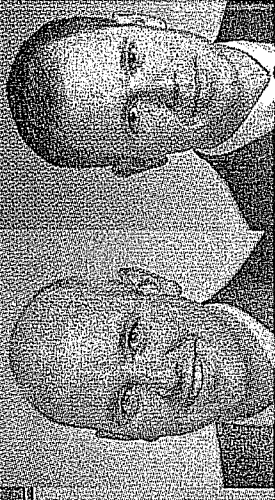


POINT COUNTER POINT

With Norm Streu & Chris Hirst



Understanding payment provisions in CCDC 2

This is the final installment in our series of articles on the 2008 CCDC 2.

In this article we highlight some further important changes in the CCDC 2, of which to be aware.

First, portions of the payment provisions in GC 5 have been altered to extend the times for review by the Consultant and payment by the Owner.

In the 1994 CCDC 2, payment was to be made within five days of the certification of the progress draw by the Consultant with certification being required within 10 days of the Consultant receiving the application.

Now, an application for payment is to be reviewed within 10 calendar days of receipt by the Consultant and payment by the Owner is to take place within 20 days after receipt by the Consultant of the application for payment, or the last day of the monthly payment period, for which the application for

payment was made. A similar change has been made with respect to applications for substantial performance.

This is where the timeline for the Consultant to respond to an application for substantial performance has been extended to 20 days from the combined 17 days, which existed in the 1994 version.

Second, the insurance provisions of the 2008 CCDC 2 have been extensively modified.

Limits for general liability insurance have been increased to \$5 million from \$2 million with the deductible rising to \$5,000 from \$2,500.

In addition, the wording in the 2008 CCDC 2 is clearer with respect to the Contractor's obligation to ensure that both the Owner and the Consultant are covered for the negligence of the Contractor.

Interestingly, the 2008 CCDC 2 specifically incor-

porates the latest version of the CCDC 41 Insurance Requirements in effect at the time of bid closing.

CCDC 41 is expected to evolve more readily with insurance trends regarding limits and exclusions than the standard form contract.

Accordingly, it will be important for Contractors and Owners alike to keep a current version of CCDC 41 on hand.

Third, the indemnity provisions have been amended so that the indemnity obligations as between the Owner and the Contractor mirror one another.

Significantly, while there continues to be limits on the indemnity to be provided as between the Owner and the Contractor, there is explicitly no limit on indemnification for claims made by third parties.

Fourth, there is an entirely new condition, which deals with the issue of mould and sets out a process by which the costs arising from the

discovery of mould, whether toxic or not, are to be dealt with by the Contractor and Owner.

This includes the costs of obtaining independent expert advice as to the existence and/or cause of mould on site.

Finally, the warranty period of one year has remained unchanged.

However, there is a new provision, which clarifies that extended warranties to be issued by warrantors are to be issued in the name of the Owner and that a Contractor's responsibility with respect to extended warranties only extends to obtaining the warranty.

Many of the changes to the CCDC 2 are in the nature of clarifications of existing contractual provisions where clearly the authors were attempting to make the contract easier to understand.

However, as discussed in our series of articles, there are also substantive changes to this widely used standard

form contract with which industry players need to be familiar.

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