

Here's the Drill: Stay Up to Date with Recent CCDC Construction Contract Standard Form Updates

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Key industry standard form contracts created by the Canadian Construction Documents Committee ("CCDC") have been updated following consultation with industry stakeholders across all sectors of the construction industry. These 2023 updates are intended to reflect changes in market trends and the legal landscape governing construction projects in Canada. This article will discuss important amendments to the following standard contract forms:

- **CCDC 02MA – 2023 Master Agreement between Owner and Contractor:** This form is intended to be used by Owners and Contractors entering into agreements for on-going construction programs. This Master Agreement establishes contractual terms and conditions (excluding scope, time, and cost) for multiple projects during a defined period so that general terms and conditions applying to each specific work arrangement do not need to be re-negotiated. These contracts if structured properly can provide significant cost and time savings for both Owners and Contractors, the ability to leverage existing rapport among contracting parties and the freedom to make adjustments when required for specific work orders.
- **CCDC 4 – 2023 Unit Price Contract:** This form is intended to be used as a standard prime contract between an Owner and Contractor and contemplates pre-determined rates for each specified unit. Various factors including material cost, overhead and labour are typically embedded in the price per unit. This form may provide particular benefit where the project scope may be changed throughout the course of a project.
- **CCDC 18 – 2023 Civil Works Contract:** This form is intended to be used as a standard prime contract for civil works construction between an Owner and Contractor. Generally, these contracts are used on projects that involve works related to roads, dams, bridges, underground utilities, and the like.

Overview of Recent CCDC Standard Form Contract Updates

The following section highlights some notable amendments to the standard form contracts listed above:

- **Notice in Writing:** To align with other CCDC contracts, Article A-6 of the CCDC 18 – 2023 allows for the delivery of effective notices electronically. This seemingly minor change can have significant practical implications on a party's ability to protect their rights under an agreement when, for example, submitting claims or notices of delay.
- **Alignment With Prompt Payment Legislation:** Payment and invoicing timelines and procedures have been modified such that they now largely reflect the invoicing and payment timelines mandated by the various provincial prompt payment legislative regimes.
- **Contract Documents.** Each standard form establishes a hierarchy to be referred to in the event of a conflict among various Contract Documents, as well as obligations pertaining to the review and compliance with such documents. Notable changes include:
 - **Document Review:** These new provisions limit the Contractor's obligations with respect to the review of Contract Documents to reviewing the documents for purposes of facilitating co-ordination and execution of the work by the

Contractor.

- **Documents at the Site:** Contractors are no longer required to keep a copy of the Contract Documents, submittals, reports, and records of meetings at the Place of the Work and make such documents available to the Owner and the Consultant.
- **CCDC Division 01 Master Specifications Document:** CCDC has removed various clauses related to Shop Drawings, Use of the Work, Cutting and Remedial Work, and Cleanup. These topics are now notably dealt with in the CCDC Division 01 Master Specifications template, which was published in 2020.
- **Substantial Performance and Payment of Holdback:** Significant changes were made to the provisions dealing with substantial performance and the release of holdback.
- **Change Directives:** Additional items have been included as compensable costs for change directive work.
- **Ready-for-Takeover:** A new contractual milestone called “Ready-for-Takeover” has been introduced in each contract, along with prerequisites for Contractors to fulfill in order for this milestone to be met. These prerequisites include, among other things, the achievement of substantial performance, providing evidence of compliance for occupancy, final cleaning, and the delivering various close-out documents. Ready-for-Takeover largely replaces Substantial Performance of the Work as the predominant contractual milestone in the contracts.
- **Early Occupancy by the Owner:** In each contract, a new section provides for the Owner’s right to take early occupancy of the premises. If the Owner does take early occupancy, the Contractor ceases to be liable for the care of that portion of the Work, Ready-for-Takeover is deemed to have been attained in respect of the occupied portion of the Work, and the warranty period in respect of that portion of the Work begins running.

Ultimately, parties should take care when reviewing and entering into agreements using the new CCDC 02MA, CCDC 04, and CCDC 18 contract forms. Notably, the various updates may have significant impacts on the validity and effect of any Supplementary Conditions that were developed for the prior versions of these contracts. Parties that intend on using Supplemental Conditions that were developed for the prior versions of these contract should ensure they are properly updated to reflect the changes prior to signing the contract.

We anticipate other CCDC contracts will be updated shortly and will publish further updates once they are.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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