

## CCDC Construction Management Contracts

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### Summary

This Practice Tip (PT) offers information on alternative forms of project delivery through the utilization of a construction manager's (CM) services and the 2010 suite of three Canadian Construction Documents Committee (CCDC) construction management contracts. Separate PTs have been prepared for each of the three new CCDC CM contracts.

### What Is Construction Management?

Construction management is a term for alternative forms of project delivery where a construction manager replaces the role a general contractor has in traditional design-bid-build delivery. The owner still engages an architect to design and prepare construction documents, but also engages a CM at an early stage as a consultant to provide advice, oversee and manage construction: planning, costs, scheduling, methods and materials. This CM could be a contractor, an architect or engineer, a consulting person or other entity as long as they have the necessary construction expertise and trust of the owner. The CM may also be brought on board after construction documents have been prepared. The CM will have a full time person on site acting as a site superintendent the same way that a general contractor does in traditional project delivery.

The philosophy behind the benefits of CM is similar to that currently ascribed to *Integrated Project Delivery*; bringing a more comprehensive team together for collaboration during design and the ability to start construction earlier than with traditional design-bid-build. In construction management, instead of bidding by general contractors, packages of work are bid for by individual trades, organized by the CM. Excavation, foundations or structure could be bid before the construction documents are completed for all the interior works. The individual trade contracts can be signed either with the owner or with the CM, which creates the two basic variations in construction management – one with CM as advisor providing consulting services only; and the other being a CM as advisor plus contractor providing consulting services and doing the construction.

In one scenario the owner signs contracts directly with the trades and the CM provides advice and management only – often referred to as CM as Agent. Alternatively the CM signs all the contracts with trades, and takes on the risk of the construction performance and the cost and schedule for the same, while still providing construction management advice in the early stages – often referred to as CM at Risk.

The cost of the construction can be set up in several ways: cost plus (minimal risk to the CM), a guaranteed maximum price (GMP), a fixed price (maximum risk to CM) or various arrangements of GMP with a sharing of cost savings between the owner and CM.

### History of Construction Management

When construction management is described as “starting construction before the plans and specs are done”, it shows that the process has been around since the time of the pyramids. Owners acted as general contractor by utilizing their own construction expertise or by hiring outside entities. The multiple trade works were done through contracts directly to the owner. The owner had the control and responsibility that normally rests with a general contractor. Some owners prefer this extra control, some like the extra control but not the added risk.

Written contracts for the construction management process were introduced in the early 1980's around the same time that fast track, project management and computers began to be common in the industry. The impetus for fast track and construction management came in part from the consistent desire of owners to reduce costs and time for project delivery. Construction management allowed owners to bring in specialized construction expertise prior to bidding and more importantly allowed construction to start earlier than the traditional design-bid-build approach.

The Canadian Construction Association (CCA) introduced a "Guide to Construction Management" in 1979 with sample contract terms and nine years later published CCA 5 – 1988 "Construction Management Contract Form between Owner and Construction Manager". The CCA 17 – 1996 "Stipulated Price Contract for Trade Contractors on Construction Management Projects" was used for trade contracts.

The term CM as Agent began to be used describing a new role for contractors in providing consulting services to the owner as an advisor or agent, with a duty of care and an obligation to advance the interests of the owner. fiduciary responsibility (i.e. trust and confidence) to advance the interests of the owner. The responsibility for a CM in this regard is similar to the responsibility of architects providing their services to owners.

Construction management is used with many variations. The CCA 5-1988 was used but did not adequately deal with all variations. For years parties have created their own contracts using pieces of other standard contracts. In 2008 the CCDC was tasked with developing appropriate changes.

## **Background**

In November, 2010 the CCDC published a new suite of three standard contract forms for Construction Management:

- CCDC 5A Construction Management Contract – for Services" (replaces the old CCA 5-1988, also referred to as CM as Agent)
- CCDC 17 Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects" (replaces the old CCA 17-1996)
- CCDC 5B Construction Management Contract – for Services and Construction" (is brand new, also referred to as CM at Risk)

CCDC 5A is intended for use when the CM acts as consultant (agent) of the owner, providing advisory services. The owner contracts directly with trade contractors to perform the construction work, using a new companion CCDC 17 document. The CM oversees the trade contractors.

CCDC 17 is a stipulated price contract between the owner and a trade contractor for use when the CM is not doing construction. It is similar to the CCA 1 document used between GC's and trade contractors in traditional construction models.

CCDC 5B is used when the CM provides pre-construction advisory services to the owner and then undertakes the construction. The CM engages trade contractors as subcontractors and is responsible for their performance. The CM acts as consultant to the owner in the design phases, but as the equivalent of a general contractor during the construction phase. When a CM is bound to a maximum price, the most fundamental character of the relationship is changed. In addition to acting in the owner's interest, CMs must also protect their own financial interests and control construction costs to not exceed the maximum price.

## **How Construction Management can Affect Architect's Services**

To have the CM as the key player in the project may be of concern to some architects but it is a valid approach for an alternative form of delivery. Construction management has its place but it is not ideal for all projects.

CM's are offering construction advice. They should have education, training, construction and construction management experience appropriate to the task. There are no regulatory requirements to be a CM. Beware of becoming involved in a project with a CM that is inexperienced.

CCDC contracts are prepared by consensus of a diverse group of stakeholders; however the OAA is concerned that the splitting of the role of making interpretations and findings between the consultant and the CM in CCDC 5A and 17 can increase the likelihood of conflicts and believes that the role of making findings should be left only with the consultant as it was in the previous CCA 5–1988 and the CCA 17-1996. The OAA has developed amendments and supplementary conditions to achieve this change for the new 5A and 17 contracts. Refer to PT.23.3 – “CCDC 5A, 2010 – Construction management Contract – For Services” and PT.23.5 – “CCDC 17, 2010 – Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects”.

Ways that Construction Management can affect the architect’s services include the following:

- General
  - It is critical to be aware that with a CM as an owner’s consultant, the team is more complex, as advisory roles can be blurred, advice from the architect can be in conflict with that of the CM. Architects often will have less direct contact with the owner. Some owners engage a CM because they have confidence in the practicality of a contractor. In the construction phase the CM will take the lead.
  - Where the CM and owner have an agreement that includes shared costs savings, there can be extensive requests to consider or recommend alternatives by the CM or individual trades.
  - Often the owner and CM will not want to share a copy of their agreement with the architect, which makes it unworkable to coordinate services or to know the level of administration expected of the architect during the construction phase.
- Design
  - There can be more options requested during design phases as a CM considers different construction techniques and/or materials.
  - The architect’s design and CM issues may not coincide (the owner needs to be involved in decisions and priorities).
- Construction Documents
  - The preparation of drawings is often requested to be expedited reducing available time for coordination and checking for completeness and errors.
  - CMs often want drawing packages for certain trades versus the traditional single comprehensive set of drawings. This requires more time to coordinate and modify early packages as the remaining packages get completed plus additional printing and preparation costs.
  - CMs may wish to change Division 1 of the specifications.
- Bidding
  - There is some difficulty in defining the scope of trade packages. The CM should clearly define the scope of works for each trade.
  - There is a need for good communication from the CM regarding the status of bidding and contract awards.
- Construction Phase
  - The CM takes more of a lead role in the construction phase; the architect has less direct communication with the owner.
  - The CCDC CM contracts (5A & 17) if not amended (refer to OAA Supplementary Conditions), have the usual role of the architect to make interpretations and findings in matters of dispute split between the architect and the CM.

- The architect may not be responsible to certify payments and have less involvement and knowledge about financial progress; on the other hand they may be asked to certify payments and do Certificates of Substantial Performance for many separate trades.

It can be more complex to maintain the traditional professional role of the architect in being fair to both sides (owner and contractor) because there are more 'sides'. On owner/developer projects, the roles and responsibilities of the owner/developer and CM can be very blurred.

### **The Architect as CM**

Architects can be CMs and enter into a CCDC 5A agreement with an owner. Some architects doing small projects such as restaurant or house renovations may be asked by the client to arrange the trade works but don't feel it necessary to have a general contractor. It may seem like a construction management approach could fulfill these directions; however the arrangement produces conflicts of interest and other potential conflicts. Construction management has many variations and keeping the contractual arrangements clear is a challenge.

The OAA does not discourage members from pursuing the provision of construction services under a separate entity and have prepared a guideline to assist members and practices in understanding the issue of conflict of interest as it relates to the provision of architectural services and construction services. Refer to Practice Tip PT.26 – "Provision of Architectural Services and Construction Services – Conflict of Interest Guideline".

### **Suggested Procedure**

1. Become familiar with the construction management form of project delivery including standard contracts available and sources for additional information such as Royal Architectural Institute of Canada (RAIC) Canadian Handbook of Practice (CHOP), OAA PTs, and OAA recommended supplementary conditions.
2. To clients asking about construction management, provide information, sources for additional information, possible pros and cons of options remembering that the determination of the project delivery method is an owner's decision. If you advise and make strong recommendations – It may be seen as your decision and your risk.
3. Coordinate the architect's services in the client/architect agreement with the roles for the architect in the construction contracts and client/CM contract. There may be additional or possibly less services and fees warranted for construction management projects.
4. If presented with CCDC CM contracts by an owner or CM, discuss the incorporation of the OAA recommended supplementary conditions. Again coordinate the architect's contracted services with those expected of you in a construction management project.
5. If taking on the CM role as an architect, be aware of the potential conflicts of interest and that a CM is expected by the client and the trades to have appropriate construction expertise and experience. You are also advised to consult with legal and professional liability insurance advisors.

### **References**

1. [CCDC website](#) – contracts and guides.
2. PTs 23.3, 23.4, & 23.5 which discuss CCDC 5A, 5B, & 17
3. PT.26 – Conflict of Interest Guideline
4. The [AIA website](#) (search for "construction management")

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*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.*

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