Blaney McMurtry LLP

PUBLICATION

New CCDC Design-Build Contracts

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In July 2013, the Canadian Construction Documents Committee (the "CCDC") released new versions of its CCDC 14 and CCDC 15 standard form contracts, the "Design-Build Stipulated Price Contract" and the "Design-Builder/Consultant Contract" respectively.

The new templates are specifically for contracts between an owner and a design build contractor. CCDC 14 governs the relationship between the contractor and the owner while CCDC 15 is intended to outline the obligations as between a consultant and the design-builder (often referred to as the prime contractor). CCDC 15 is not intended to be a stand-alone contract, but rather is in addition to the use of CCDC 14 where the project contemplates overlapping timeline for both design and construction, there is a single supplier for both design and construction, and a consultant who will have obligations to the design-builder. The 2013 CCDC 14 is substantively similar to the previous version released in 2000, but has some significant changes some of which are outlined in this article. The 2013 CCDC 15 has been greatly revised and is based upon other standard form contracts published by the Royal Architects Institute of Canada and the Association of Consulting Engineers of Canada.

Some New Provisions That May Warrant Specific Attention

DESIGN COPYRIGHT PROTECTION

The 2013 CCDC 14 features enhanced copyright protection for the consultants who design the project. It only permits the owner to use copies of the design one time for the specific project being constructed and the owner cannot alter the documents or provide them to a third party. The owner may retain copies of the design and use them only for their "use and occupancy" of the project. The 2000 version on the other hand allowed the owner to use the consultant's drawings "in connection with the [o]wner's design and construction… of the [w]ork" in addition to their use and occupancy.

TERMINATION BEFORE CONSTRUCTION

The 2013 CCDC 14 contains a liquidated damages clause if the owner terminates or suspends the project for more than 20 days before construction commences. The use of the term liquidated damages contemplates compensation for all design services performed and damages, including a reasonable profit.

DESIGN CHANGE ORDERS

Where an owner is considering making a change to the project, it typically requests that the design builder provide a proposal for the change. Where this involves additional design by the consultant and/or design builder , and the owner then elects not to proceed with the proposed change, the 2013 CCDC 14's compensation provision is now expanded such that compensation will be owed to the design builder for expenses incurred in preparing the change proposal, rather than only for the actual design services rendered.

INCREASED INSURANCE COVERAGE

Both the 2013 CCDC 14 and 2013 CCDC 15 have increased the minimum insurance coverage that design builders and consultants must carry. It is worth reminding that CCDC contracts are intended to be a general template for construction contracts. It is anticipated that, as in the past, contract provisions will be amended to suit the specifics of the project through the use of supplementary conditions, in particular where the CCDC 15 is used, as there may be additional exposure for the owner, the contractor and/or the consultant.

Blaney McMurtry's ACES group has in depth experience working with CCA and CCDC contracts. We would be pleased to assist you in understanding how the new 2013 CCDC 14 and 2013 CCDC 15 contracts may impact your business.