



# **New CCDC 2 – 2020 Stipulated Price Contract & Contract Best Practices: What you need to know**



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**April 20, 2021**

The information contained in this presentation does not constitute legal advice.  
This presentation is for information purposes only.

**WeirFoulds**<sup>LLP</sup>



# Overview

What we'll cover ...

- **CCDC 2 overview**
- CCDC 2 (2020) key changes:
  - Payment Terms
  - Safety
  - Ready-for-Takeover and Early Occupancy
  - Indemnification and Waiver
  - Insurance
  - Review of Contract Documents
  - Other changes
- Division 01 – General Requirements
- Supplementary Conditions: are they still needed?
- Contract Best Practices and Costly Mistakes

# CCDC Suite of Contracts

<u>Project Delivery Model</u>	<u>Contract</u>
Stipulated Price / Lump Sum / Fixed Price	CCDC 2
Cost Plus	CCDC 3
Unit Price	CCDC 4
Construction Management (CM at risk)	CCDC 5B
Construction Management (CM not at risk)	CCDC 5A (with CCDC 17)
Design-Build	CCDC 14
Civil Works	CCDC 18
Integrated Project Delivery	CCDC 30

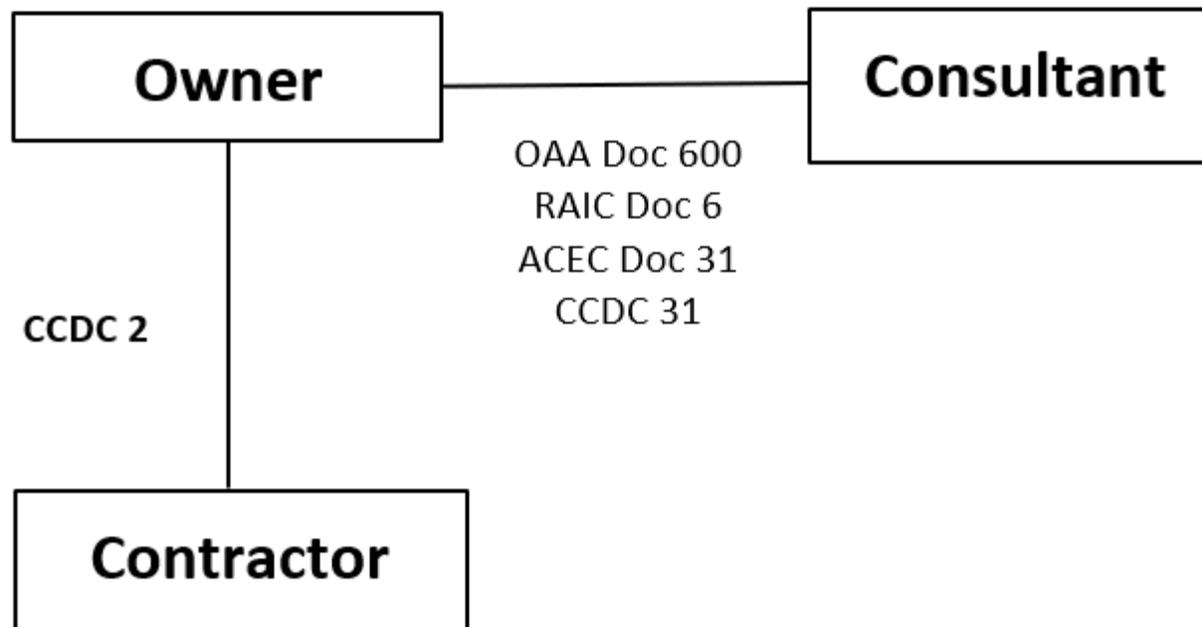
*\*CCA-1 Subcontract (may be updated in the near future)*

Canadian Construction Documents Committee

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# CCDC 2 – Project Structure

“Traditional” ... project is fully designed, tendered, then built





# CCDC 2 – Document Structure

*Three parts to the document:*

## Agreement

- Parties
- Project location
- Scope
- Contract Time
- Contract Documents
- Contract price
- Notice information
- Signatures

## Definitions

- Meaning of essential terms
- Applies to all Contract Documents

## General Conditions

- Contract Administration
- Execution of the Work
- Payment
- Changes
- Default Notices
- Dispute Resolution
- Insurance
- Indemnification
- Waiver
- Warranty



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# Payment Terms

- **Refinement of payment terms:**
- All payment applications (“pay apps”) go to the Consultant **and to the Owner** [GC 5.2.1]
- Pay apps must comply with requirements of “Payment Legislation” [GC 5.2.6, 5.5.4]
- Owner (not Consultant) must notify the Contractor of rejection of a pay app [GC 5.3.1.1]
- Owner must pay in 28 days and in compliance with the Payment Legislation [GC 5.3.1.2, 5.5.4]
- Pay apps must include CCDC 9A stat decs [GC 5.2.7] and evidence of WSIB compliance [GC 5.2.7]





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# Safety

Contractor now responsible for overall health and safety on Project ... *even if* the Owner brings on other contractors [deletion of old GC 3.2.2.2]

## **BUT:**

- both parties must comply with health and safety legislation [GC 9.4.3]
- owner must ensure other contractors and its own forces comply with Contractor's health and safety precautions [GC 9.4.4]



owner should have language  
in its other contracts



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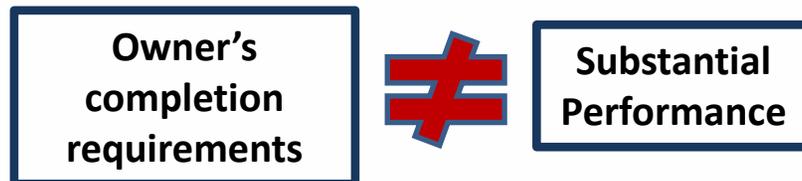
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# Ready-for-Takeover and Early Occupancy

## - Ready-for-Takeover:

Pervasive concept throughout CCDC 2 (2020)

Address misalignment between contractual completion requirements and legislations' "substantial performance"



Largely replaces "Substantial Performance of the Work" as key milestone



# Ready-for-Takeover and Early Occupancy

## - Ready-for-Takeover:

### RFT pre-requisites (GC 12.1.1):

.1	Consultant certified or verified Substantial Performance
.2	Compliance with AHJ occupancy/occupancy permit requirements
.3	Final cleaning and waste removal*
.4	O&M documents necessary for immediate operation and maintenance*
.5	Copy of as-built drawings available on site
.6	Startup, testing required for immediate occupancy*
.7	Owner has been provided ability to secure access to the Work*
.8	Demonstration and training*

\* as/if required by the Contract Documents

# Ready-for-Takeover and Early Occupancy

## - Ready-for-Takeover:

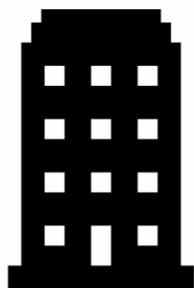
If any of the following must be deferred because of conditions reasonably beyond the Contractor's control (or if the parties agree), then RFT will not be delayed (GC 12.1.2):

.1	Consultant certified or verified Substantial Performance
.2	Compliance with AHJ occupancy/occupancy permit requirements
<b>.3</b>	<b>Final cleaning and waste removal</b>
<b>.4</b>	<b>O&amp;M documents necessary for immediate operation and maintenance</b>
<b>.5</b>	<b>Copy of as-built drawings available on site</b>
<b>.6</b>	<b>Startup, testing required for immediate occupancy</b>
.7	Owner has been provided ability to secure access to the Work*
.8	Demonstration and training*

# Ready-for-Takeover and Early Occupancy

## - Early Occupancy:

- Owner can now occupy all or part of the Work before Ready-for-Takeover.
- Preconditions:
  - contractor must agree (acting reasonably)
  - must have prior approval from AHJs
- If Owner occupies part of the Work:
  - that part is deemed to have achieved RFT
  - care of that part of the Work passes to the Owner
  - warranty period on occupied part starts





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# Indemnification and Waiver

- **Timing:** Timing of indemnification claims [GC 13.1] and waivers of claims [GC 13.2] are now tied to Ready-for-Takeover (instead of substantial performance)
- **Limits on Indemnification:** the obligation to indemnify the other party is now limited to direct loss and damage (liability for indirect, consequential, punitive and exemplary damages is excluded) [GC 13.1.2.3]
- **Indemnification for Third Party Claims:** the obligation to indemnify in respect of third party claims is without limit [GC 13.1.2.4]
- **Monetary Caps:** monetary caps on indemnity claims remain [GC 13.1.2.1]





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# Insurance

## GC 11.1 Insurance & CCDC 41 – Insurance Requirements

- All insurance requirements have been changed to make reference to *Ready-for-Takeover* date
- Increased insurance limit of \$10M (from \$5M) per occurrence for general liability, automobile liability and manned aircraft/watercraft liability insurance
- New unmanned aerial vehicle liability insurance requirement (\$5M)
- New contractor's pollution liability insurance requirement (\$5M)



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# Review of Contract Documents

- The Contractor's obligation to review contract documents is now only for the purposes of "facilitating co-ordination and execution of the Work" [GC 1.1.3]
- Previous GC 3.4.1 contemplated review that was to the Contractor's best knowledge, information and belief (and was frequently modified by supplementary conditions ...)





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## Other Changes

- **Delays:** Delay by stop work order entitles contractor to time extension but only if stipulated RFT date cannot be achieved [GC 6.5.2]
- **Change Directives:** Categories of costs that can be charged refined. Subcontract pricing mechanism must be approved by owner. Can no longer charge for wages of personnel engaged in review of shop drawings, fabrication drawings, etc. or processing changes. [GC 6.3]
- **Adjudication:** Added throughout. Does not impact prescribed dispute resolution process. [GC 8.2]
- **Cash Allowances:** Reallocation of unexpended cash allowances to cover shortfalls is permitted. Increase in Contract Price only occurs if actual cost under all cash allowances exceeds total allowance amounts under the Contract. [GC 4.1]



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# Division 01

- Intended (but not required) to be used with CCDC 2 (2020)
- Available in MS Word for editing

**CCDC 2 (2008)**

Documents at the site (GC 3.9)  
Shop drawings – partially (GC 3.10)  
Cutting, remedial work - partially (GC 3.12)  
Cleaning – partially (GC 3.13)  
Some close-out procedures (GC 3.13.3)  
Bonding requirements (GC 11.2)

**If using Division 01,  
list it in Article A3**

**CCDC Division 01**



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# Supplementary Conditions: Are They Still Needed?



CCDC 2 (2020) resolved *some* changes that were frequently added as supplementary conditions ...

But expect owners to still use SCs to address things like:

- enhanced schedule obligations
- proper invoice submission procedures
- deficiency correction
- maintenance, deficiency, or warranty holdback
- set-off
- removal of construction liens
- liquidated damages
- modified dispute resolution clauses
- expanded indemnity obligations
- COVID-19
- Excess Soil Regulation 406/19



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## Costly Mistakes:

1. Failing to list and describe the Contract Documents properly.
2. Failing to flow down risk and obligations in the prime contract to subcontractors.
3. Accepting improper risk (e.g. risk of site conditions when no site investigation was performed, liability related to review of drawings and specifications)
4. Adopting unlimited liability by agreeing to unreasonable indemnities (e.g. that include third parties, unknown parties, and cover “all costs and damages” with no caps)
5. Failing to review and comply with contract notice requirements



# Contract Best Practices:

Some simple and inexpensive solutions can mitigate substantial risk:

1. Review proposed contract form carefully during procurement.
  1. Are contract terms up for negotiation?
  2. Do contract terms comply with legislation?
  3. Get broker's advice on insurance terms
  4. Identify red flag clauses (e.g. expanded indemnities, unreasonable risk assumption, removal of liability caps)
2. Strong set of standard subcontract supplementary conditions that:
  1. properly reflect risk and entitlements in prime contract (e.g. scope, time extensions, compensation, indemnity obligations)
  2. modify onerous CCA-1 clauses
  3. improve dispute resolution clauses
3. Know when to get advice!





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# Questions?

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