

Design-Build: OAA 600–2013 with July 1, 2018 Amendments, OAA 600–2013 with Amendments to October 1, 2019

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Summary

The Canadian Construction Documents Committee (CCDC) published new contracts for design-build: CCDC 14 for the owner/design-builder; and CCDC 15 as the services contract between an architect and a design-builder. This Practice Tip offers the OAA recommendation that OAA 600 be used, with a few modifications, as it is entirely suitable for use as the architect's services contract with a design-builder in lieu of using CCDC 15. As the architect'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 (a design-builder) to provide and take contractual responsibility for both the design services and the construction services.

The design-build method of project delivery has become more prevalent in recent years. The CCDC published 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* which replaced the earlier (2000) versions of the Standard Construction Documents 14 & 15.

The OAA supports the concept of industry standard contracts as produced by the CCDC and endorsed by RAIC / Architecture Canada but continues to believe that services contracts for architects should be under the purview of architectural associations and as such recommends the use of the OAA *Standard Form of Contract for Architect's Services* amended for use on design-build projects.

This Practice Tip provides appropriate modifications to OAA 600–2013 with July 1, 2018 Amendments and OAA 600–2013 with Amendments to October 1, 2019 (herein referred to collectively as OAA 600), so that they can be used as the contract between the design-builder and the architect in lieu of using CCDC 15.

In all cases it is important that the architect's role and responsibilities as described in the construction contract for the project are consistent with the services and responsibilities in the client/architect contract. Architects should obtain a copy of the contract between the owner and the design-builder so that a review for consistency can be done.

Modifications to OAA 600 for Design-Build

The text for suggested modifications to OAA 600 for use for design-build are provided in MS Word format in the Sample Template attachment to this PT, which can be used to create a Schedule '___' which is identified as being "attached to and forming part of the contract" in GC 13 Other Terms of Contract. Below are explanations of each of the items of modification.

Item 1: clarifies that the architect's client is a design-builder; that the design-builder will have a contract with the owner; that there is no contractual relationship between the architect and owner; and that the architect will receive a copy of the owner / design-builder contract.

The architect requires a copy of the owner /design-builder contract to verify the compatibility of the scope of services and other terms with the client (design-builder) / architect contract and for the purpose of being able to administer the contract during construction.

Item 2: highlights the responsibilities of the client (design-builder) by identifying the standard of care test which is currently utilized by the courts.

Item 3: allows identification of the client's (design-builder's) anticipated construction procurement method as this decision by the design-builder impacts the architect's services during both the construction documents phase and the construction phase. Some of the various options design-builders use are: competitive bid, negotiated contract, multiple prime contractors, and construction management or the design-builder's own forces. All of the above could require either the preparation of a single complete set of construction documents or multiple packages which greatly affects the architect's services required and appropriate fees.

Item 4: expands the requirement for the client (design-builder) to notify the architect of any fault or defect in the project including during the design and construction document phases. This reinforces the design-build concept which is a team effort to provide a finished project which meets the owner's requirements.

Item 5: GC 5.1 and GC 8.4.2 are amended to include that the architect is not responsible for acts or omissions of the client (design-builder) and the client's contractors.

Item 6: GC 6.2.4 is deleted as it is not applicable in the design-build scenario.

Items 7 and 8: GC 7.3 is deleted and is effectively replaced by the change to GC 7.4 which is modified so that the use of the *Architect's Instruments of Service* extends to the owner.

Item 9: applies if the intention is that CAD files are to be provided to the client (design-builder) or the owner upon request (GC 7.6). Indemnification as a precedent for the use of the CAD drawing files by the client or owner is provided in new GCs 7.7 and 7.8.

Item 10: provides clarification for certification of payments and substantial performance. Refer also to commentary in PT.23.6.

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 contracts 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, and possible pros and cons from personal 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 and may give rise to liability for the architect.
- 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.
- Payment Certifier: Confirm who will be the *Payment Certifier* designated in CCDC 14 and modify the roles and responsibilities of the architect as required. Refer also to comments in PT.23.6.
- Estimating: OAA 600 GC 2.1 Architect's Scope of Basic Services – items .7, .11 and .16 refer to the architect providing and updating *Estimates of Construction Cost* as part of Basic Services. In a design-build project this is most often done by the design-builder with the architect and other consultants providing assistance. Clarify and document the level of services required for this aspect.
- Complete OAA 600 as per the *Instructions and Commentary* and include modifications for Design-Build as a Schedule '___', referenced in GC13 Other Terms of Contract.

References

OAA 600–2013 with July 1, 2018 Amendments

OAA 600–2013 with Amendments to October 1, 2019

Instructions & Commentary for OAA 600-2013 & OAA 601-2013

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

PT.23.7 – *Design-Build*: CCDC 15–2013

[CCDC Contracts and Guides](#)

RAIC CHOP Chapter 2.3.2 Types of Project Delivery

Attachments

Sample Template – Schedule ‘___’ ([Word](#))

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.

This is a sample template which may be used to prepare a Schedule for your own contract. Coordinate the numbering and clause references with any additional items you may include.

Schedule ' [REDACTED]'

(for use with OAA 600–2013 for Design-Build projects)

GC 13 Other Terms of Contract

- .1 The *Client* is a design-builder providing both the design services and the construction for the *Work* for the *Project* under a design-build contract with the owner. Nothing contained in this contract shall create any contractual relationship between the *Architect* and the owner. The *Client* will provide to the *Architect* a copy of the design-build contract, from which commercial terms may be redacted.
- .2 In carrying out its responsibilities under this contract, the *Client* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent client supplying similar design-build services for similar projects to an owner. The *Client* acknowledges and agrees that throughout this contract, the *Client's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Client* 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.
- .3 Replace the content of Article A8 with:
The *Client's* anticipated construction procurement method is as described below: (e.g., single bid, multiple prime contractors, construction management or *Client's* (design-builder's) own forces.)
[REDACTED]
- .4 The responsibilities for the *Client* described in GC 4.4.4 shall include notification of any errors, omissions or inconsistencies in the *Architect's Instruments of Service* or in the services or information furnished by the *Client*.
- .5 Replace the word "contractor" in the 5th line of GC 5.1 and in the 1st line of GC 8.4.2 with "*Client* and *Client's* contractors".
- .6 Delete GC 6.2.4.
- .7 Delete GC 7.3.
- .8 Add the words "and the owner" after "*Client*" in the first sentence of GC 7.4.
- .9 Add GC 7.6, GC 7.7 and GC 7.8:
 - "7.6 If requested by the *Client* or the owner the *Architect* shall provide editable CAD drawings and shall grant a limited licence to the *Client* or the owner to use the editable CAD drawings for management of the facility including any future additions, renovations, or alterations.
 - 7.7 As a condition precedent to the use of the editable CAD drawings the *Client* agrees to indemnify and save harmless the *Architect*, his/her employees, agents and consultants 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 *Client's* reliance on the editable CAD drawings.
 - 7.8 As a condition precedent to the use of the editable CAD drawings the *Client* agrees to require the owner to sign a similar indemnification in favour of the *Architect*."

.10 The Parties agree that where the Contract Price includes both the cost of the Work and the cost of Design Services under the Contract:

- (1) the certification of payment by the *Consultant* made in support of the Design-Builder's application for payment is in respect of the value of Construction performed and products delivered only. The *Consultant* cannot independently certify the value of the Design Services provided by the *Consultant* to the Design-Builder; and
- (2) the *Consultant* is not deemed to be the "the payment certifier" under s.32(1) of the Ontario Construction Act or Construction Lien Act, for purposes of certifying the date of substantial performance of the Contract under s.2 of the Construction Act or Construction Lien Act as appropriate. The *Consultant* can only assist the Design-Builder for the purpose of determining the date on which the Contract was substantially performed. In these circumstances, the payment certifier shall make the determination of substantial performance and sign the certificate (CA form 9 or CLA form 6 as appropriate) or where there is no payment certifier, the Owner and the Design-Builder shall make the determination of substantial performance jointly and both sign the certificate (CA form 9 or CLA form 6 as appropriate)

****END****