

Here's the Drill: The New CCA 1 – 2021: Stipulated Price Subcontract

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In December 2021 the Canadian Construction Association released an updated version of its widely used standard form stipulated price subcontract, the CCA 1-2021: Stipulated Price Subcontract. The updated subcontract contains several changes from its predecessor, the CCA 1-2008. Notably, the new CCA 1-2021 has been modified to align more closely with the new CCDC 2-2020 stipulated price prime contract. Below is a high level summary of some of the key changes in the new CCA 1-2021 subcontract.

If your organization uses the CCA 1 subcontract, it will want to consider migrating to the new subcontract form and updating your supplementary conditions accordingly.

Payment terms

Similar to the CCDC 2-2020, the payment terms in the new CCA 1-2021 now clarify that the Contractor's payment obligations are subject to "Payment Legislation". This would include the prompt payment rules under Ontario's *Construction Act* and similar prompt payment legislation that may be introduced in other provinces.

In the event of the Owner's non-payment to the Contractor, the Contractor is still required to take certain steps including enforcing its lien rights to recover all amounts unpaid to the Subcontractor and providing written notice of those steps to the Owner. However, unlike the CCA 1-2008 the Contractor is no longer required to stop performing work.

Ready-for-Takeover

The new CCDC 2-2020 introduced "Ready-for-Takeover" as the key contractual milestone in the contract and the new CCA 1-2021 has followed suite. The 1 year warranty period under the CCA 1-2021 subcontract will now start running from Ready-for-Takeover for example.

If the prime contract documents do not contemplate Ready-for-Takeover (as would be the case if the owner and contractor are using an older CCDC contract form such as the CDC 5B-2010 construction management contract), the references to Ready-for-Takeover in the CCA 1-2021 are deemed to refer to "Substantial Performance of the Work".

It is important to remember that while Ready-for-Takeover replaces Substantial Performance of the Work as the key contractual milestone, Substantial Performance of the Work is still relevant for purposes of provincial statutory lien rights and release of holdback.

Early Occupancy by the Owner

The CCA 1-2021 adds a new section related to the Owner's rights to occupy a part or entirety of the Work. This new section

resembles the new early occupancy section added to the new CCDC 2-2020. Most significantly:

- The Contractor must consult the Subcontractor and obtain its agreement before making any agreement with the Owner for early occupancy
- The Subcontractor will stop being liable for care of the part of its work that is being used
- The Subcontractor's warranty period for the part of its work that is being used will start to run

Adjudication

The CCA 1-2021 states that nothing under the Subcontract is deemed to affect the rights of parties to resolve any dispute by adjudication (which will be relevant for provinces that contemplate statutory adjudication such as Ontario).

Prime Contract Flow Down

Like its 2008 predecessor, the CCA 1-2021 gives the parties the option of selecting whether the Prime Contract or the Subcontract will take precedence in the event of a conflict between the two. If the parties elect to have the Prime Contract take precedence, they now also have the option of listing certain Subcontract provisions that would nevertheless not be subordinate to the Prime Contract.

Division 01

When the CCDC 2-2020 was published, the CCDC also published its CCDC Master Specification for Division 01 – General Requirements. Certain items in the general conditions of the previous CCDC 2-2008 are not present in the CCDC 2-2020 and are instead addressed in CCDC's new Division 01 form, such as terms related to cutting, remedial work and cleanup. These clauses are similarly absent from the new CCA 1-2021. However, as with the CCDC 2-2020 it is important to remember that the use of the CCDC Division 01 document is not assumed in the CCA 1-2021 form and the parties will need to expressly list it as a contract document if it is being used.

Indemnification

The new CCA 1-2021 adds a noteworthy limitation on the parties' obligation to indemnify each other under the Subcontract. Now, the obligation to indemnify a party for losses it suffered is restricted to "direct loss and damage" and excludes indirect, consequential, punitive and exemplary damages. This significantly alters the parties' indemnification obligations under the Subcontract and both contractors and subcontractors will want to consider this change carefully.

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