**Practice Tip – PT.23.4**

**Attachment 2**

**May 21, 2012**

**Recommended Supplementary Conditions for
Construction Management Contract –
for Services and Construction,
CCDC 5B –2010 – Stipulated Price Option (Appendix)**

**CCDC 5**B **– 2010 - Construction Management Contract – for Services and Construction - Stipulated Price Option (Appendix)**

The following are recommended supplementary conditions for the Appendix to CCDC 5B, 2010 contract, for use when the parties convert the 5B into a Stipulated Price option. To incorporate their use you can copy/paste from the Word document into the front end of the project manual specifications with appropriate headings and footers with the project name, practice name, specification section, page numbers etc. utilizing the standard specifications section/page format. Coordinate the sequence and numbering with other amendments or supplementary conditions.

Note that the OAA recommended amendments and supplementary conditions that apply to the Base Contract are contained in a separate attachment to Practice Tip PT.23.4.

**Do Not Include This Cover Page In Your Specifications**

**Recommended SUPPLEMENTARY CONDITIONS for
Construction Management Contract – for Services and Construction,
CCDC 5B, 2010 - Attachment for Stipulated Price Option (Appendix)**

Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, General Conditions, these amendments, additions and modifications shall govern.

**GC 2.3 CONSULTANT’S RESPONSIBILITIES**

* Add at the end of paragraph 2.3.9. ‘The *Owner* and the *Construction Manager* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings made in accordance with paragraphs 2.3.7., 2.3.8. and 2.3.9’.

**GC 2.5 DEFECTIVE WORK**

* Add new subparagraphs 2.5.1.1 and 2.5.1.2:

.1 The *Construction Manager* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.

.2 The *Construction Manager* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

**GC 3.8 LABOUR AND PRODUCTS**

* Add new paragraph 3.8.4:

3.8.4 The *Construction Manager* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

**GC 3.15 SERVICES**

* Renumber ‘New GC 3.14 – Services’ as ‘GC 3.15 – Services’

**GC 4.1 CASH ALLOWANCES**

* Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the Consultant’s direction to cover the shortfall. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.

* Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

4.1.5 The net amount of any unexpected cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the Contract Price by Change Order.

* Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7.

4.1.7 At the commencement of the Work, the Construction Manager shall prepare for the review and acceptance of the Owner and the Consultant, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be Owner purchased and Construction Manager installed or hooked up are required at the site to avoid delaying the progress of the Work.

* Add new paragraph 4.1.8:

4.1.8 The Owner reserves the right to call, or to have the Construction Manager call for competitive bids for portions of the Work, to be paid for from cash allowances.

**GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

* Add new paragraph 6.4.5

6.4.5 The Construction Manager confirms that, prior to bidding the Project, it carefully investigated the Place of the Work and applied to that investigation the degree of care and skill described in paragraph 3.14.1. The Construction Manager is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Construction Manager by such careful investigation undertaken prior to the submission of the bid.

**GC 6.5 DELAYS**

* Delete the period at the end of paragraph 6.5.1, and substitute the following words:

‘…, but excluding any consequential, indirect or special damages.’

* Add new subparagraph 6.5.6.

6.5.6 If the Construction Manager is delayed in the performance of the Work by an act or omission of the Construction Manager or anyone employed or engaged by the Construction Manager directly or indirectly, or by any cause within the Construction Manager’s control, then the Contract Time shall be extended for such reasonable time as the Consultant may decide in consultation with the Construction Manager.

The Owner shall be reimbursed by the Construction Manager for all reasonable costs incurred by the Owner as the result of such delay, including all services required by the Owner from the Consultant as a result of such delay by the Construction Manager and, in particular, the cost of the Consultant’s services during the period between the date of Substantial Performance of the Work stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of Substantial Performance of the Work achieved by the Construction Manager.

**GC 9.1 PROTECTION OF WORK AND PROPERTY**

* Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

.1 Errors in the Contract Documents which the Construction Manager could not have discovered applying the standard of care described in paragraph 3.14.1;

* Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any Work, the Construction Manager shall determine the locations of all underground utilities and structures indicated in the Contract Documents, or that are discoverable by applying to an inspection of the Place of the Work the degree of care and skill described in paragraph 3.14.1.

**GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

* Add to paragraph 9.2.6 after the word ‘responsible’, the following new words:

or whether any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,

* Add ‘and the Consultant’ after the word ‘Construction Manager’ in subparagraph 9.2.7.4.
* Add to paragraph 9.2.8 after the word ‘responsible’, the following new words:

or that any toxic or hazardous substances or materials already at the Place of the Work (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the Construction Manager or anyone for whom the Construction Manager is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the Owner or others,

**GC 9.5 MOULD**

* Add ‘and the Consultant’ after ‘Construction Manager’ in subparagraph 9.5.3.4.

**GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

* Delete from the first line of paragraph 10.2.5 the word, ‘The’ and substitute the words:

‘Subject to paragraph 3.14.1, the…’

**GC 12.1 INDEMNIFICATION**

* Add new clause 12.1.1.3.

12.1.1.3. The Construction Manager shall indemnify and hold harmless the Consultant, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the Construction Manager’s performance of the Contract, provided such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the Construction Manager or anyone for whose acts the Construction Manager may be liable, and made in writing within a period of 6 years from the date of Substantial Performance of the Work as set out in the certificate of Substantial Performance of the Work, or within such shorter such period as may be prescribed by any limitation statute or the province or territory of the Place of Work.

**GC 12.3 WARRANTY**

* Delete from the first line of paragraph 12.3.2 the word, ‘The’ and substitute the words:

‘Subject to paragraph 3.14.1, the…’.

~ END ~

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.