

## CCDC-2 Stipulated Price Contract March 2005 Update

A “Final Endorsement Version” of CCDC-2 has been circulated among the members of the Canadian Construction Documents Committee, and in March 2005 was granted endorsement by the Canadian Construction Association. Endorsement remains pending from the other CCDC members (Royal Architectural Institute of Canada, Construction Specifications Canada, and the Association of Consulting Engineers of Canada).

The new edition is structured identically to CCDC-2 1994 (the last revision), but contains subtle changes throughout, and two or three completely new topics. Commentary on some of the changes follows.

- **Article A-5: Payment**

The default interest rate is specified as prime+2% for the first 60 days, and a more punitive prime+4% after the first 60 days.

- **GC 2.2: Role of the Consultant**

In GC 2.2.4, the Consultant is given the positive duty of “promptly informing” the Owner of receipt of an application for payment from the Contractor. In GC 2.2.11, the Consultant is directed to make findings with respect to claims for a change in the contract price (see commentary on GC 6.6 below).

- **GC 4.2: Contingency Allowance**

GC 4.2.2 clarifies that the contingency allowance, if any, includes associated overhead and profit.

- **GC 5.3: Progress Payment**

The schedule for reacting to a progress payment application is changed significantly. Previously, the timetable was 10 days for Consultant review and 5 days (after issuance of a certificate) for payment. The new form requires payment within 20 days of receipt of application or last day of the billing period, whichever is later. The Consultant review is still supposed to happen within 10 days, but issuance of a certificate is no longer an essential trigger for the Owner’s payment

obligation. The realistic effect of this will be to increase the pressure on the Consultant to report to the Owner on time.

- **GC 6.1: Owner's Right to Make Changes**

In GC 6.1.1.2, the Owner now gets to make changes to the "Contract Time for the Work, or any part thereof", via Change Order.

- **GC 6.3: Change Directive**

GC 6.3.3 clarifies that Change Directives can not be used to direct a change in the contract time. In other words, prior agreement between Owner and Contractor on the adjustment to contract price will be required.

- **GC 6.6: Claims for a Change in Contract Price**

This is a completely new section:

"6.6.1 If the Contractor intends to make a claim for an increase to the Contract Price, or if the Owner intends to make a claim against the Contractor for a credit to the Contract Price, the party that intends to make the claim shall give timely Notice in Writing of intent to claim to the other party and to the Consultant.

"6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:

1. take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
2. keep such records as may be necessary to support the claim. "6.6.3 The party making the claim shall submit within a reasonable time to the Consultant a detailed account of the amount claimed and the grounds upon which the claim is based.

"6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim

account and the party making the claim shall, at such intervals as the Consultant may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

“6.6.5 The Consultant's findings, with respect to a claim made by either party, will be given by Notice in Writing to both parties within 30 Working Days after receipt of the claim by the Consultant, or within such other time period as may be agreed by the parties.

“6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.”

- **GC 9.1: Protection of Persons and Property**

This requirement is new, and arguably shifts some risk to the Contractor:

“9.1.2 Before commencing any work, the Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent in an inspection of the Place of Work.”

- **GC 9.4: Artifacts and Fossils**

This requirement is new. No more pocketing old coins turned up by the backhoe!

“9.4.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place or Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.

“9.4.2 The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.4.1, and shall advise the Consultant upon discovery of such items.

“9.4.3 The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.4.1. If conditions are found that would cause an increase or decrease in the

Contractor's cost or time to perform the Work, the Consultant, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE."

- **GC 9.6: Mould**

This is a significant addition dealing with the discovery and remediation of mould on site:

"9.6.1 If the Contractor or Owner observes or reasonably suspects the presence of mould at the Place of the Work, the remediation of which is not expressly part of the Work,

1. the observing party shall promptly report the circumstances to the other party in writing, and
2. the Contractor shall promptly take all reasonable steps, including stopping the Work if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
3. if the Owner and Contractor do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and Contractor.

"9.6.2 If the Owner and Contractor agree, or if the expert referred to in paragraph 9.6.1.3 determines that the presence of mould was caused by the Contractor's operations under the Contract, the Contractor shall promptly, at the Contractor's own expense:

1. take all reasonable and necessary steps to safely remediate or dispose of the mould, and
2. make good any damage to the Work, the Owner's property or property adjacent to the Place of the Work as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
3. reimburse the Owner for reasonable costs incurred under paragraph 9.6.1.3, and

4. indemnify the Owner as required by paragraph 12.1.

“9.6.3 If the Owner and Contractor agree, or if the expert referred to in paragraph 9.6.1.3 determines that the presence of mould was not caused by the Contractor’s operations under the Contract, the Owner shall promptly, at the Owner’s own expense:

1. take all reasonable and necessary steps to safely remediate or dispose of the mould, and
2. reimburse the Contractor for the cost of taking the steps under paragraph 9.6.1.2 and making good any damage to the Work as provided in paragraph 9.1.4 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
3. extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in paragraph 9.6.1.3 and reimburse the Contractor for reasonable costs incurred as a result of the delay, and
4. indemnify the Contractor as required by paragraph 12.1.

“9.6.4 If either party does not accept the expert’s finding under paragraph 9.6.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert’s determination the steps required by paragraphs 9.6.2 or 9.6.3, it being understood that by so doing neither party will jeopardize any claim the party may have.”

- **GC 11.1: Insurance**

The section on insurance has many small changes, including the incorporation of CCDC 41 as a source for minimum coverage requirements. In GC 11.1.1.4, the “All Risks” insurance coverage is now required to be extended to subcontractors. This makes an interesting conflict with BCCA’s recommended for of subcontract, CCA1, whose SCC 11.2.1 suggests that the subcontractor is not entitled to be added to all risk coverage.

**GC 12.3: Warranty**

GC 12.3.6, dealing with the individual warranties longer than one year which may be called for in the contract documents, states that “The Contractor’s responsibility ... shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.”