

Design–Build: CCDC 15 - 2013

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Summary

In 2013, the Canadian Construction Documents Committee (CCDC) published updated standard contract forms for design-build: CCDC 14 – 2013, *Design-Build Stipulated Price Contract* and CCDC 15 – 2013, *Design Services Contract between Design-Builder and Consultant* which replaced the earlier (2000) versions of Standard Construction Documents 14 & 15.

CCDC 15 is a services contract which a design-builder would use to engage a certificate of practice holder (“holder”). The Ontario Association of Architects (OAA) recommends the use of OAA 600–2021 amended for use on design-build projects in lieu of using CCDC 15 (refer to PT.25, Design-Build: Using OAA 600–2021); however this Practice Tip provides guidance where CCDC 15 is used.

As the holder’s contract for services is used in conjunction with the design-builder’s contract with the owner (CCDC 14), it is important to also review the Practice Tip PT.23.6, *Design-Build: CCDC 14 – 2013*.

Background

Design-build is a form of project delivery where an owner contracts, under a single contract, with one entity (the design-builder) to provide and take contractual responsibility for both the design services and the construction.

In 2013, CCDC released new standard contract forms for design-build: CCDC 14 – 2013, *Design-Build Stipulated Price Contract*, and CCDC 15 – 2013, *Design Services Contract between Design-Builder and Consultant*. The previous 2000 versions of 14 & 15 were not endorsed by all of the CCDC constituent organizations; the 2013 version now has the consensus agreement of all: Canadian Construction Association (CCA), Construction Specifications Canada (CSC), Association of Consulting Engineering Companies Canada (ACEC) and RAIC.

The OAA supports the concept of industry standard contracts as produced by the CCDC and endorsed by RAIC but continues to believe that services contracts for OAA members should be under the purview of architectural association and recommends the use of OAA 600–2021 (Standard Form of Contract) amended for use on design-build projects in lieu of using CCDC 15 – 2013 (refer to PT.25 Design Build: Using OAA 600-2021). However, this PT has been prepared to provide guidance under situations where the use of OAA 600 is not possible and CCDC 15 is to be used.

This Practice Tip does not make an exhaustive analysis of the contract and the information provided is not a substitute for involvement of legal counsel.

Issues

Issues of importance to holders involved in design-build projects using CCDC 15 – 2013 are described below with suggestions for management procedures and in some cases suggested wording for supplementary conditions.

CCDC contracts use the term “*Consultant*” to refer to either an architect or engineer. Where the term is used below in this Practice Tip, it refers to the holder of a certificate of practice.

Consultant's Subconsultants

Article A-1 – DESIGN SERVICES

A-1.2 ~~delete~~ the words “but not limited to” in the 1st line or otherwise qualify that the retention of any *Subconsultant* other than those listed is an additional service to the contract subject to an agreed adjustment to the fee.

Remuneration & Payment

Article A-5 REMUNERATION FOR DESIGN SERVICES

A-5.2 CCDC contracts do not include VAT or contingencies in the definition of *Construction Price or Construction Cost*. For the purposes of determining an appropriate fee, the OAA 600 and the RAIC Fee Guide have been revised and are now consistent with the approach taken by CCDC.

A-5.3 Refer to comments below on SCHEDULE A - Post Construction Phase.

A-5.7 Recommend ~~deleting~~ clause A-5.7 and replacing it with similar wording to clause 11.9 of OAA 600–2021 .

5.7 Termination expenses are in addition to compensation for the *Consultant's Design Services* and include:

- 1) expenses directly attributable to termination for which the *Consultant* is not otherwise compensated;
- 2) plus an amount for the *Consultant's* anticipated profit calculated as 10% of the value of the *Design Services* remaining to be performed by the *Consultant*; or
- 3) such other amount as may be mutually agreed.

Alternatively insert in A-5.7 the standard value given in OAA 600–2021, e.g. “10% of the value of services remaining”.

GC 4.1 PAYMENTS

4.1.3 Recommend changing 90 calendar days to 28 days which is consistent with the current timing for payment to the holder in OAA 600–2021 ; however, there may be situations where a fewer number of days is advisable such as for compliance with the timelines in the *Construction Act*. The *Construction Act* mandates payment by a contractor (such as the *Design-Builder*) to a subcontractor (such as the *Consultant* under a CCDC 15) within 7 days of the contractor's receipt of payment from the owner. In its CCDC 15 subcontract with the *Design-Builder*, however, the *Consultant* may contract for timely payment that is not dependent upon the *Design-Builder's* receipt of payment from the *Owner* (e.g., for payment within no later than 28 days of receipt of the *Consultant's* invoice).

Design Services – Role of the Consultant

The scope of services is described in GC 3.1 DESIGN SERVICE and SCHEDULES A and B for Basic and Additional Services. The schedules in CCDC 15 are based on the RAIC DOCUMENT SIX, 2006 - Canadian Standard Form of Contract for Architectural Services and ACEC DOCUMENT 31, 2010 - Engineering Agreement between Client and Engineer. RAIC DOCUMENT SIX has been updated several times in the interim, including the most recent RAIC DOCUMENT SIX, 2022 as of the date of the Practice Tip PT.23.7. If it is to be used, the latest version should be compared with CCDC 15 for consistency. The description of services in OAA 600–2021 contains many updates and clarifications from the much earlier versions of these schedules in the RAIC / ACEC documents. The OAA recommends that if CCDC 15 is being used, that the schedules A and B in the CCDC 15 be deleted and replaced with those contained in OAA 600–2021, i.e. Schedule 2 - Basic Services and Schedule 3 - Additional Services, or custom schedules derived from them. Amend the reference to “Schedule A” in CCDC 15, GC 3.1.14.1 appropriately.

If using the CCDC 15 schedules, review the items carefully and compare them with the standard wording in the OAA 600–2021 schedules. Several items in the CCDC 15 schedules have wording which should be clarified to avoid misunderstandings later on or to avoid taking on unexpected services requirements.

Examples of services items which should be clarified and/or modified:

SCHEDULE A - BASIC DESIGN SERVICES AND REMUNERATION

Preliminary Phase

- A1.1.6 documents for zoning changes - considered additional services
- A1.1.9 services for phased occupancy - considered additional services
- A1.1.15 clarify the level of service required for “participate in the preparation of an estimate ...” (also applies to other phases); similarly related to the word “involve” as it pertains to value engineering and preparing estimates of *Construction Cost* in GC 2.1.4.6 & .7.

Bidding Phase

- A1.3.3 the appropriate standard of care should be taken when providing advice on the “implications” of alternatives; in design-build there are often many unsolicited alternatives and requests for “equals” products, materials, equipment or systems.

Construction Phase

- A1.4.9 interpretations of *Construction Documents* is normal, but “findings” in this clause is not compatible with CCDC 14 as there is no role for the holder in CCDC 14 – 2013 to make a finding.

Certifying Payments & Substantial Performance

The *Payment Certifier* is named in CCDC 14 – 2013 *Owner/Design-Builder Contract*. If the *Consultant* is not the *Payment Certifier*, the tasks in A1.4.12 to .15 are not required. If they are checked off in the CCDC 15 schedule of services as being required, then there is a duplication of tasks and possible conflicts may arise.

Refer also to comments and recommendations in PT.25 and PT 23.6, in addition to the following:

- A1.4.13 & .14 *Construction Cost* reports and value of *Construction* in A1.4.14 are akin to Certificates of Payment and if the *Consultant* is not the designated *Payment Certifier* in CCDC 14, the reports should not be required. Even with another entity designated as the *Payment Certifier* in the contract, doing these items is likely an equivalent amount of work and liability as there is in being the *Payment Certifier*.
- A1.4.12 & .15 determine and certify (to the *Design-Builder*) whether the *Construction* is substantially performed.

Post Construction Phase

Holders should note that there are no “post construction” activities considered standard or basic services other than a review prior to the end of the 12 month warranty period. Traditionally the *Owner* advises the contractor of any problems during the warranty period and the contractor and trade contractors attend to them. This is how the process is stated in CCDC 14, but CCDC 15 has several items that make the *Consultant* responsible for reviewing and reporting during the 12 month warranty plus coordination of the activities of *Other Consultants* (those being the consultants the *Design-Builder* engaged).

Schedule A, A1.5 includes services related to completion of construction that run through the one year warranty period whereas CCDC 14, GC 5.7 describes final payments and release of holdbacks in traditional timing. Schedule A, A1.5.6 notes a “final *General Review*” and report that *Construction* is completed as occurring after the *Design-Builder* corrects defects during the 12-month warranty.

Other Items which are of concern and may affect liability or fees:

- A1.5.2 assist the *Design-Builder* in commissioning activities – considered additional services
- A1.5.3 collect and organize operating and maintenance manuals – contractors' responsibilities
- A1.5.4 final acceptance documents at the end of the warranty period – acceptance normally occurs near substantial performance, not at the end of warranty – there is no description of what these documents may constitute.
- A.5.5 (1) review and report during the warranty period – normally reviews are not done during the warranty period, excepting possible involvement with particular problems, these services should be considered additional services as their scope is entirely unknown and relates to defects not under the *Consultant's* control.
- A.5.5 (2) notify the *Design-Builder* in writing of those items requiring attention – normally as in CCDC 14 the *Owner* notifies the *Design-Builder* directly.
- A1.5.6 do a final *General Review* and report upon notification by the *Design-Builder* that the defects and deficiencies referred to in A1.5.5 have been corrected and the *Construction* is completed – this is near substantial performance and not post-construction.
- A1.5.7 prepare record drawings – clarify what is expected and if editable electronic drawings (CAD/BIM) files are required. (refer to comments and recommendations in PT.14 Record Drawings, As-Builts, Measured Drawings).

GC 6.1 TERMINATION AND SUSPENSION

The words “other than a default in payment” in the 2nd line of GC 6.1.7 should be deleted. GC 6.1.6 provides that non-payment is a default of the *Design-Builder*, if GC 6.1.7 is not changed, the current wording does not appear to give the *Consultant* the right to suspend services or terminate for non-payment of fees.

Copyright & Editable Electronic Files (CAD/BIM)

GC 1.2 COPYRIGHT AND USE OF DOCUMENTS

- 1.2.1 Recommend **amending** the last sentence to read “Their alteration by the *Design-Builder* or **any other person** is prohibited.” in order to avoid a misunderstanding that it is acceptable for others such as the *Owner* or a trade contractor to alter the drawings.

Note that CCDC 15, GC 1.2.4 requires payment to the *Consultant* as a precedent to the use of drawings and other documents whereas CCDC 14, (7.5.1) does not. In order to clarify issues related to CAD/BIM drawings being provided, the addition of new GCs is recommended:

GC 1.2 COPYRIGHT AND USE OF DOCUMENTS

Add GC 1.2.7, GC 1.2.8, GC 1.2.9 and GC 1.2.10.

- “1.2.7 “The terms *Drawings*, computer-generated designs, electronic media or instruments of service used in this *Contract* do not include editable CAD or BIM files, unless otherwise agreed by the *Consultant* in writing.”
- 1.2.8 If requested by the *Design-Builder* or the *Owner* the *Consultant* shall provide editable CAD drawings and shall grant a limited licence to the *Design-Builder* or the *Owner* to use the editable CAD drawings.
- 1.2.9 As a condition precedent to the use of the editable CAD drawings the *Design-Builder* shall indemnify and save harmless the *Consultant*, its *Subconsultants*, employees and agents from and against any and all claims, losses, demands, costs and expenses (including legal fees), damages or recoveries (including any amounts paid in settlement) arising by reason of, caused by, or alleged to be caused by, the *Design-Builder's* or reliance on the editable CAD drawings.

1.2.10 As a condition precedent to the release of editable CAD drawings to the *Owner*, the *Design-Builder* shall obtain from the *Owner* its agreement to indemnify and save harmless the *Consultant* and its *Subconsultants*, employees, and agents from and against any and all claims, losses, demands, costs and expenses (including legal fees), damages or recoveries (including any amounts paid in settlement) arising by reason of, caused by, or alleged to be caused by, the *Owner's* reliance on the editable CAD drawings. Subject to the acceptance of the agreement by the *Owner*, the *Consultant* may release editable CAD drawings, under a limited license, according to the terms of such agreement.

Suggested Procedure

- Become familiar with the design-build form of project delivery. Review referenced material including standard CCDC contracts and CCDC guides, the RAIC Canadian Handbook of Practice (CHOP) and OAA Practice Tips.
- If becoming involved in a design-build project or presented with CCDC 14 or CCDC 15 by an *Owner* or *Design-Builder*, review and discuss the benefits of the OAA recommendations in PTs 25, 23.6 and 23.7.
- To clients asking about design-build, provide information, sources for additional information, possible pros and cons from professional experiences, remembering that the determination of the project delivery method is an owner's decision. Advising and making strong recommendations may be seen as making a decision or offering legal advice and may give rise to liability/risk for the practice
- It is very important to obtain a copy of the *Owner/Design-Builder* contract. Review and coordinate the 'Role of the *Consultant*' in that contract with the *Consultant's* services described in the *Design-Builder/Consultant* contract. Any inconsistencies should be discussed and clarified in writing.
- If there will be an *Owner's Advisor* designated in CCDC 14 obtain a copy of a written description of their role, responsibilities, and services. Refer to comments in PT.23.6 *Design Build: CCDC 14 – 2013*.
- Confirm who will be the *Payment Certifier* designated in CCDC 14 and clarify their roles and responsibilities. Refer to comments in PT 23.6 and PT.25.
- Discuss any questions regarding insurance with your insurance provider.

References

PT.25 - *Design-Build: Using OAA 600–2021*

PT.23.6 - *Design Build: CCDC 14 – 2013*

CCDC website – contracts and guides

RAIC CHOP Chapter 4.1 Types of Design Construction Program Delivery

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.
