**Practice Tip – PT.23.4**

**Attachment 1**

**May 21, 2012**

**Recommended Amendments and Supplementary Conditions for
Construction Management Contract –
for Services and Construction, CCDC 5B –2010**

**CCDC 5**B **– 2010 - Construction Management Contract – for Services and Construction**

The following pages are the recommended amendments and supplementary conditions for the CCDC 5B, 2010 Base Contract. To incorporate their use you can copy/paste from the following Word document into the front end of the project manual specifications with appropriate headings and footers with the project name, practice name, specification section, page numbers etc. utilizing the standard specifications section/page format. Coordinate the sequence and numbering with other amendments or supplementary conditions.

Note that the CCDC 5B also contains an Appendix that convert the contract into a Stipulated Price Option which can be implemented by the parties at the time of the signing of the contract or later on via a change order. The OAA recommended supplementary conditions that apply to the utilization of the Appendix are contained in a separate attachment to Practice Tip PT.23.4.

**Do Not Include This Cover Page In Your Specifications**

**Recommended AMENDMENTS and SUPPLEMENTARY CONDITIONS for: Construction Management Contract – for Services and Construction, CCDC 5B – 2010**

Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, General Conditions, these amendments, additions and modifications shall govern.

**Amendments to Articles**

**ARTICLE A-10 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

* Delete the words ‘or other form of electronic communication’ after the words ‘or by facsimile’ in paragraphs 10.2 and 10.4.

**AMENDMENTS TO DEFINITIONS**

**DEFINITIONS**

Add the following definition:

Submittals

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Construction Manager*, such as:

- *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and

- As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

**SUPPLEMENTARY CONDITIONS**

**GC 1.1 CONTRACT DOCUMENTS**

* Add to the end of sub-paragraph 1.1.2.2

‘…, except where the *Consultant* shall be indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4, 9.5.3.4 and in 12.1.1.3.’

**GC 1.3 RIGHTS AND REMEDIES**

* Delete the words ‘either of the parties to this Contract’ in the second line of paragraph 1.3.2 and add the words ‘any of them under this Contract’ after the words ‘or duty afforded.’

**GC 2.2 AUTHORITY OF THE CONSULTANT**

* In paragraph 2.2.2 after the words ‘of the Construction Manager’, delete the words ‘following consultation with the Consultant’ and add the words ‘Owner and Consultant.’

**GC 2.3 CONSULTANT’S RESPONSIBILITIES**

* Add at the end of paragraph 2.3.9 ‘The Owner and the Construction Manager waive any claims against the Consultant arising out of the making of such interpretations and findings made in accordance with paragraphs 2.3.7, 2.3.8 and 2.3.9.’

**GC 2.5 DEFECTIVE WORK**

* Add new subparagraphs 2.5.1.1 and 2.5.1.2:

.1 The *Construction Manager* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.

.2 The *Construction Manager* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

**GC 3.1 CONTROL OF THE WORK**

* Add new paragraph 3.1.3:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the Construction Manager shall verify, at the Place of the Work, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the Work and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or contradictions exist, or exact locations are not apparent, the Construction Manager shall immediately notify the Consultant in writing and obtain written instructions from the Consultant before proceeding with any part of the affected work.

**GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES**

* Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The Construction Manager shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Construction Manager may discover. If the Construction Manager does discover any error, inconsistency or omission in the Contract Documents, the Construction Manager shall not proceed with the work affected until the Construction Manager has received corrected or missing information from the Consultant.

* Delete paragraph 3.4.2 in its entirety and substitute new paragraph 3.4.2:

3.4.2 Such review by the Construction Manager shall comply with the standard of care described in paragraph 3.14.1 of the Contract. Except for its obligation to make such review and report the result, the Construction Manager does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Construction Manager shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Construction Manager could not reasonably have discovered.

**GC 3.8 LABOUR AND PRODUCTS**

* Add new paragraph 3.8.3:

3.8.3 The Construction Manager is responsible for the safe on-site storage of Products and their protection (including Products supplied by the Owner and other contractors to be installed under the Contract) in such ways as to avoid dangerous conditions or contamination to the Products or other persons or property and in locations at the Place of the Work to the satisfaction of the Owner and the Consultant. The Owner shall provide all relevant information on the Products to be supplied by the Owner.

**GC 3.10 SHOP DRAWINGS**

* Add the words ‘AND OTHER SUBMITTALS’ to the Title after SHOP DRAWINGS.
* Add ‘and Submittals’ after the words ‘Shop Drawings’ in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11 and 3.10.12.
* Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3

3.10.3 Prior to the first application for payment, the Construction Manager and the Consultant shall jointly prepare a schedule of the dates for submission and return of Shop Drawings and any Submittals.

* Delete the words ‘with reasonable promptness so as to cause no delay in the performance of the Work’ and replace with ‘within 10 working days or such longer period as may be reasonably required’ in paragraph 3.10.12.

**GC 3.14 PERFORMANCE BY THE CONSTRUCTION MANAGER**

* Add new General Condition 3.14.1

3.14.1 In performing its services and obligations under the Contract, the Construction Manager shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent Construction Manager supplying similar services for similar projects. The Construction Manager acknowledges and agrees that throughout the Contract, the Construction Manager’s obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Construction Manager shall exercise the same standard of due care and diligence in respect of any Products, personnel, or procedures which it may recommend to the Owner.

* Add new General Condition 3.14.2

3.14.2 The Construction Manager further represents, covenants and warrants to the Owner that:

.1 The personnel it assigns to the *Project* are appropriately experienced;

.2 It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner’s* approval, in the event of death, incapacity, removal or resignation.

**GC 4.1 CASH ALLOWANCES**

* Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the Consultant’s direction to cover the shortfall. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.

* Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7

4.1.7 At the commencement of the Work, the Construction Manager shall prepare for the review and acceptance of the Owner and the Consultant, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be Owner purchased and Construction Manager installed or hooked up are required at the site to avoid delaying the progress of the Work.

* Add new paragraph 4.1.8:

4.1.8 The Owner reserves the right to call, or to have the Construction Manager call for competitive bids for portions of the Work, to be paid for from cash allowances.

**GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

* Add new paragraph 6.4.5

6.4.5 The Construction Manager confirms that, prior to bidding the Project, it carefully investigated the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.14.1. The Construction Manager is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Construction Manager by such careful investigation undertaken prior to the submission of the bid.

**GC 6.5 DELAYS**

* Delete the period at the end of paragraph 6.5.1, and substitute the following words:

‘…, but excluding any consequential, indirect or special damages.’

* Add new paragraph 6.5.6.

6.5.6 If the Construction Manager is delayed in the performance of the Work by an act or omission of the Construction Manager or anyone employed or engaged by the Construction Manager directly or indirectly, or by any cause within the Construction Manager`s control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Construction Manager. The Owner shall be reimbursed by the Construction Manager for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Construction Manager and, in particular, the cost of the Consultant’s services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Construction Manager.

**GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

* Add the following new paragraphs 8.2.9, 8.2.10, 8.2.11, 8.2.12., 8.2.13., and 8.2.14.

8.2.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.2.6, the Owner and the Construction Manager shall give the Consultant a written notice containing:

a) a copy of the notice of arbitration

b) a copy of supplementary conditions 8.2.9 to 8.2.14 of this *Contract*, and;

c) any claims or issues which the *Construction Manager* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.2.10 The Owner and the Construction Manager agree that the Consultant may elect, within ten days of receipt of the notice under paragraph 8.2.9, to become a full party to the arbitration under paragraph 8.2.6 if the Consultant:

a) has a vested or contingent financial interest in the outcome of the arbitration

b) gives the notice of election to the *Owner* and the *Construction Manager* before the arbitrator is appointed

c) agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6, and;

d) agrees to be bound by the arbitral award made in the arbitration.

8.2.11 If an election is made under paragraph 8.2.10, the Consultant may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in paragraph 8.2.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.

8.2.12 The arbitrator in the arbitration in which the Consultant has elected under paragraph 8.2.10 to become a full party may:

a) on application of the *Owner* or the *Construction Manager*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.2.10, and;

b) make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.2.13 The provisions of paragraph 8.2.9 shall apply mutatis mutandis to written notice to be given by the Consultant to any sub-consultant;

8.2.14 In the event of notice of arbitration given by the Consultant to a sub consultant, the sub-consultant is not entitled to any election with respect to the proceeding as outlined in 8.2.10, and is deemed to be bound by the arbitration proceeding.

**GC 9.1 PROTECTION OF WORK AND PROPERTY**

* Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

.1 Errors in the Contract Documents which the Construction Manager could not have discovered applying the standard of care described in paragraph 3.14.1;

* Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any Work, the Construction Manager shall determine the locations of all underground utilities and structures indicated in the Contract Documents, or that are discoverable by applying to an inspection of the Place of the Work the degree of care and skill described in paragraph 3.14.1.

**GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

* Add to paragraph 9.2.6 after the word ‘responsible’, the following new words:

‘or whether any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,’

* Add ‘and the Consultant’ after the word ‘Construction Manager’ in sub-paragraph 9.2.7.4
* Add to paragraph 9.2.8 after the word ‘responsible’, the following new words:

‘or that any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,’

**GC 9.5 MOULD**

* Add ‘and the Consultant’ after ‘Construction Manager’ in sub-paragraph 9.5.3.4

**GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

* Delete from the first line of paragraph 10.2.5 the word, ‘The’ and substitute the words:

‘Subject to paragraph 3.14.1, the…’

**GC 12.1 INDEMNIFICATION**

* Add new clause 12.1.1.3

12.1.1.3. The Construction Manager shall indemnify and hold harmless the Consultant, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the Construction Manager’s performance of the Contract, provided such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the Construction Manager or anyone for whose acts the Construction Manager may be liable, and made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute or the province or territory of the Place of Work.

**GC 12.3 WARRANTY**

* Delete from the first line of paragraph 12.3.2 the word, ‘The’ and substitute the words:

‘Subject to paragraph 3.14.1, the…’

~ END ~

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.