

What You Need to Know About the Changes to CCDC 2 2020

By Jerry Genge, Past President & Michael Tindale, Project Principal, Pretium Engineering Inc.

If you are managing construction contracts, then you have probably attended a webinar and reviewed a copy of the new *CCDC 2 2020 Stipulated Price Contract* that updates the well-worn *CCDC 2 2008*. If you have, then the technical information in this article will be a refresher. If you don't know about the new *CCDC 2 2020*, this article will give you a basic understanding of the major changes and how they can affect the day-to-day administration of your construction projects.

REDUNDANCY MINIMIZED

The new documents include *CCDC 2 2020* and *CCDC Master Specification Division 01 – General Requirements (CCDC Div. 01)*. These complement *CCDC Master Specification Division 00 – Procurement & Contracting Requirements (CCDC Div. 00)*, which was issued late in 2018 and which forms an integral part of this package of documents.

The general project administrative items are moved from the *CCDC 2* contract into the *Master Specification Division 01 – General Requirements*. This change allows project-specific information required to facilitate contract administration and other common technical requirements to be associated within the technical sections.

CCDC 2 is also coordinated with *CCDC Master Specification Division 00 – Procurement & Contracting Requirements*, which deals with information required by the bidders and is intended to be used with as few adjustments as possible.

Together, these help contract managers incorporate standard general and bidding requirements into contracts.

CHANGES TO THE LIST OF DEFINITIONS

There are several changes and additions to the definitions in *CCDC 2 2020*. Defined terms in *CCDC* contracts are identified using italics. Some key definitions are:

- **Consultant:** The reference to the “*Consultant’s authorized representative*” has been removed. The reference to an authorized representative has also been deleted from the definition of *Contractor* and *Owner*.
- **Contract Time:** *Contract time* now references *Ready-For-Takeover* instead of *Substantial Performance* in the definition and in Article A-1.3.
- **Other Contractor:** *Other Contractor* has been added to differentiate between the *Contractor* and other contractors that may be engaged by the *Owner*.

- **Ready-For-Takeover:** *Ready-For-Takeover* is a new term. The definition references new PART 12 – READY-FOR-TAKEOVER.
- **Payment Legislation:** *Payment Legislation* has been added to reference legislation in effect at the Place of Work.
- **Substantial Performance:** *Substantial Performance* is re-defined by removing the reference to when the Work is ‘ready for use’ as this now applies to *Ready-For-Takeover*.
- **Payment Legislation:** This has been added to be more generic and allows for changes in regional legislation to be automatically included in the contract without updating the *CCDC 2* document.

CHANGES TO THE GENERAL CONDITIONS

General Conditions – Payment

GC 5.3 Progress Payments is renamed *GC 5.3 Payment*. The payment timelines have been brought into line with the timelines in the *Construction Act*.

In the new *CCDC 2*, the consultant no longer needs to advise the owner of receipt of an application for payment, as the contractor is required to submit their application to the owner and consultant at the same time. The timeline for payment to the contractor following receipt of an application for payment is changed from 20 days to 28 days from receipt of a proper invoice, in keeping with the requirements of the *Construction Act*. The time allowed for the consultant to issue a certificate of payment to the owner is unchanged at 10 calendar days.

The *Construction Act* is silent on the role of the consultant relative to the payment process. Because of this, in some cases, it has



been interpreted that, if the contractor issues a proper invoice, the consultant is required to issue a payment certificate in the amount invoiced. This puts the consultant in a difficult position. *CCDC 2 2020* clarifies the role of the consultant.

If the consultant is not in agreement with the contractor's invoice, it can, within the 10-day time period, issue a payment certificate for a different amount, or, if none of the items for which a payment claim is made are acceptable, the consultant can reject the application. If the consultant issues a payment certificate that is for a different amount or rejects the application, the owner must issue a notice of non-payment to the contractor within 14 days of receipt of the application (10 + 4).

This 14-day notice is in accordance with the *Construction Act's* prompt payment requirements. In practice, the owner will likely direct the consultant to issue the notice of non-payment to the contractor on their behalf.

GENERAL CONDITIONS – SUBSTANTIAL PERFORMANCE

GC 5.4 Substantial Performance of the Work & Release of Holdback combines the previous two conditions: *GC 5.4 Substantial Performance of the Work* and *GC 5.5 Payment of Holdback Upon Substantial Performance of the Work*. With the blending of these general conditions:

- The value of work to be completed to obtain *Substantial Performance* is unchanged.
- The requirement that the work is “ready for use” is no longer a requirement of *Substantial Performance*, as this is now a requirement for *Ready-For-Takeover*.
- The 20-day timeline, from receipt of the contractor's application for *Substantial Performance* to advise the contractor if the work has been substantially performed, is unchanged.
- The value of work required to obtain *Substantial Performance* is unchanged.

What has changed? The “ready for use” requirements in *CCDC2 2008* have been removed from *Substantial Performance* and moved over to *Ready-For-Takeover*. Other requirements for *Substantial Performance* that have been moved into the new *Part 12 Owner Takeover - Ready-For-Takeover* are primarily related to project close-out requirements.

The timeline for release of the holdback payment has changed from the first calendar day following expiration of the holdback period stipulated in the lien legislation to no later than 10 working days following expiration of the holdback period. The introduction of *Ready-For-Takeover* makes this timeline compliant with the *Construction Act*.

THE DAY-TO-DAY IMPLICATIONS

Previously, if a contractor thought that they qualified for *Substantial Performance*, the contractor prepared their application, which was supposed to provide a comprehensive list of work to be completed or corrected (often didn't happen), along with an application for a review by the consultant to establish *Substantial Performance*. The consultant then had 20 calendar days to review the work and let the contractor know if they agreed. If the work was substantially performed, the consultant would issue a certificate of *Substantial Performance* to the contractor for publication,

which started the holdback period. Holdback payment was due on the day following expiration of the holdback period. At this same time, the consultant and contractor would mutually agree on a date for finishing the work.

Under *CCDC 2 2020*, the contractor need not submit a list of work to be completed; they need only submit an application for *Substantial Performance* (read: payment application for release of holdback). On receipt of that application, the consultant has 20 calendar days to review the work and verify the work has been substantially performed (no change here). If the consultant agrees the work is substantially performed (no agreement on a completion date is required), it will issue a certificate of *Substantial Performance*, which the contractor will publish, starting the holdback period that is now due no later than 10 days (change in timeline here) after expiration of the holdback period.

GENERAL CONDITIONS – READY-FOR-TAKEOVER

Part 12 Owner Takeover is also new in *CCDC 2 2020* and contains two new general conditions: *GC 12.1. Ready-For-Takeover* and *GC 12.2 Early Occupancy by Owner*.

GC 12.1 Ready-For-Takeover - Issuance of Substantial Performance is a prerequisite for attaining *Ready-For-Takeover*. The *Construction Act* definition of *Substantial Performance* includes the condition of being when the improvement to be made under the contract, or a substantial part thereof, is ready for use or is being used for the purposes intended, plus a dollar value based on a percentage of the total cost of the work. By requiring *Substantial Performance* to be issued in advance of *Ready-For-Takeover*, the *CCDC 2 2020* is still in compliance with the *Construction Act*, as it does not delay *Substantial Performance* or the release of holdback.

Removing the requirement that a portion of the work be ready for use from the requirement of obtaining *Substantial Performance* and creating the *Ready-For-Takeover* contract condition, eliminates the owner's ability to delay the issuance of *Substantial Performance* (and the subsequent release of holdback) on the excuse that they have not received maintenance manuals / as-built documents, etc. that are required to operate the building and make it ready for use.

GC 12.2 Early Occupancy by Owner is a new general condition that allows the owner to take occupancy of part of the work before *Ready-For-Takeover* has been attained, but in allowing this, it makes the owner responsible for the care of the occupied area and establishes the date for commencement of warranties related to the work as the date the area of work was taken over.

All documentation required as part of the application for *Substantial Performance* has been moved to *GC 12.2*. These include occupancy requirements, final cleaning, operation manuals, as-built drawings, testing, commissioning, and demonstrations and training. On receipt of the application for *Ready-For-Takeover* and the contractor's list of work to be completed or corrected, the consultant has 10 calendar days to review the work and let the contractor know if it agrees. Once *Ready-For-Takeover* is confirmed, a date for finishing the work is set by the consultant and contractor. This is a review of submitted documentation as required by the contract documents; a site visit is not required. There is no financial threshold that needs to be met to qualify for *Ready-For-Takeover*. There is no payment certification made as a result of meeting the requirements of *Ready-For-Takeover*. However, it may



be appropriate to add a line item in the contract that identifies the value of the documentation to be provided.

CONSTRUCTION SAFETY

Another significant change to the new *CCDC 2 2020* involve *Construction Safety*. Previously, under *GC 3.2*, unless the owner engaged other contractors or used their own forces, the contractor was solely responsible for construction safety. If the owner engaged other contractors or used their own forces, the owner assumed overall responsibility for construction safety, including insurance coverage. This has been removed from *CCDC 2 2020*. Under *GC 9.4*, the contractor is responsible for establishing, initiating, maintaining, and supervising all aspects of construction safety in connection with the performance of the work, but now the owner and contractor are jointly responsible for following health and safety precautions and complying with rules and regulations related to health and safety legislation. This joint responsibility eliminates the transfer for site safety to the owner as the ‘constructor.’ Now, if the owner engages a consultant, other contractors, or uses their own forces, the owner is responsible for ensuring these parties comply with the health and safety requirements established by the contractor at the place of work.

CASH ALLOWANCES

For *GC 4.1 Cash Allowances*, under *GC 4.1.2*, the contractor’s overhead and profit for “allowance” work is carried in the contract price, not in the allowance item. This clarifies that additional overhead and profit are not added to allowance items. This has not changed in *CCDC 2 2020*.

In *CCDC 2 2008*, if there were multiple cash allowance items in the contract, and one was depleted and another had a surplus, the surplus funds could not be transferred to top up the depleted allowance. This has been changed in *CCDC 2 2020, Item 4.1.4* to allow reallocation from one allowance item to another to cover a shortfall in an allowance.

INSURANCE

CCDC Insurance Requirements – CCDC 41 is referenced in *GC 11.1 Insurance* and *GC 13.1 Indemnification*. *CCDC 41* identifies the liability coverage required to be carried by the contractor. The general liability limits have been increased from \$5 million to \$10 million.

MASTER SPECIFICATION FOR DIVISION 01 – GENERAL REQUIREMENTS

At the start of this article, we mentioned that *CCDC Master Specification Division 01* was issued at the same time as *CCDC 2 2020*. The new *CCDC 2 2020* tries to correct overlap or duplication between the contract administration components in the various *CCDC* forms of contract and *Division 01* of the *NMS* specifications by moving several of the administrative items and owner requirements from *CCDC 2* into the *Division 01* of the specification.

To make cross-referencing the changes easier to follow and updating your specifications simpler, *CCDC* has prepared a matrix of the clauses relocated from *CCDC 2 2008* to *CCDC Div. 01*, and it is expected to be issued with the new documents.

This article has touched on only a few of the major changes. Project and contract administrators will have some homework to do to get fully up-to-speed. Hopefully, this summary has got you started. ■

Gerald R. Genge, P.Eng., C.Eng., BDS, BSS, C.Arb., Q.Med., is the past president of Pretium Engineering. He provides senior technical consulting as well as litigation support work for construction and negligence claims. He is qualified as an arbitrator, mediator, and ODACC adjudicator.

Michael G. Tindale, MAATO, is a project principal at Pretium Engineering Inc. He is responsible for standardization of CCDC forms of contract and general conditions. He also manages building restoration and new construction work.

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2051 Williams Parkway
Unit 21
Brampton, Ontario L6S 5T4
Tel: (905) 792-7792
Fax: (905) 792-7829
Cell: (416) 560-7700
E-mail: rocco@davroc.com
www.davroc.com

