10.3: Amended to state that the Contractor and Consultant shall prepare a schedule related to Shop Drawing review. The Consultant should review the schedule for completeness of all required Shop Drawings and Submittals and allotted review times for the Consultant's review.
- Paragraph 3.10.12: Deleted the reference to causing a delay and added a time period for the Consultant's review.
- Article 4.1: Amended Paragraphs 4.1.4 and 4.1.5 to clarify that unexpended funds from one cash allowance can be reallocated to avoid shortfalls in other cash allowances. This avoids mark-ups for overhead and profit on a shortfall while no credit for same is being offered where there are unexpended funds in some cash allowances.

It is also important to note that the 2008 version has deleted the paragraph defining what nets costs are included under a cash allowance, thereby making it necessary to specifically define the scope of work or costs included in such cash allowance in the Contract Documents. If, as an example, it is not defined that freight, installation and construction equipment, etc. are included, the cost of such items will be treated as a change to the Contract Price with overhead and profit mark-ups.

- Paragraph 4.1.7: Amended to clarify the procedure for establishing the schedule of procurement of cash allowance items.
- Paragraph 4.1.8: Added paragraph to confirm the Owner's right to obtain competitive bids for cash allowance items.

- Paragraph 5.4.1: Caution – It should be recognized that the requirement for the Contractor to deliver to the Consultant and Owner within one working day, a comprehensive list of if items to be completed or corrected after considering the Work as being substantially performed may be unrealistic due to the scope and status of the Project.
- Paragraph 6.5.1: Amended to exclude the payment by the Owner to the Contractor of any consequential, indirect or special damages in the case of delays caused by the Owner or anyone employed or engaged by them.
- Paragraph 6.5.6: Added to clarify that Owner shall be reimbursed by the Contractor for all reasonable costs incurred, including Consultant's fees for additional services that arise out of a delay caused by the Contractor. Caution: If the Consultant's fees for additional services become a matter of dispute between the Contractor and Owner, the Consultant must refrain from making a finding due to a conflict of interest.
- Article 6.6 – Paragraph 6.6.5: Amended to allow additional time for Consultant to make findings after receipt of detailed account(s) of claim if agreed by the Owner, Contractor or Consultant. See reference to Paragraph 2.2.11 above for additional background information.
- GC 9.2 – Paragraphs 9.2.6 and 9.2.8: Amended to address the situation where toxic and hazardous substances already exist on the site and have been dealt with in accordance with legal and regulatory requirements, but subsequently threaten health and safety or the environment due to the actions of the Contractor.
- CG 12.3 – Caution: Practices should clearly specify the scope of work to be covered by an extended warranty, as the warranty may relate only to materials or also include labour for installation of the replacement material plus the making good of the parts of the work affected by the replacement. In addition, the warranty may require more than one warrantor as the material supplier and installer may be two different entities.

Suggested Procedure

1. Familiarize yourself in detail with CCDC 2 - 2008, especially the changes from the 1994 version, and with the CCDC support documents listed under "References" below.
2. It is a good practice to review the more significant changes with your client prior to using CCDC 2 - 2008 on their project. While you can appropriately share with your client your understanding and experience with CCDC 2- 2008, remember to avoid giving legal advice.
3. Review CCDC Guide documents already issued relating to CCDC 2 - 2008, as well as those which will be issued in the future as more experience develops in the use of the new contract.
4. It is good practice to keep supplementary conditions to a minimum. Many of your old 'standards' may have been addressed in the development of the 2008 version, or by the 2008 OAA Recommended Supplementary Conditions.
5. Remember that it is inappropriate to use supplementary conditions to amend Articles of the Agreement, or Definitions. Supplementary conditions are used to amend the General Conditions of CCDC 2 -2008. See CCDC 20 for guidance on drafting amendments to Articles of the Agreement and Definitions.
6. The OAA supports and endorses the concept of standard industry documents as are produced by CCDC. Care is taken to attempt to co-ordinate CCDC and OAA/RAIC documents. For example, the role of the consultant in CCDC 2 - 2008 parallels the description of the architect's services during construction in the standard architect/consultant contract except as noted herein and in the Recommended Supplementary Conditions. Recommend to your clients the use of industry recognized documents.

- 7 OAA *Standard Form of Contract for Architect's Services – Document 600, 2008* is co-ordinated with CCDC 2, 2008. For example, procedures for the use of ADR between client and contractor are included in OAA Document 600. Use the latest version of Document 600, especially when your client intends to employ the CCDC 2 ADR process. If using other standard RAIC forms, include the procedures outlined in Document 600 for the use of ADR procedures by the client in the owner/contractor contract.
8. Determine if CCDC 2, 2008 is going to be utilized as the construction contract prior to finalizing the client/architect contract. If so, carefully review and identify all of the consultant's various defined responsibilities in the new CCDC 2, 2008 version and co-ordinate with the client/architect contract so that fair and reasonable fees are established for the CCDC 2 defined services and provisions are made for additional services which arise during construction and which could not be previously determined. The defined role of the consultant in the new CCDC 2 version may have increased the level of your services in some areas due to the additions and clarifications, including timeframes established in some articles.

References

OAA Recommended Supplementary Conditions for the Stipulated Price Contract, CCDC 2, 2008_(August 11, 2009)

OAA Standard Form of Contract for Architect's Services, Document 600, 2008

Summary of Important Differences Between the 2008 and 1994 editions of CCDC 2 – Stipulated Price Contract

CCDC 2 - 2008 Stipulated Price Contract

CCDC 20 - 2008 A Guide to the Use of CCDC 2 - 2008 Stipulated Price Contract

CCDC documents can be purchased through the OAA or directly from [CCDC](#)

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.
