

A GUIDE TO
BIDDING & SUPPLEMENTARY
CONDITIONS
FOR
HEALTHCARE PROJECTS



Revised June, 2008

The Ontario General Contractors Association gratefully acknowledges the assistance of the following in the development of this guide (the “Guide”):

Ministry of Health and Long Term Care
Ontario Association of Architects
Mr. Bill Pigott - Miller Thomson LLP
Mr. Glenn Ackerley - WeirFoulds LLP
Mr. Geza Banfai - Blaney McMurtry LLP

Published jointly by

Ontario General Contractors Association
6299 Airport Road, Suite 703
Mississauga, Ontario
L4V 1N3
(905) 671-3969

Ontario Association of Architects
111 Moatfield Drive
Don Mills, Ontario
M3B 3L6
(416) 449-6898

Neither the Ontario General Contractors Association (“OGCA”), the Ontario Association of Architects (“OAA”), nor the authors, nor the review committee members accept any responsibility for mistakes or omissions in this Guide. The OGCA and the authors are not engaged in rendering legal, accounting or other professional advice. If such legal advice or other expert assistance is required, the services of a competent professional should be sought.

This document is intended to create a recommended set of standard supplementary conditions to address issues specifically related to healthcare projects. The conditions and best practices are based on the use of accepted industry standard documents developed by the Canadian Construction Documents Committee (“CCDC”).

All parties believe that all contracts should be fair and equitable to all parties, and that the transfer of risk should not be unduly placed on any one party. The parties have reviewed the conditions and recommendations contained in this document, but advise all bidders that the final decision to accept any or all of these conditions should be based on their own review and ability to deal with them.

GENERAL INQUIRIES AND SUGGESTIONS SHOULD BE DIRECTED TO:

Ontario General Contractors Association
6299 Airport Road, Suite 703
Mississauga, Ontario
L4V 1N3
(905) 671-3969

Ontario Association of Architects
111 Moatfield Drive
Don Mills, Ontario
M3B 3L6
(416) 449-6898

TABLE OF CONTENTS

- 1.0 INTRODUCTION

- 2.0 INSTRUCTIONS TO BIDDERS AND BID FORMS

- 3.0 PRINCIPLES OF SUPPLEMENTARY CONDITIONS

- 4.0 MODEL DOCUMENTS
 - 4.1 INSTRUCTIONS TO BIDDERS
 - 4.2 BID FORM
 - 4.3 LIST OF SUBCONTRACTORS
 - 4.4 ITEMIZED AND ALTERNATIVE PRICES
 - 4.5 UNIT PRICES
 - 4.6 SUPPLEMENTARY CONDITIONS

- 5.0 CONTACTS

A GUIDE TO BIDDING AND SUPPLEMENTARY CONDITIONS FOR HEALTHCARE PROJECTS

1.0 Introduction

Renewal of healthcare facilities through renovation and new construction is critical to the sustainability of the Ontario healthcare system.

Hospital design and construction are among the more complex and challenging projects undertaken by the public sector. The complexity of a healthcare project escalates dramatically when the facility must remain open during its redevelopment/renovation. Project tools such as standard procurement and contract documents are critically important to the initiation and management of any healthcare project.

Standard construction documents are key ingredients in a successful healthcare project. They play a critical role in the selection of the prime contractor and, through the course of the project, govern the obligations of both owner and contractor. When healthcare projects run into difficulty, owners, contractors and the public all suffer. The experience of both the Ministry of Health and Long Term Care (the "Ministry") and industry has been that a common element in a difficult project has been alteration of the standard construction documents through onerous and/or inconsistent Supplementary Conditions which cause the altered documents to lose meaning or become uncoordinated. Poor construction documents inevitably fail to comply with government principles of procurement and project delivery which call for an open, fair and transparent process with appropriate risk allocation among the parties.

Traditional Design-Bid-Build Model ("DBB")

Planning, design and procurement guidelines, as well as stewardship of the government's share of capital spending on healthcare facilities (including community programs), are developed and overseen by the Ministry. The Ministry's principal area of concern is to ensure that capital projects are properly planned and delivered. The Ministry uses a Capital Planning Manual (the "Manual") that sets out the processes that healthcare or community program providers ("Owners") are obliged to meet to guide a project from initial planning through to use and occupancy.

As set out in the Manual, healthcare projects overseen by the Ministry are executed using DBB by awarding a stipulated price contract following competitive bidding. The intent of this handbook is to augment the Manual by providing Owners with concrete examples of procurement and contract documents which will help them to develop procurement processes and supplementary conditions which are consistent with Ministry policy and reflect best practices in risk management.

Model Documents

The purpose of model documents is to equitably represent the interests of all parties involved in a project, reduce the potential for conflict and ensure that project-related risks are properly allocated. Assignment of risk to the party best able to manage it is a fundamental tenet of risk management and leads to a balance between the parties of their rights, interests and obligations. Owners and their consultants are encouraged to use model documents through the duration of

their projects, including bidding and contract award stages. Model documents include the standard documents, instructions to bidders, bid forms, forms, supplementary conditions, guides and bulletins.

The model instructions to bidders and bid forms represent the view of the Guide as to best practices for bid documents, given existing bidding practice and the surrounding law. The model supplementary conditions represent the view as to best practices around amendments to *CCDC 2*.

Standard Documents prepared by CCA and CCDC

It should be recognized that a standard document is what it says it is – standard. Standard documents are prepared to address many types of construction projects from residential to industrial to commercial and to institutional. Accordingly, such standard documents cannot address all issues all of the time. Particular projects have their particular needs. Supplementary conditions are used to address the specific requirements of particular project types – such as healthcare.

Organizations such as the CCDC use a process that builds consensus among its member groups. Draft documents are developed from stakeholder working groups with input from legal counsel. Drafts are reviewed by constituent organizations and by a wide range of practitioners and client groups. When review comments have been received, final draft documents are prepared. Once consensus has been reached, final drafts are issued to the constituent organizations seeking their unanimous endorsement. Once that endorsement is received, the documents are published for use by the industry.

The standard documents have been developed through a process of consultation and negotiation. They are the end product of good and bad experiences and represent years of extensive input from construction industry experts and their clients.

Failure to use standard documents can result in problems associated with unbalanced contracts that unfairly favour one party over another. Negative consequences may arise for both the disadvantaged and favoured parties. For the favoured party, these consequences may include loss of goodwill, refusal to bid by competent bidders, additional costs included in pricing and the risk that contractors are simply unable to comply with some of the terms of the contract. Unbalanced contracts inevitably increase the risk of claims and disputes and often cause schedules and budgets to be overrun.

CCDC 2 - 2008 Stipulated Price Contract is the form of contract required for use under the Ministry's Manual.

Benefits of using standardized documents include:

- **Familiarity** – The parties are familiar with the content of standard documents and know their obligations. This reduces the likelihood of claims being made among the parties. From project to project, the participants can take comfort from the fact that the standard documents are drafted to fairly balance the interests of the involved parties.

- **Comprehension** – The standard documents are written in plain language, using terms familiar to the construction industry.
- **Current** – Standard documents are continuously reviewed and refined in order to reflect current industry practices, legislative developments and recent court decisions. They have been analyzed by the legal profession and reflect the current state of case law.
- **Consistency With Other Standard Documents** – Standard documents, which include consulting agreements, insurance and bond forms, work together.
- **Efficiency** – Owners and consultants need not spend time and money developing specialized documents – documents which vary among healthcare projects. Bidders need not spend time and money reading and trying to understand different documents, from project to project. Any revisions and additions to standard documents that pertain to a specific project are highlighted, allowing all parties to assess the risks and expenses involved. Ultimately, standard documents reduce costs that may be added by bidders when they identify risks arising from uncertainty within the contract documents.

2.0 Instructions to Bidders and Bid Forms

Front-end documents have been developed that are within the scope of the Guide, on the basis of recent experience in healthcare projects. Often, when bidders have been dissatisfied with supplementary conditions, they have expressed their dissatisfaction by qualifying their bids (by adding unsolicited terms and conditions) on the grounds that the supplementary conditions were not acceptable.

Faced with bids on a project being non-compliant, Owners have been obliged to re-bid or find some other way to award a contract while still complying with the guiding principles of the Ministry that the bid process be competitive, fair and transparent. On other occasions, bid problems have arisen because, from project to project, instructions to bidders, bid forms and related bidding documents are not consistent with each other. Often, these bid documents do not reflect the current state of bidding law in Canada resulting from the 1981 decision of the Supreme Court of Canada in *R. v. Ron Engineering & Construction (Eastern) Ltd.* and the cases which have followed it.

3.0 Principles of Supplementary Conditions

Supplementary conditions represent amendments to standard documents such as CCDC 2. The use of supplementary conditions must be justifiable to all parties and the clauses carefully written so as to effect the amendments in a legally responsible manner and without offending the underlying principles of risk management (i.e., the party best able to manage the risk normally bears it).

Supplementary conditions should be used sparingly and only when necessary, as they can have negative ramifications. For example, some supplementary conditions have compromised insurance coverages. Other sets of conditions cause bidders to decline to bid or to include additional costs in their bids to offset perceived risks. Some Owners have found that the use of supplementary conditions has resulted in extra time and effort being expended in dealings with legal advisors and professional associations.

Balanced against these potential difficulties is the need for supplementary conditions to accommodate such issues as payment mechanisms, insurance, patient risk factors, needs of the specific healthcare institution and Ministry policy.

The Guide represents best practices. The Ministry does not, as a matter of policy, mandate the detailed and specific content of the Owner's contract documents. The Ministry's review process is meant to ensure that the bid and contract documents fit within the boundaries of the government's capital approval, and protects and enhances the delivery of healthcare services. The Guide is intended to help reduce or eliminate the kinds of bidding and contract award issues which have been experienced on some healthcare projects.

4.0 Model Documents

4.1 Instructions to Bidders

TABLE OF CONTENTS

1. COMPLIANCE
2. BID DOCUMENTS
3. CONDITIONS OF THE PLACE OF THE WORK
4. MANDATORY SITE MEETING
5. PREQUALIFICATION • [NOTE: REMOVE THIS SECTION IF NOT APPLICABLE.]
6. BID AND PERFORMANCE SECURITY
7. AMENDMENTS TO BID DOCUMENTS
8. TAXES
9. BID COMPLETION
10. BID SUBMISSION
11. BID EXPIRY PERIOD
12. BID OPENING AND EVALUATION
13. REQUESTS FOR INFORMATION

14. AWARD OF CONTRACT, EXECUTION OF THE CONTRACT AND DOCUMENTS TO BE DELIVERED
15. LIMIT OF LIABILITY
16. DISPUTES

1. COMPLIANCE

- 1.1 The bidder acknowledges that by submitting a compliant bid, it has accepted an offer by the Owner to enter into a “bid contract” for the evaluation of bids and the award of the Contract, if an award is made. The bidder acknowledges that the terms of the “bid contract” are represented by the Bid Documents.
- 1.2 A bid which fails to comply with the requirements of these Instructions to Bidders may cause a bid to be declared non-compliant.

2. BID DOCUMENTS

- 2.1 The following documents form the basis of this bid process (the “Bid Documents”):
 - .1 Instructions to Bidders
 - .2 Bid Forms comprising the Base Bid Form and, where required, the Supplementary Bid Form – List of Subcontractors, Supplementary Bid Form – Itemized and Alternative Prices and Supplementary Bid Form – Unit Prices
 - .3 Agreement, Definitions and General Conditions of the CCDC 2 - 2008
 - .4 Supplementary Conditions
 - .5 Specifications (per table of contents)
 - .6 Drawings (per list of drawings)
 - .7 Addenda issued during bidding period

● *[NOTE: the above list should be revised by adding or deleting documents as may be required, e.g., if not all Supplementary Bid Forms are being used, reference to them should be deleted.]*
- 2.2 Check Bid Documents for completeness upon receipt. Inform Consultant immediately:
 - .1 should any documents be missing or incomplete;
 - .2 upon finding any discrepancies or omissions.
- 2.3 Complete sets of Bid Documents are available **at the office of the Consultant.** ● *[NOTE: if not, set out where the Bid Documents can be obtained, and the charge, if any]* Bid Documents shall be returned to Consultant within ten (10) days of bid close and the deposit for additional sets will be refunded provided all Bid Documents are returned complete and in good order. Costs of replacing damaged Bid Documents will be deducted from the deposit.

● *[NOTE: delete the last two sentences, if not applicable]*
- 2.4 The Bid Documents are made available only for the purpose of submitting bids for the Project. Availability and/or use of the Bid Documents do not confer a licence or grant for any other purpose.

2.5 Except as otherwise defined in these Instructions to Bidders, the defined terms in these Bid Documents are taken from the Contract. The term Contract is defined in the Agreement.

3. CONDITIONS OF THE PLACE OF THE WORK

3.1 The Place of the Work is located at ● *[Note: insert location]*

3.2 The following reports prepared or obtained with respect to the Place of the Work are available through the Consultant: ● *[NOTE: Consultant to provide list.]*

3.3 Before submitting a bid, investigate the Place of the Work to fully ascertain existing conditions, circumstances and limitations affecting the Work. No allowances will be made for additional costs and no claims will be entertained in connection with conditions which could reasonably have been ascertained by such investigation or other due diligence prior to submitting a bid.

4. MANDATORY SITE MEETING

4.1 A mandatory site meeting has been scheduled on ● *[NOTE: insert date and time allowing reasonable notice to the bidders]* at ● *[NOTE: insert place of meeting – if it will be at the site, then insert “Place of the Work”]*. All bidders must attend and will be required to sign the “Site Meeting Log” to confirm their attendance.

4.2 Bids received from bidders who failed to attend the mandatory site meeting, as determined from the “Site Meeting Log”, shall be returned unopened.

5. PREQUALIFICATION ● [NOTE: REMOVE THIS SECTION IF NOT APPLICABLE.]

5.1 The following bidders have been prequalified: ● *[NOTE: List prequalified bidders.]*

5.2 Bidders must use Subcontractors and Suppliers from the following prequalified list: ● *[NOTE: List prequalified Subcontractors and Suppliers.]*

5.3 Bids received from bidders which have not been prequalified shall be returned unopened.

5.4 Bidders who fail to comply with 5.2 shall be declared non-compliant.

6. BID AND PERFORMANCE SECURITY

6.1 Each bid shall be accompanied by bid security in the form of a bid bond in the amount of \$● *[See note below regarding appropriate amount of bid security]* naming the Owner as obligee and issued by a surety licensed to conduct surety and insurance business in Ontario. The bid security is for the benefit of the Owner and stands as security that the

bidder, if awarded the Contract, will deliver the performance security and evidence of insurance and other documents required by these Instructions to Bidders or by the Contract, and will execute the Contract. The bid security shall remain valid for a period of sixty (60) days from the date of bid submission. No other form of bid security is acceptable.

[NOTE: On each project, the Consultant and the Owner need to determine the appropriate amount of bid security. The amount of bid security should always match the limit of liability described in Article 15 [Limit of Liability]. The bid security validity period should correspond to the bid irrevocability period in 11.1.]

- 6.2 The bid security of the bidder whose bid is accepted will be retained by the Owner to compensate the Owner for the damages it will suffer should the successful bidder fail to execute the Contract and/or fail to provide the specified performance security and/or evidence of insurance and other documents required by these Instructions to Bidders or by the Contract.
- 6.3 The bid security of the bidder whose bid is accepted will be returned after the delivery of the specified performance security and evidence of insurance and other documents required by these Instructions to Bidders or by the Contract, and after the execution of the Contract. The bid security of all other bidders will be returned after the execution of the Contract or after the expiry of this bid process without an award of Contract or after the rejection of all bids.
- 6.4 Each bid shall be accompanied by an agreement to bond issued by the same surety company that provides the bid bond, undertaking to provide a fifty percent (50%) performance bond and a fifty percent (50%) labour and material payment bond, both to be delivered to the Owner if the bidder is awarded the Contract.
- 6.5 Bids not accompanied by the required bid security and the required agreement to bond will be declared non-compliant and rejected.
- 6.6 Include the cost of all bonds in the bid price.

7. AMENDMENTS TO BID DOCUMENTS

- 7.1 Direct questions arising during the bidding period to ● ***[NOTE: insert the name of the contact person at the Consultant, (the Bid Coordinator), along with contact information]***. The Bid Coordinator is the sole contact for bidding on this Project. A bid may be disqualified where contact is made with any person other than the Bid Coordinator.
- 7.2 Neither the Owner nor the Consultant will be responsible for instructions, clarifications or amendments communicated orally. Instructions, clarifications or amendments which affect the Bid Documents may only be made by addendum.

7.3 If bidders find discrepancies, omissions, errors, departures from building by-laws, codes or good practice, and points considered to be ambiguous or conflicting, they shall bring them to the attention of the Bid Coordinator in writing, and not less than seven (7) Working Days before the bid closing date, so that the Consultant may, if the Consultant deems it necessary, issue instructions, clarifications or amendments by addendum to all bidders prior to the bid closing date. The Consultant will endeavour to issue such addenda at least seventy-two (72) hours prior to bid closing.

7.4 Addenda issued during the bidding period shall become part of the Bid Documents and their receipt shall be acknowledged in the space provided on the Bid Form. Addenda will be sent to all bidders.

8. TAXES

The Goods and Services Tax (GST) shall not be included in the bid price. All other eligible taxes shall be included in the bid price. Any taxes or increases to taxes announced prior to the date of the issuance of the Bid Documents and scheduled to come into effect subsequent to it shall be taken to be included in the bid price.

9. BID COMPLETION

9.1 Fill in all blank spaces on the Bid Forms in ink, or typewritten, providing all information requested, and ensure that an authorized person or persons sign all forms where indicated. Failure to provide all requested information on the Bid Forms and failure to fill in all blank spaces may result in a bid being declared non-compliant.

9.2 Use only the Bid Forms issued as part of the Bid Documents for the Project. If any or all pages of the Bid Forms are amended by addendum, only the amended pages shall be used to submit a bid. Failure to comply with this paragraph may result in the bid being declared non-compliant.

9.3 Information provided by bidders on the Bid Forms may be amended prior to bid closing, provided corrections are initialled by an authorized representative of the bidder. Other modifications, erasures, additions, conditions, qualifications or un-initialled pre-closing amendments may result in the bid being declared non-compliant.

9.4 Bids that are not originals, are unsigned, improperly signed, un-initialled, incomplete, conditional or illegible, may be declared non-compliant.

9.5 Bid Price

- .1 The Base Bid Form provides that the bid price shall be provided in numbers only.
- .2 Where the Bid Forms require the bidder to provide a breakdown of the bid price, the bid price shall govern in the case of conflict or ambiguity between the bid price and the sum of the breakdown of the bid price. ● *[NOTE: delete if not applicable]*

9.6 Listing of Subcontractors

- .1 Where required by the Bid Documents, a bidder shall complete and submit a Supplementary Bid Form – List of Subcontractors, naming the Subcontractors and Suppliers which the bidder will employ to perform an item of the Work called for by the Contract. Failure of the bidder to list Subcontractors and Suppliers, where required, or the listing by a bidder of more than one Subcontractor and Supplier to perform or supply an item of work listed, may result in the bid being declared non-compliant. ● ***[NOTE: It is recommended that Owners and Consultants strive to minimize the number of subcontractors to be named.]***
- .2 Where a bidder lists “own forces” in lieu of a Subcontractor, the bidder shall carry out such item of the Work with its own forces. Where “own forces” have been listed by a bidder, the Owner reserves the right to obtain information from the bidder and from third parties respecting the qualifications and experience of the bidder’s “own forces” for such item of the Work. If the Owner, acting reasonably, determines that the bidder’s “own forces” are not sufficiently qualified or sufficiently experienced to undertake such item of the Work, it may reject the bid.

9.7 Itemized and Alternative Prices. Where required by the Bid Documents, a bidder shall complete and submit a Supplementary Bid Form – Itemized and Alternative Prices:

- .1 Itemized Prices for work, if any, shall be included in the bid price.
- .2 Alternative Prices for work, if any, any or all of which the Owner reserves the right to accept or reject any or all alternative prices.

● ***[NOTE: Comply with Ministry Policy.]***

9.8 Unit Prices. Where required by the Bid Documents, a bidder shall complete and submit a Supplementary Bid Form – Unit Prices.

10. **BID SUBMISSION**

● ***[NOTE: Determine whether bid closing is to be single stage or two stage. If single stage use version 1 below; if two stage use version 2]***

[VERSION 1]

- 10.1 Submit one (1) completed original of the Base Bid Form, and any required Supplementary Bid Forms, accompanied by the bid bond and the agreement to bond, in a sealed opaque envelope. Ensure that the outside of the envelope bears the bidder’s return address and a label clearly identifying the Project and Project number for which the bid is submitted.

- 10.2 Submit the envelope to:
● ***[NOTE: insert information specifying exactly where the bids are to be submitted]***
- 10.3 Bids must be received before ● ***[NOTE: insert time as 00:00:00 AM/PM]*** local time on ● ***[NOTE: insert date]***. The term “local time” shall mean the time as measured by the identified clock at the recipient’s location.
- 10.4 Bids will be date and time stamped at the place receiving the bids. Late bids will be returned unopened.
- 10.5 Bids which are submitted by facsimile transmission or by electronic means will not be considered.
- 10.6 Bidders are solely responsible for the method and timing of delivery of their bids.

[VERSION 2]

- 10.1 STAGE 1. Submit one (1) completed original Base Bid Form, accompanied by the bid bond and the agreement to bond, in a sealed opaque envelope. Ensure that the outside of the envelope bears the bidder’s return address and a label clearly identifying the Project and Project number for which the bid is submitted. Submit the envelope to:
● ***[NOTE: insert information specifying exactly where the bids are to be submitted]***
- 10.2 STAGE 1. Bids received before ● ***[NOTE: insert time as 00:00:00 AM/PM]*** local time on ● ***[NOTE: insert date]*** will be date and time stamped at the place receiving the bids. The term “local time” shall mean the time as measured by the identified clock at the recipient’s location. Late bids will be returned unopened.
- 10.3 STAGE 2. Submit one (1) completed original of each of the Supplementary Bid Forms in a sealed, opaque envelope. Ensure that the outside of the envelope bears the bidder’s return address and a label clearly identifying the Project and Project number for which the bid is submitted. Submit the envelope to:
● ***[NOTE: insert information specifying exactly where the bids are to be submitted]***
- 10.4 STAGE 2 bid submissions received before ● ***[NOTE: insert time as 00:00:00 AM/PM]*** local time on ● ***[NOTE: insert date]*** will be date and time stamped at the place receiving the bids. The term “local time” shall mean the time as measured by the identified clock at the recipient’s location. Late bids will be returned unopened.
- 10.3 Bids which are submitted by facsimile transmission or by electronic means will not be considered.
- 10.4 Bidders are solely responsible for the method and timing of delivery of their bids.

11. BID EXPIRY PERIOD

- 11.1 Bids shall be irrevocable for a period of sixty (60) days from the date of submission, after which period the bid expires.

12. BID OPENING AND EVALUATION

[VERSION 1]

- 12.1 Bids will be opened in public
● *[NOTE: insert where and when.]*
- 12.2 In the event that more than one envelope is received from the same bidder, only the last envelope received will be considered.

[VERSION 2]

- 12.1 Bids will be opened in public, following Stage 2 bid closing.
● *[NOTE: insert where and when.]*
- 12.2 In the event that more than one envelope is received from the same bidder in either Stage, only the last envelope received for each stage will be considered.
- 12.3 If only a single bid is received for evaluation, the Owner will return the bid unopened.
- 12.4 The Owner may reject the lowest or any bid or part of any bid, reject all bids or cancel this bid process in whole or in part.
- 12.5 The bid price offered on the Base Bid Form will be considered the bidder's "Base Bid". The Owner reserves the right, but has no obligation, to adjust all bidders' Base Bids by the amounts of any alternative prices which the Owner, in its discretion, decides to accept.
- 12.6 The Owner reserves the right to award the Contract to the bidder which submitted the bid which, in the Owner's sole discretion, provides the best value to the Owner based on the criteria described in the Bid Documents including, but not limited to, a bidder's:
- .1 Base Bid;
 - .2 Base Bid as adjusted by the Owner pursuant to the Bid Documents;
 - .3 Clarification provided pursuant to Article 13 [Requests for Clarification]
- 12.7 The Owner reserves the right to award the Contract to a bidder which, in the Owner's discretion, has submitted a substantially compliant bid. Incomplete or conditional bids may be declared non-compliant.

12.8 Should the Owner receive no compliant bids, the Owner, in its discretion, may re-bid the Project or may negotiate a Contract for the whole or any part of the Project with a bidder which has submitted a non-compliant bid.

13. REQUESTS FOR CLARIFICATION

13.1 The Consultant may contact any one or more bidders to request clarification without any obligation to contact other bidders. Such additional clarification shall be provided promptly by the bidder to the Consultant.

13.2 Requests for information shall not be construed as acceptance of a bid.

14. AWARD OF CONTRACT, EXECUTION OF THE CONTRACT AND DOCUMENTS TO BE DELIVERED

14.1 Bidders shall not issue or make any statements or news release concerning their bid, the bid process, the Owner’s evaluation of the bids, or the Owner’s award or cancellation of the bid process without the express written consent of the Owner.

14.2 If the Owner decides to award the Contract to a bidder, it will issue a letter of Contract award.

14.3 Prior to commencing the Work, the Contractor shall deliver to the Owner:

- .1 the performance bond and the labour and material payment bond described in the Bid Documents, the form of such bonds to comply with the requirements of the Contract;
- .2 certified true copies of the insurance policies required by the Bid Documents; and
- .3 a current Clearance Certificate issued by the Workplace Safety and Insurance Board.

14.4 The Contractor shall execute the Contract and deliver the executed original to the Owner within ten (10) Working Days of receipt from the Consultant.

15. LIMIT OF LIABILITY

15.1 The liability of the bidder to the Owner for loss and damage arising out of the bidder’s breach of the “bid contract” shall be limited to the lesser of the actual loss suffered by the Owner and the sum of ● [NOTE: insert amount in words] Dollars (\$ ● [NOTE: insert amount in numbers]).

15.2 The liability of the Owner to any bidder for loss and damage arising in tort or for the breach by the Owner of the “bid contract” shall be limited to the lesser of the sum of ● [NOTE: insert amount in words] Dollars (\$ ● [NOTE: insert amount in numbers]) and the reasonable cost to the bidder of preparing its bid.

● ***[NOTE: The amount to be included in paragraphs 15.1 and 15.2 should match the amount of bid security described in paragraph 6.1.]***

16. DISPUTES

- 16.1 In the event of a dispute arising in connection with this bid process including, without limitation, a dispute concerning the existence of the “bid contract” or a breach of the “bid contract”, or a dispute as to whether the bid of any bidder was submitted on time or whether a bid is compliant, the Owner may refer the dispute to a confidential binding arbitration pursuant to the *Arbitration Act, 1991*, as amended, before a single arbitrator with knowledge of procurement/bidding law. In the event that the Owner refers the dispute to arbitration, the bidder agrees that it is bound to arbitrate such dispute with the Owner. Unless the Owner shall refer such dispute to binding arbitration, there shall be no arbitration of such dispute.
- 16.2 In the event the Owner refers a dispute to binding arbitration, the Owner may give notice of the dispute to one or more of the other bidders who submitted bids, whether or not they may be compliant, each of whom shall be a party to and shall be entitled to participate in the binding arbitration, and each of whom shall be bound by the arbitrator’s award, whether or not they participated in the binding arbitration.
- 16.3 In the event the Owner refers a dispute to binding arbitration, the parties to the arbitration shall exchange brief statements of their respective positions on the dispute, together with the relevant documents, and submit to a binding arbitration hearing which shall last no longer than two days, subject to the discretion of the arbitrator to increase such time. The parties further agree that there shall be no appeal from the arbitrator’s award.
- 16.4 This Article is not intended to form part of any “bid contract” that may come into being between a bidder and any prospective Subcontractor or Supplier of that bidder.

NAME OF BIDDER _____

ADDRESS _____

TELEPHONE _____ **FAX** _____

BID PRICE

I/We the undersigned, having carefully examined the Bid Documents, having received, carefully examined and incorporated

Addenda No. _____ to No. _____

inclusive, having visited and investigated the Place of the Work, and having examined all conditions, circumstances and limitations affecting the Work, offer to enter into a Contract with the Owner to perform the Work required by the Bid Documents for the price of

\$_____. ● [NOTE: insert amount in numbers only] The price offered excludes Goods and Services Tax (GST) but includes all other eligible taxes.

BID SECURITY

Attached to this bid is a bid bond issued by _____ in the amount of \$_____ ● [NOTE: insert amount in numbers only].

No other form of bid security is acceptable.

AGREEMENT TO BOND

Attached to this bid is a separate agreement to bond issued by _____
_____ undertaking to provide the bonds required by the Bid Documents.

LIST OF SUBCONTRACTORS [OPTIONAL] ● [NOTE: only significant subcontractors as identified by the consultant.]

DECLARATIONS

I/We the undersigned declare that:

1. I/We agree to perform the Work, inclusive of mobilization time, in compliance with the Contract Documents and attain Substantial Performance of the Work within _____ weeks after award of the Contract.
2. No person, firm or corporation other than the undersigned has any interest in this bid or in the proposed Contract for which this bid is made.
3. This bid is irrevocable and is open for acceptance by the Owner for a period of sixty (60) days from the date of submission.

DATE

SIGNATURE

Name and Title

END OF DOCUMENT

NAME OF BIDDER _____

I/We the undersigned propose to employ the following Subcontractors and/or Suppliers to perform an item of the Work called for by the Contract. I/We confirm that all have been investigated to confirm their reliability and competency to carry out such work in accordance with the Contract Documents.

I/We acknowledge that the Instructions to Bidders require that we list only one Subcontractor and/or Supplier for each item of the Work described in this List of Subcontractors. I/We further acknowledge that where we have entered "own forces" to perform an item of the Work, it is our intention to use "own forces" for that purpose.

After bid submission, no substitution for a Subcontractor, Supplier or "own forces" will be permitted except as provided in the Contract.

ITEM OF WORK

SUBCONTRACTOR / SUPPLIER

- *[NOTE: insert items of Work for which a list of Subcontractors / Suppliers is to be provided]*

This List of Subcontractors is an integral part of these Bid Documents.

DATE _____

SIGNATURE _____

Name and Title _____

END OF DOCUMENT

NAME OF BIDDER _____

I/We the undersigned offer the Itemized Prices and Alternative Prices described below. I/We agree that:

1. All prices submitted take into consideration and allow for changes and adjustments in other work as may be necessary to provide a finished and functional result, unless specifically indicated otherwise.
2. "Itemized Prices" are for work included in the bid price and are provided for information purposes only. They will not be used to adjust the scope of the work or the bid price.
3. "Alternative Prices" are amounts stipulated by bidders for solicited alternatives which can be stated as additions, deductions or no change to the bid price.
4. Without limiting its rights under the Instructions to Bidders, the Owner reserves the right to accept or reject any of the Alternative Prices. Acceptance of Alternative Prices is subject to the earlier acceptance of the bid or the bid expiry date.
5. Prices listed hereunder do not include Goods and Services Tax (GST) but include all other eligible taxes.
6. These amounts shall be irrevocable for the Bid Expiry Period provided in the Instructions to Bidders.

ITEMIZED PRICES

1. ● (Consultant to list all applicable Itemized Prices, or note this part as "Not Applicable") \$ _____

ALTERNATIVE PRICES

1. ● (Consultant to list all applicable Alternative Prices, or note this part as "Not Applicable") \$ _____

This List of Itemized and Alternative Prices is an integral part of the Bid Documents.

DATE _____

SIGNATURE _____

Name and Title _____

END OF DOCUMENT

NAME OF BIDDER _____

I/We the undersigned offer the following unit prices for the work or for additional work listed here. All unit prices, unless specifically indicated, are for complete work, in place, supplied and installed in accordance with applicable Contract requirements and include all overhead and profit mark-up.

I/We the undersigned agree that the credits for deleted work shall be no less than eighty percent (80%) of the unit prices listed hereunder.

I/We the undersigned agree that the Owner shall have the right to negotiate the cost of additional work instead of using the unit prices listed hereunder.

Prices listed hereunder do not include Goods and Services Tax (GST) but include all other eligible taxes.

● *[NOTE: Below, fill in the items for which unit prices are being solicited, including the unit of measurement.]*

<u>ITEM OF WORK</u>	<u>UNIT</u>	<u>COST/UNIT</u>
---------------------	-------------	------------------

This list of Unit Prices is an integral part of these Bid Documents.

DATE _____

SIGNATURE _____

Name and Title _____

END OF DOCUMENT

4.6 Supplementary Conditions

The following Supplementary Conditions have been developed by the OGCA in cooperation with architects, the Ministry and legal advisors, to be used with *CCDC 2 - 2008*. It is recommended that Owners not alter these supplementary conditions or create additional or new conditions without consulting with the OGCA, the Owner's Consultant and legal advisor.

SUPPLEMENTARY CONDITIONS FOR THE STIPULATED PRICE CONTRACT

The Standard Construction Document for Stipulated Price Contract, English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications:

ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

Delete Article A-6.1 and substitute new article 6.1:

- 6.1 Notices in Writing between the parties or between them and the Consultant shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or if sent during normal business hours by fax and addressed as set out below. Such Notices in Writing will be deemed to be received by the addressee on the next business day if sent by fax after normal business hours or if sent by overnight commercial courier. Such Notices in Writing will be deemed to be received by the addressee on the fifth Working Day following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.

DEFINITIONS

Add the following definition:

27. Submittals
Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor*, 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
 - Record drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

1 GENERAL

- 1.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

GC 1.1 CONTRACT DOCUMENTS

- .1 Add new sentence to the end of paragraph 1.1.6:

The *Specifications* are divided into divisions and sections for convenience but shall be read as a whole and neither such division nor anything else contained in the *Contract Documents* will be construed to place responsibility on the *Consultant* to settle disputes among the *Subcontractors* and *Suppliers* in respect to such divisions.

- .2 Add new subparagraph 1.1.7.5:

1.1.7.5 in case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

- .3 Delete paragraph 1.1.8 in its entirety and substitute new paragraph 1.1.8:

1.1.8 The *Owner* shall provide the *Contractor*, without charge, ●
[NOTE: insert appropriate number] copies of the *Contract Documents*.

GC 2.4 DEFECTIVE WORK

- .1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:

2.4.1.1 The *Contractor* 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*.

2.4.1.2 The *Contractor* 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

- .1 Add new paragraph 3.1.3:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* 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 exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- .1 Delete subparagraph 3.2.2.1 in its entirety
- .2 Delete subparagraph 3.2.2.2 in its entirety
- .3 Add new subparagraph 3.2.3.4:

3.2.3.4 Subject to **GC 9.4 CONSTRUCTION SAFETY**, for the *Owner's* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable health and safety legislation in the *Place of the Work*, including all of the responsibilities of the constructor under the Occupational Health and Safety Act.

GC 3.4 DOCUMENT REVIEW

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* 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 *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

.2 Add new paragraph 3.4.2:

3.4.2 If the *Contractor* finds discrepancies in and/or omissions from the *Contract Documents* or has any doubt as to the meaning or intent of any part thereof, the *Contractor* must immediately notify the *Consultant*, who will provide written instructions or explanations. Neither the *Owner* nor the *Consultant* will be responsible for oral instructions.

GC 3.5 CONSTRUCTION SCHEDULE

.1 Delete paragraph 3.5.1 in its entirety and substitute new paragraph 3.5.1:

3.5.1 The *Contractor* shall,

3.5.1.1 Prior to submitting the first application for payment, submit to the *Owner* and the *Consultant* for their review and acceptance a construction schedule indicating the critical path for the *Project* demonstrating that the *Work* will be performed in conformity with the *Contract Time* and in accordance with the *Contract Documents*. The *Contractor* shall provide the schedule information required by this paragraph in both electronic format and hard copy. Once accepted by the *Owner* and the *Consultant*, the construction schedule submitted by the *Contractor* shall become the baseline construction schedule;

3.5.1.2 Provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline construction schedule referred to in paragraph 3.5.1.1 or any successor or revised schedule accepted by the *Owner* pursuant to GC3.5;

3.5.1.3 Monitor the progress of the *Work* on a weekly basis relative to the construction schedule reviewed and accepted pursuant to paragraph 3.5.1.1, or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.5, update the schedule on a monthly basis and advise the *Consultant* and the *Owner* in writing of any variation from the baseline or slippage in the schedule; and

3.5.1.4 If, after applying the expertise and resources required under paragraph 3.5.1.2, the *Contractor* forms the opinion that the slippage in schedule reported in paragraph 3.5.1.3 cannot be recovered by the *Contractor*, it shall, in the same notice provided under paragraph 3.5.1.3, indicate to the

Consultant and the *Owner* if the *Contractor* intends to apply for an extension of *Contract Time* as provided in PART 6 - CHANGES IN THE WORK.

.2 Add new paragraph 3.5.2:

3.5.2 If at any time it should appear to the *Owner* or the *Consultant* that the actual progress of the *Work* is behind schedule or is likely to become behind schedule, based on critical path methodology, or if the *Contractor* has given notice of such to the *Owner* or the *Consultant* pursuant to 3.5.1.3, the *Contractor* shall take appropriate steps to cause the actual progress of the *Work* to conform to the schedule and shall produce and present to the *Owner* and the *Consultant* a recovery plan demonstrating how the *Contractor* will achieve the recovery of the schedule. If the *Contractor* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, the *Contractor* shall proceed with PART 6 – CHANGES IN THE WORK.

GC 3.6 SUPERVISION

.1 Delete paragraph 3.6.1 in its entirety and substitute new paragraph 3.6.1:

3.6.1 The *Contractor* shall provide all necessary supervision and appoint competent representatives who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representatives shall not be changed except for valid reasons, and upon the *Contractor* obtaining the *Consultant's* written consent, which consent will not be unreasonably withheld.

.2 Add new paragraph 3.6.3:

3.6.3 The *Owner* may, at any time during the course of the *Work*, request the replacement of the appointed representative(s), where the grounds for the request involve conduct which jeopardizes the safety of the *Owner's* operations. Immediately upon receipt of the request, the *Contractor* shall make arrangements to appoint an acceptable replacement.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- .1 Delete paragraph 3.7.2 in its entirety and substitute new paragraph 3.7.2:

3.7.2 The *Contractor* agrees not to change *Subcontractors* without prior written approval of the *Owner*, which approval will not be unreasonably withheld.

GC 3.8 LABOUR AND PRODUCTS

- .1 Add new paragraph 3.8.4:

3.8.4 The *Contractor* 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 3.9 DOCUMENTS AT THE SITE

- .1 Delete paragraph 3.9.1 in its entirety and substitute new paragraph 3.9.1:

3.9.1 The *Contractor* shall keep one copy of the current *Contract Documents*, *Supplemental Instructions*, *Contemplated Change Orders*, *Change Orders*, *Change Directives*, *Cash Allowance Disbursement Authorizations*, reviewed *Shop Drawings*, *Submittals*, reports and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and *Consultant*.

GC 3.10 SHOP DRAWINGS

- .1 Add the words “AND OTHER SUBMITTALS” to the Title after SHOP DRAWINGS.
- .2 Add “and *Submittals*” after the words “*Shop Drawings*” in clauses 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, and 3.10.11.
- .3 Delete paragraph 3.10.3 in its entirety and substitute new paragraph 3.10.3:

- 3.10.3 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and any *Submittals*.
- .4 Delete subparagraph 3.10.8.1 in its entirety and substitute new subparagraph 3.10.8.1:
- 3.10.8.1 the *Contractor* has determined and correlated the field measurements with the *Shop Drawings* and any *Submittals* and field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so if not possible at that time, and
- .5 Delete paragraph 3.10.12 in its entirety and substitute new paragraph 3.10.12:
- 3.10.12 The *Consultant* will review and return *Shop Drawings* and *Submittals* in accordance with the schedule agreed upon in 3.10.3, or, in the absence of such schedule, with reasonable promptness. If, for any reason, the *Consultant* cannot process them within the agreed-upon schedule or with reasonable promptness, the *Consultant* shall notify the *Contractor* and they shall meet to review and arrive at an acceptable revised schedule for processing. The *Contractor* shall update the *Shop Drawings* and *Submittals* Schedule to correspond to changes in the construction schedule. Changes in the *Contract Price* or *Contract Time* may be made only as otherwise provided in the *Contract*.

Add new General Conditions 3.14 and 3.15:

GC 3.14 PERFORMANCE BY CONTRACTOR

- 3.14.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* 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*.
- 3.14.2 The *Contractor* 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; and
- .3 There are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Contractor* to perform its work under the *Contract*.

GC 3.15 RIGHT OF ENTRY

- 3.15.1 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for the purpose of placing fittings and equipment or for other uses before *Substantial Performance of the Work*, if, in the opinion of the *Consultant* and *Contractor*, such entry or occupation does not prevent or substantially interfere with the *Contractor* in completion of the *Contract* within the *Contract Time*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*."

GC 4.1 CASH ALLOWANCES

- .1 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.
- .2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:
 - 4.1.5 The unexpended total cash allowance amount shall be deducted from the *Contract Price by Change Order*.
- .3 Add new paragraph 4.1.8:
 - 4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, competitive bids for portions of the *Work*, to be paid for from cash allowances.

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- .1 Revise the heading, “GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER” to read, “GC 5.1 FINANCING INFORMATION REQUIRED”.
- .2 Delete paragraph 5.1.1 in its entirety and substitute new paragraph 5.1.1:
 - 5.1.1 The *Owner* and *Contractor* shall provide each other with timely *Notice in Writing* of any material change in their financial ability to fulfil their respective obligations under the *Contract*.
- .3 Delete paragraph 5.1.2 in its entirety.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- .1 Add to the end of paragraph 5.2.7 the following new sentence:

“Any *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall remain at the risk of the *Contractor* notwithstanding that title has passed to the *Owner* pursuant to GC 13.1 OWNERSHIP OF MATERIALS.”
- .2 Add new paragraphs 5.2.8, 5.2.9 and 5.2.10:
 - 5.2.8 The *Contractor* shall submit, with each application for progress payment after the first, a Statutory Declaration, on an original form of CCDC Document 9A-2001, stating that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application.
 - 5.2.9 The *Contractor* shall submit Workplace Safety & Insurance Board Clearance Certificate, with each application for progress payment.
 - 5.2.10 The *Contractor* shall prepare and maintain current as-built *Drawings* which shall consist of the *Drawings* and *Specifications* revised by the *Contractor* during the *Work*, showing changes to the *Drawings* and *Specifications*, which current as-built *Drawings* shall be maintained by the *Contractor* and made available to the *Consultant* for review with each application for progress payment. The *Consultant*

reserves the right to retain a reasonable amount for the value of the as-built *Drawings* not presented for review.

GC 5.3 PROGRESS PAYMENT

- .1 Delete from the first line of subparagraph 5.3.1.2, the words “calendar days” and substitute the words:

“*Working Days*”.

- .2 Delete subparagraph 5.3.1.3 in its entirety and substitute new subparagraph 5.3.1.3:

5.3.1.3 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than 10 *Working Days* after the date of a certificate of payment issued by the *Consultant*.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- .1 Delete paragraph 5.4.3 in its entirety and substitute new paragraph 5.4.3:

5.4.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish reasonable dates for finishing the *Work* and correcting deficient work.

- .2 Add new paragraphs 5.4.4, 5.4.5 and 5.4.6:

5.4.4 The *Contractor* shall publish, in a construction trade newspaper in the area of the location of the *Work*, a copy of the Certificate of *Substantial Performance of the Work* within seven (7) days of receiving a copy of the Certificate signed by the *Consultant*, and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and *Owner*. If the *Contractor* fails to publish such notice, the *Owner* shall be at liberty to publish and back charge the *Contractor* its reasonable costs for doing so.

5.4.5 Prior to submitting its application for *Substantial Performance of the Work*, the *Contractor* shall submit to the *Consultant* all:

- .1 guarantees,
- .2 warranties,
- .3 certificates,
- .4 testing and balancing reports,

.5 distribution system diagrams,
.6 spare parts,
.7 maintenance manuals,
and other materials or documentation required to be submitted under the *Contract*, together with written proof acceptable to the *Owner* and the *Consultant* that the *Work* has been substantially performed in conformance with the requirements of municipal, government and utilities authorities having jurisdiction.

5.4.6 Where the *Contractor* is unable to deliver the documents and materials described in paragraph 5.4.5, then, provided that none of the missing documents and materials interferes, in a material way, with the use and occupancy of the *Work*, failure to deliver shall not be grounds for the *Consultant* to refuse to certify *Substantial Performance of the Work*. Any documents or materials not delivered in accordance with paragraph 5.4.5 shall be delivered as provided in GC 5.7, paragraph 5.7.1.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

.1 Add new subparagraphs 5.5.1.3, 5.5.1.4 and 5.5.1.5:

5.5.1.3 Submit a written request for release of holdback including a declaration that no written notices of lien have been received by it.

5.5.1.4 Submit a Statutory Declaration CCDC 9A-2001.

5.5.1.5 Submit Workplace Safety & Insurance Board Clearance Certificate.

.2 Delete from line 1 of paragraph 5.5.2, the words “the statement” and substitute the words:

“the documents”.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

.1 Add new paragraph 5.6.4:

5.6.4 For release of holdback on subcontract work which is 100% complete, prior to final payment, the *Contractor* shall make application by written request for a review to

determine the date of completion of the subcontract and shall submit such supporting material as the *Consultant* may in his discretion require, and may include statutory declarations from such persons and dealing with such matters as the *Consultant* requires. Such material shall in any event include:

- .1 Description of the scope of work included in the subcontract.
- .2 Declaration of Last Supply by the *Subcontractor* as prescribed in subsection 31(5) of the Act (Form 5).
- .3 Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the Act (Form 7).
- .4 Workplace Safety & Insurance Board clearance certificate for the *Contractor*, the *Subcontractor* concerned, and any other subcontractors and suppliers who have provided any services to the *Subcontractor*.
- .5 Statutory declaration by an officer of the *Subcontractor* in the form CCDC Document 9B - 2001.
- .6 *Contractor's* written acknowledgement to the *Owner* that the requirements of the *Contract Documents* will not be altered by early release of the holdback of the completed subcontracts.
- .7 Confirmation by the bonding company that it has been notified of the intent to claim early release of holdback and does not object.

GC 5.7 FINAL PAYMENT

- .1 Delete paragraph 5.7.1 in its entirety and substitute new paragraph 5.7.1:

5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment. The *Contractor's* application for final payment shall be accompanied by any documents or materials not yet delivered pursuant to paragraph 5.4.5 together with complete as-built *Drawings*. Should the *Contractor* fail to deliver any of the foregoing documents, the *Owner* shall be at liberty to withhold from amounts otherwise payable to the *Contractor*, the sum of ● **[NOTE: insert dollar amount]** Dollars (\$) as security for the obligation of the *Contractor* to deliver the undelivered documents.

- .2 Delete from the first line of paragraph 5.7.2 the words “calendar days” and substitute the words:

“*Working Days*”.

- .3 Delete from the second line of paragraph 5.7.4 the words “calendar days” and substitute the words:

“*Working Days*”.

- .4 Add new paragraph 5.7.5:

5.7.5 As additional requirements for release of finishing construction lien holdback, the *Contractor* shall submit the following documentation:

- .1 *Contractor’s* written request for release of holdback, including a declaration that no written notices of lien have been received by it.
- .2 *Contractor’s* Statutory Declaration CCDC 9A-2001.
- .3 *Contractor’s* Workplace Safety & Insurance Board Clearance Certificate.

GC 6.2 CHANGE ORDER

● [NOTE: *There are several methods by which mark-ups can be determined. It is good practice for the Owner to recognize fairness when setting the mark-up rates.*

The value of a change may be determined in one or more of the following methods:

- .1 *by estimate and acceptance of a lump sum.*
- .2 *by unit prices established in the Contract.*
- .3 *by time and materials, net of all credits, using 6.3.7.*

Owner and Consultant to review and complete this section before calling for bids.]

Owners should be aware that Change Orders can be categorized by the following methods:

- owner initiated
- authorities having jurisdiction
- errors and omissions
- site conditions
- unforeseeable changes

When dealing with these Change Orders, it is recommended that the provider and its consultants follow the procedures outlined in the Canadian Construction Document Committee (CCDC) guidelines on the issuance of a Change Order. It is further recommended that hospital projects should include a contingency allowance for dealing with Change Orders. The allowance can be proportional to the construction costs and range from 3 to 10 percent and depend on taking into account the complexity of the construction of the project.

GC 6.3 CHANGE DIRECTIVE

- .1 Delete 6.3.7.1(1) and substitute the words:

“(1) carrying out the work, including necessary supervisory services;”

- .2 Delete paragraph 6.3.7.1(2) and substitute the words

“(2) intentionally left blank.”

- .3 Amend paragraph 6.3.7.1(3) so that, as amended, it reads:

“(3) engaged in the preparation of *Shop Drawings*, fabrication drawings, coordination drawings and project record drawings: or...”

- .4 Amend paragraph 6.3.7.1(4) so that, as amended, it reads:

“(4) including clerical staff engaged in processing changes in the Work.”

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- .1 Add new subparagraph 6.4.5:

6.4.5 The *Contractor* 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, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of the bid.

GC 6.5 DELAYS

- .1 Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“; but excluding any consequential, indirect or special damages.”

- .2 Add new subparagraph 6.5.6.

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* 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 *Contractor* 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 *Contractor*.

GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- .1 Delete subparagraph 7.2.3.1 in its entirety.
- .2 Delete subparagraph 7.2.3.3 in its entirety and substitute new subparagraph 7.2.3.3:

7.2.3.3 the *Owner* fails to pay the *Contractor* when due the amount certified by the *Consultant* or awarded by arbitration or a Court, except where the *Owner* has a bona fide claim for set off, or

- .3 Delete from line 2 of subparagraph 7.2.3.4, the words “OF THE OWNER”.

.4 Add new paragraph 7.2.6:

7.2.6 If the *Contractor* terminates the *Contract* under the conditions described in this GC 7.2, the *Contractor* shall be entitled to be paid for all work performed to the date of termination. The *Contractor* shall also be entitled to recover the direct costs associated with termination, including the costs of demobilization, losses sustained on *Products* and construction machinery and equipment.

GC 8.1 AUTHORITY OF THE CONSULTANT

.1 Delete last sentence of 8.1.3 and substitute the following sentence:

If it is subsequently determined that such instructions were at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond the requirements of the *Contract Documents*, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

.1 Add 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 *Contractor* shall give the *Consultant* a written notice containing:

- .1 a copy of the notice of arbitration
- .2 a copy of supplementary conditions 8.2.9 to 8.2.15 of the *Contract*, and;
- .3 any claims or issues which the *Contractor* 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 *Contractor* 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*:

- .1 has a vested or contingent financial interest in the outcome of the arbitration;
- .2 gives the notice of election to the *Owner* and the *Contractor* before the arbitrator is appointed;

- .3 agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6; and,
 - .4 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 *Owner* 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:
 - .1 on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.2.10; and
 - .2 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 a *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 8.3 RETENTION OF RIGHTS

- .1 Add new subparagraph 8.3.3:

8.3.3 If the *Owner* gives the notice in writing described in paragraph 8.2.6 to have a dispute resolved by arbitration, the *Contractor* agrees that this paragraph 8.3.3 shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. In no event shall the *Contractor* be deprived of its right to enforce its lien against the *Project* should the *Owner* fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph 8.3.3 shall prevent the

Contractor from taking the steps required by the *Construction Lien Act* to preserve and/or perfect a lien to which it may be entitled.

GC 9.1 PROTECTION OF WORK AND PROPERTY

- .1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;

- .2 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 *Contractor* 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.

- .3 Add new paragraph 9.1.5:

9.1.5 The *Contractor* shall neither undertake to repair and/or replace any damage whatsoever to the work of other contractors, or to adjoining property, nor acknowledge the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed from either the *Owner* or the *Consultant*. However, where there is danger to life or public safety, the *Contractor* shall take such emergency action as it deems necessary to remove the danger.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- .1 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 *Contractor* or anyone for whom the *Contractor* 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,

- .2 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 *Contractor* or anyone for whom the *Contractor* 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 9.4 CONSTRUCTION SAFETY

- .1 Delete paragraph 9.4.1 in its entirety and substitute new paragraph 9.4.1

9.4.1 The *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

- .2 Add new paragraphs 9.4.2, 9.4.3 and 9.4.4:

9.4.2 Prior to the commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 a current WSIB clearance certificate;
- .2 copies of the *Contractor's* insurance policies having application to the *Project* or certificates of insurance, at the option of the *Owner*;
- .3 documentation of the *Contractor's* in-house safety-related programs;
- .4 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under OHSA.

9.4.3 The *Contractor* shall indemnify and save harmless the *Owner*, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the *Contractor* under OHSA, including the payment of legal fees and disbursements on a solicitor and client basis.

Such indemnity shall apply to the extent to which the *Owner* is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.4

The *Owner* undertakes to include in its contracts with other contractors and/or in its instructions to its own forces the requirement that the other contractor or own forces, as the case may be, will comply with directions and instructions from the *Contractor* with respect to occupational health and safety and related matters. The text of such instruction is attached to these Supplementary Conditions.

[Drafting Note: see form which follows]

**LANGUAGE FOR OWNER PERSONNEL OR FOR THIRD PARTY CONTRACTORS
ENTERING A PROJECT SITE WHERE THE CONTRACTOR
HAS ASSUMED OVERALL RESPONSIBILITY – IN CONTRACT –
FOR OCCUPATIONAL HEALTH AND SAFETY**

“The (trade or employee) acknowledges that the work it will perform on behalf of the *Owner* requires it to enter a job site which is under the total control of a *Contractor* which has a *Contract* with_____. The (trade or employee) acknowledges that [name of *Contractor*] has assumed overall responsibility for compliance with all aspects of the health and safety legislation of Ontario, including all the responsibilities of the “constructor” under the Occupational Health and Safety Act (Ontario). Further, (trade or employee) acknowledges that [name of *Contractor*] is also responsible to the _____ to co-ordinate and schedule the activities of our work with the *Work* of the *Contractor*.

We agree to comply with [name of *Contractor*] directions and instructions with respect to occupational health and safety and coordination. We acknowledge that it will be cause for termination under our contract with the *Owner* should (I/we) fail or refuse to accept the direction and instruction of the *Contractor* with respect to matters of occupational health and safety or matters related to coordination of work.

We agree to have the *Contractor* named as an additional insured on our comprehensive liability policy.”

GC 9.5 MOULD

- .1 Delete paragraph 9.5.3.3 in its entirety and substitute new paragraph 9.5.3.3

9.5.3.3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. If, in the opinion of the *Consultant*, the *Contractor* has been delayed in performing the *Work* and / or has incurred additional costs under paragraph 9.5.1.2, the *Owner* shall reimburse the *Contractor* for reasonable costs incurred as a result of the delay and as a result of taking those steps, and

GC 10.1 TAXES AND DUTIES

- .1 Add new paragraph 10.1.3:

10.1.3 Where the *Owner* is entitled to an exemption or a recovery of sales taxes, customs duties, excise taxes or *Value Added Taxes* applicable to the *Contract*, the *Contractor* shall, at the request of the *Owner* or the *Owner's* representative, assist with application for any exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

● ***[NOTE: 10.2.2, regarding provision of permits, should be reviewed on every project and amended if necessary.]***

- .1 Add to the end of paragraph 10.2.4, the following words:

“The *Contractor* shall notify the Chief Building Official or the registered code agency where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The *Contractor* shall be present at each site inspection by an inspector or registered code agency as applicable under the Ontario Building Code.”

- .2 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:

“Subject to paragraph 3.4.1, the”

GC 12.2 WAIVER OF CLAIMS

- .1 Delete the last sentence of subparagraph 12.2.3.4 and substitute:

For purposes of this subparagraph 12.2.3.4, “substantial defects or deficiencies” means those defects or deficiencies in the *Work* where the reasonable cost of repair of such defects or deficiencies exceeds:

- .1 if the *Contract Price* is \$2 million or less, the sum of \$50,000, before GST;
- .2 if the *Contract Price* exceeds \$2 million, the sum of \$100,000, before GST.

In any event, “substantial defects or deficiencies” shall include defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.

GC 12.3 WARRANTY

- .1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words:

"Subject to paragraph 3.4.1, the..."

Add new PART 13 as follows:

PART 13 OTHER PROVISIONS

GC 13.1 OWNERSHIP OF MATERIALS

- 13.1.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time of execution of the *Contract* shall remain the property of the *Owner*. All work and *Products* delivered to the *Place of the Work* by the *Contractor* shall be the property of the *Owner*. The *Contractor* shall remove all surplus or rejected materials as its property when notified in writing to do so by the *Consultant*.

● **[NOTE: confirm that this clause aligns with the terms of the insurance coverages provided under the contract.]**

GC 13.2 CONSTRUCTION LIENS

- 13.2.1 In the event that a construction lien is registered against the *Project* by or through a *Subcontractor* or *Supplier*, and provided the *Owner* has paid all amounts properly owing under the *Contract*, the *Contractor* shall, at its own expense:
- .1 within ten (10) days, ensure that any and all construction liens and certificates of action are discharged, released or vacated by the posting of security; and
 - .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.
- 13.2.2 In the event that the *Contractor* fails to conform with the requirements of 13.2.1, the *Owner* may set off and deduct from any amount owing to the *Contractor*, all costs and associated expenses, including the costs of borrowing the appropriate cash, letter of credit or bond as security and legal fees and disbursements. If there is no amount owing by the *Owner* to the *Contractor*, then the *Contractor* shall reimburse the *Owner* for all of the said costs and associated expenses.”

GC 13.3 CONTRACTOR DISCHARGE OF LIABILITIES

- 13.3.1 In addition to the obligations assumed by the *Contractor* pursuant to GC 3.7, the *Contractor* agrees to discharge all liabilities incurred by it for labour, materials, services, *Subcontractors* and *Products*, used or reasonably required for use in the performance of the *Work*, except for amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

GC 13.4 AS-BUILT DRAWINGS

- 13.4 Unless otherwise provided in the *Contract Documents*, the *Contractor* shall prepare as-built *Drawings* and provide them to the *Consultant* for review.

GC 13.5 DAILY REPORTS/DAILY LOGS

- 13.5.1 The *Contractor* shall cause its supervisor, or such competent person as it may delegate, to prepare a daily log or diary reporting on weather conditions, work force of the *Contractor*, *Subcontractors*, *Suppliers* and any other forces on site and also record the general nature of *Project* activities. Such log or diary shall also include any extraordinary or emergency events which

may occur and also the identities of any persons who visit the site who are not part of the day-to-day work force.

- 13.5.2 The *Contractor* shall also maintain records, either at its head office or at the job site, recording manpower and material resourcing on the *Project*, including records which document the activities of the *Contractor* in connection with GC 3.5, and comparing that resourcing to the resourcing anticipated when the most recent version of the schedule was prepared pursuant to GC 3.5.

GC 13.6 NEUTRAL APPOINTING AUTHORITY

- 13.6.1 For purposes of the Rules for Mediation and Arbitration of Construction Disputes CCDC 40, the term “neutral appointing authority”, as used in both the Rules for Mediation of CCDC 2 Construction Disputes and the Rules for Arbitration of CCDC 2 Construction Disputes shall mean the head of the construction section of the ADR Institute of Ontario, Inc. presiding at the time notice of the dispute is given pursuant to the *Contract*.

END OF DOCUMENT

5.0

CONTACTS

Ontario General Contractors Association
6299 Airport Road, Suite 703
Mississauga, Ontario
L4V 1N3 www.ogca.ca

Ontario Association of Architects
111 Moatfield Drive
Toronto, Ontario
M3B 3L6 www.oaa.on.ca

Ministry of Health and Long Term Care
Capital Planning and Strategies Branch
Health System Information Management and Investment Division
56 Wellesley Street West, 9th floor
Toronto, Ontario
M7A 2J9 www.moh.gov.on.ca

ADR Institute of Ontario, Inc.
234 Eglinton Ave. East, Suite 500
Toronto, Ontario
M4P 1K5 www.adrontario.ca/