



Ontario Association of Architects

INFORMATION BULLETIN

Architect Contract Alert – Requirements Regarding Cash Allowances for Construction Inspection and Testing (January, 2015)

It has come to the attention of the Ontario Association of Architects (OAA) that the City of Toronto is requiring architects to carry a cash allowance in the client/architect contract for the retention of construction inspection and testing companies directly by the architect.

While the OAA has been trying to reverse this contractual requirement, it has been unsuccessful after on-going correspondence, including a letter addressed to the City of Toronto Ombudsman.

- Traditionally, such cash allowances have been included in the owner/contractor contract as they serve to verify that the terms of the construction contract are being adhered to. The contractor has “... *total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents*”. (wording as per CCDC 2 - 2008 *Stipulated Price Contract*, 3.1 .1). The utilization of independent inspection and testing companies is a means toward verification that the contractor has adhered to the terms of the contract.

In keeping with good professional practice, the architect specifies that the selection of the independent inspection and testing companies is as named in the contract documents or subject to approval prior to award of contract by the general contractor. Alternatively, the client can either provide a list of acceptable companies or require approval of any proposed selections.

There are instances where the client has retained the inspection and testing companies due to a preference not to include cash allowances in the contract which are subject to a contractor’s mark-up for overhead and profit and also a preference to directly control the inspection and testing.

- By removing the cash allowances from the contractor’s contract, the testing and inspection companies become “Other Contractors” than the party named in the contract.

CCDC 2, 2008 defines the responsibilities of the owner in such situations under GC 3.2 - *Construction by Owner or Other Contractors*. The owner’s responsibilities are of a nature outside an architect’s experience and qualifications and fall under the purview of contractors, legal counsel, insurance advisors, etc. and should not be delegated to an architect.

- The services of testing and inspection companies in these circumstances are part of the delivery of construction and therefore are outside of the customary services of an architect that are covered under the architect’s professional liability insurance policy. Not only does this create an uninsured risk for the architect, it also does not seem to be in the best interest of the public or the client.

The OAA recommends that clients either revert back to including cash allowances in the owner/contractor contract or administer the cash allowances in-house.

Alternatively, the architect can assist a client by:

- a) Arranging for the retention of the testing and inspection companies on behalf of the City and certifying payment for the services performed, the same as is currently done when included in the contractor's progress application for payment and administration of cash allowances.
- b) Acting as an agent of the client, retain the testing and inspection companies subject to an indemnification and hold harmless from the client for any claim which may arise from carrying out such a service.

Note: While the OAA is specifically aware of the City of Toronto requirements, there may be other clients who have a similar requirement. In such cases, the information provided here applies.

In summary, architects should be aware of the added risk that they are taking when agreeing to retain the construction inspection and testing companies and should seek alternative contractual arrangements.