



Ontario Association of Architects

## **Important Information for Architects Regarding the Ontario Realty Corporation's Consultant Contract**

2009-06-11

The Ontario Realty Corporation (ORC) has issued a new Standard Consultant Contract for ORC projects. As reported previously to members the ORC has used the OAA's Document 600 as the basis for their contract and then developed a set of standard supplementary conditions to accompany it. As already conveyed, members are reminded that while OAA representatives were involved in the discussions around the creation of the supplementary conditions, and their evolution, the supplementary conditions are an ORC document, not endorsed by the OAA. The following information is provided to OAA members in order that they may gain a better understanding of the intention of the various supplementary conditions and their potential impact on their practice.

OAA Council views this new consultant contract as an improvement over the previous ORC contract, and are encouraged that there is to be consistent use of the contract on ORC projects. OAA Council continues to have considerable concern over the inclusion of one clause in particular as noted below (GC 3.5) and continues to meet with the ORC to discuss those concerns and the implications for practices. In the interim, the OAA is monitoring its implementation in the field and encourages members who may be working on ORC projects to provide feedback directly to the OAA. The OAA also provides the following advice to members.

With the following information, members can make their decision to pursue ORC work based on the knowledge that a standard contract and set of supplementary conditions is in place. Members are also encouraged to contact the OAA directly for more information should they require it. Questions with respect to any liability and insurance matters should continue to be referred to Pro-Demnity Insurance Company (ProDem).

**The following is a list of the ORC Supplementary Conditions and their impact on the practice and client responsibilities including where the practice should analyze the implications prior to signing the new ORC Consultant Contract.**

### **AGREEMENT**

#### **Articles A-7 to A-9**

Articles are amended to have ORC project specific schedules attached. Where the client requirements are more onerous than OAA documents, members may wish to consult with Practice Advisory Services, ProDem and their own legal counsel before making a business decision.

#### **Articles A-11 to A-15**

Articles are amended and affect monetary issues related to payment of fees and reimbursable expenses.

## **Article A-16**

Defines government policy on conflict of interest. Members should take action to have sub-consultants bound by same terms and obtain declarations from their own employees confirming that they have no conflict of interest. In addition, any new employees brought on board should be required to make same declaration in employment agreement.

## **Article A-19**

Defines requirements for confidentiality. Members may wish to review ramifications with their own legal counsel. These provisions are modelled on existing Freedom of Information and Protection of Privacy legislation.

## **DEFINITIONS**

### **Record drawings**

Requirement that record drawings be "editable CAD files prepared to current ORC standards". Members should obtain current ORC standards for preparation of CAD files prior to commencing construction documents.

## **GENERAL CONDITIONS**

*Some of the amendments noted below have business implications which may have an impact on fee calculations.*

### **GC 1 Client's Responsibilities**

- 1.2.5            This clause has been deleted. Verify responsibilities of Client in Schedule 'A' to the contract.
- 1.2.8            This clause has been deleted. See new GC 3.5.
- 1.3.2 & 1.3.3   These clauses have been deleted. Co-ordinated with ORC Supplementary Conditions to CCDC 2.

### **GC 3 Construction Budget and Construction Costs**

- 3.2              Amended time frame.
- 3.5              New clause added. OAA continues to express concern over the inclusion of this new penalty clause and the impact that it has on the architect's ability to provide professional services, the impact on risk allocation, as well as the impact on professional liability insurance. These discussions continue with ORC via a working group of OAA representatives. OAA Council does not support the inclusion of this clause. Members may discuss insurance implications further by contacting ProDem. In the interim, practices entering into an agreement which contains this clause should not alter their professional fees to accommodate this clause. Further information regarding its practical implementation in the field is being gathered.

### **GC 5 Copyright and Use of Documents**

- 5.4              Amended requirement for use of client's instruments of service to exclude payment of "any amounts in dispute between parties".

5.6 to 5.9        Clauses have been added which deal with future alterations, infringement of patents, ownership of patents developed for the project, and requirement for record drawings in editable CAD format (also refer to Definition of Record Drawings).

#### **GC 7 Liability of the Architect**

7.1 & 7.2        Clauses deleted and replaced with defined insurance coverage requirements.

7.5                Clause has been deleted and replaced with wording which reflects current status of law.

7.8-7.9         Practices may wish to review these new clauses with their own legal counsel. Note that the ORC Supplementary Conditions can not contain any indemnification by ORC due to Ontario *Financial Administration Act*.

#### **GC 8 Suspension and Termination**

Note changes which affect time frames, client obligations for payment and additional architect responsibilities.

#### **GC 12 Payments to the Prime Consultant**

12.1             Amended to clarify that the client has 10 calendar days to approve or reject invoice (also relates to Article A-14)

12.5             Note third paragraph which indicates where additional services were not authorized in writing prior to implication, such services will be dealt with in the same manner as client predetermined requested changes.

#### **GC 14 Contract Performance**

ORC will continue with their Contractor (Consultant) Evaluation Process under their new business model. The OAA will be participating in discussions with ORC via the Strategic Opportunities Committee about the process.

#### **GC 15 Record Drawings**

Note the requirement for record drawings within a set time frame and client's right to retain and subsequently to withhold an amount for non-performance. Practice should reinforce general contractor requirements for as-builts in their construction documents. (Note: ORC supplementary conditions to CCDC 2, paragraph 5.2.10 should match)