

Construction File:

--- “CCDC5B and Time & Material Subcontracts” ---

The [CCDC 5B-2010 Contract for Services and Construction](#) has seen its popularity boom in recent years. As CCDC describes it in its guide, it is “essentially a cost-plus contract” between the Owner and Construction Manager (“CM”) unless and until one of its options is exercised.

For the CM, there are several different compensation options under Article A-5 that allow flexibility for projects with a significant portion of cost plus work and pre-construction services. Schedules A1 and A2 outline the scope, fixed and reimbursable expenses for the Services and in Schedule B, it specifies the CM personnel rates for both the Work and Services.

The 5B is an “at risk” construction management contract so trade contractors are contracted to the construction manager. This is typically done under a CCA 1 Stipulated Price Contract.

But what happens if the Construction Manager looks to engage a Subcontractor on a time and materials (T&M) basis?

One option is to use the [CCA 1 contract](#). The CCA-1 contract is widely understood in industry and contains clauses that clearly define responsibilities and mechanisms to resolve disputes, amongst others. Without a standard contract developed for T&M work between a CM and a subcontractor, using the CCA1 is a good place to start.

The Article 5.1 Subcontract Price in the CCA 1 contract can refer to an appendix/supplementary which outlines the unit rates for personnel, tools etc. In addition to CCA-1 Article 5.1 Subcontract Price, the CM and the subcontractor should clearly articulate the T&M approach in the CCA-1 Articles 1A/2A/3A or 1B/2B/3B. This is specifically important in Article 2.1A, where deviations from the prime contract are to be listed.

Critically, the 10% lien holdback must still be deducted from each invoice.

Parties may wish to consult an experienced [construction](#) lawyer for review and assistance.

Important considerations and challenges

- Must include a clear scope of work and schedule (and the CM must be closely monitoring these.)
 - Determining a deficiency holdback can be convoluted.
 - Payments based on T&M can be more complicated. Payments based on unit rates may be more straightforward so long as the estimated quantities are close to the actual quantities.
 - Subcontractors should ask for a clause that allows for an adjustment to its rates when the quantities vary substantially.
 - Establish a clear and transparent mechanism for tracking time and/or quantities on site. These are typically required for verification in progress claims.
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While the above items are important for any contract, this is especially true when the contract in use is not a stipulated price.

CCDC 5B Article A-8 Options

The CM should discuss with the Owner its intention to use T&M with a subcontractor, and any implications to the Owner and the Project. Using T&M could complicate a transition to the various options under CCDC 5B Article A-8 Options (stay as essentially cost-plus, conversion to stipulated sum, GMP, and GMP with cost savings.)

Conversely, *before* an option is exercised, the subcontractor also needs to understand the anticipated Article A-8 Options that the Owner and CM intend to use. This should be asked before bidding and before signing a contract.

In closing and as with any contract, all parties should discuss and ensure the contract reflects mutual understanding, expectations and intent. In short, get it in writing. And as always, [read your contract](#).
