

Design–Build: CCDC 15 - 2013

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Summary

The Canadian Construction Documents Committee (CCDC) has 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 replace the earlier (2000) versions of Standard Construction Documents 14 & 15.

CCDC 15 is a services contract which a design-builder would use to engage an architect. The Ontario Association of Architects (OAA) recommends the use of OAA 600–2013 amended for use on design-build projects in lieu of using CCDC 15 (refer to PT.25, Design-Build: OAA 600–2013); however this Practice Tip provides guidance where CCDC 15 is used.

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.

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 / Architecture Canada.

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 OAA 600–2013 *Standard Form of Contract for Architect’s Services* amended for use on design-build projects in lieu of using CCDC 15 – 2013 (refer to PT.25). 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 architects 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 and where it is used below in this Practice Tip, it refers to the “Architect”.

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 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 do include these. If using a percentage fee *Consultants* should note that a fee of x% of the *Construction Cost* that excludes 13% VAT would be increased by 1.13 times the x% to account for this variance.

- 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 the similar wording to clause 10.6 of OAA 600–2013 .

10.6 Termination expenses are in addition to compensation for the *Consultant's* services and include expenses directly attributable to termination for which the *Consultant* is not otherwise compensated, plus an amount for the *Consultant's* anticipated profit calculated as 10% of the value of the services remaining to be performed by the *Consultant* or such other amount as may be mutually agreed.

Alternatively insert in A-5.7 the standard value given in OAA 600–2013 , e.g. “10% of the value of services remaining”.

GC 4.1 PAYMENTS

- 4.1.3 Recommend changing 90 calendar days to 45 days which is consistent with the current wording in OAA 600–2013 ; however, there may be situations where a fewer number of days is advisable.

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. The description of services in OAA 600–2013 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 two schedules be deleted and replaced with those contained in OAA 600–2013 , GC 2.1 Architect's Scope of Basic Services and GC 3.1 & 3.2 Provision of Additional Services. Amend the reference to “Schedule A” in GC 3.1.14.1 appropriately.

If using the CCDC 15 schedules, architects should review the items carefully and compare them with the standard wording in the OAA 600–2013 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 take care if providing advice on the “implications” of alternatives; in design-build there are often many unsolicited alternatives and requests for “equals”.

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 architect in CCDC 14 – 2013 to make a finding.

Certifying Payments & Substantial Performance

Refer also to comments and recommendations in PT.25 and PT 23.6.

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 there is a duplication of tasks and possible conflicts may arise.

- 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. (Refer to comments and recommendations in PT.25 and PT 23.6.)

Post Construction Phase

Architects 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 ones 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 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 end of warranty – no description of what these documents might be.
- A.5.5 (1) review and report during the warranty period – normally reviews not done during warranty period excepting possible involvement with particular problems which services should be considered additional services as scope is entirely unknown and relates to defects not under *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 CAD drawings are required.

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 & CAD files

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 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 *Client* or the *Owner* the *Consultant* shall provide editable CAD drawings and shall grant a limited licence to the *Client* 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 *Client* agrees to indemnify and save harmless the *Consultant*, his/her employees, agents and *Subconsultant* 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.
- 1.2.10 As a condition precedent to the use of the editable CAD drawings the *Owner* agrees to indemnify and save harmless the *Consultant*, 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 *Owner's* reliance on the editable CAD drawings.

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*, 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 personal experiences 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.
- 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 the 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 the 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: OAA 600–2013, OAA 600–2013 with July 1, 2018 Amendments*

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

[CCDC website](#) – contracts and guides.

RAIC CHOP 2.3.2 Types of Project 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.
