

Construction File:

Supplementary Conditions and Standard Construction Documents: Guidance for General Contractors and Trade Contractors

Introduction

In this Construction File, we'll explore the use of supplementary conditions in standard form contracts and examine the steps that general and trade contractors can take to understand their impact. We always recommend consulting a qualified and experienced construction lawyer when deemed necessary.

The use of CCDC contracts and [CCA 1 subcontracts](#) are the foundation of construction delivery for institutional, commercial and industrial projects in Canada. CCDC and CCA documents are relied upon as industry standards for their fairness and balance towards all parties. BCCA encourages general contractors to use the CCA-1 subcontract and act reasonably in adding supplementary conditions. Equally, we encourage owners to use CCDC contracts and act reasonably in adding supplementary conditions, understanding that oftentimes a flow down provision will exist between their prime contract down to subcontractors.

Supplementary conditions can be expected for the reasons we describe below. However, all too often, egregious supplementary conditions distort the Articles, Definitions, intent and language of standard contracts. It adds in legalese to what is otherwise simple, easy to understand language. Regarding CCDC contracts, BCCA believes it is a misrepresentation to advertise a contract as "CCDC," in effect using CCDC's strong reputation, to paper over onerous supplementary conditions. It is at best misleading.

Further, adding unwarranted risk and cost via supplementary conditions contributes nothing to the long-term sustainability of the construction industry, whatever the short-term rationale from any party. **And they can decrease the number of bidders or contribute to General and trade contractors adding risk contingency (also known as money) to their bids to offset the actual or perceived consequences.**

What Can Contractors and Trade Contractors Do When Faced with Supplementary Conditions?

1. *Read* the supplementary conditions.
 - a. Watch out for deleted clauses, not just added clauses
 - b. Subcontractors: If you are under a flow down provision from the prime contract, make sure you get a copy of the prime contract, including any and all supplementary conditions.
2. If you don't understand the wording or intent of the clause, *ask* the General Contractor, Owner or Bidding Authority for clarification.
3. Reach out to your regional construction association or BCCA's [Industry Standard Practices Consultant](#) to flag the clause. We might be able to help before the bid closing.
4. And critically, if you do not like the terms, you have a business decision to make to not bid and not sign the contract. Your business and livelihood may be at stake.

Deeper Dive: What are Supplementary Conditions?

Supplementary conditions are terms and clauses that amend a construction contract to provide details and conditions for specific and unique aspects of a project's contract and the organizational requirements of an

Owner. In addition to adding terms and clauses, supplementary conditions may also delete and revise standard clauses, thereby altering the original contract's intent.

Supplementary conditions can be reasonable and succinct, such as the [BC Documents Committee Standard Supplementary Conditions](#). With the release of the new CCDC 2-2020, efforts were made by CCDC to move project specific requirements into the Division 00 or Division 01. A goal was to make the CCDC 2-2020 more succinct.

Deeper Dive: Intent of Supplementary Conditions

The intent of supplementary conditions is to modify a CCDC or CCA contract and address specific contractual issues that cannot be addressed in the project specifications. They supersede the base CCDC or CCA contract.

Supplementary conditions are often blanketed across every project within an organization, with little regard to the uniqueness of the project itself. They morph into risk transfer vehicles, with “gotcha clauses.”

Deeper Dive: Characteristics of "Good" Supplementary Conditions

1. Relevant and necessary for successful project completion.
2. Consistent with industry standards and best practices.
3. Not overly burdensome or unreasonable.
4. Fair treatment of all parties involved, without altering their respective responsibilities.

What can Owners do?

While this Construction File targets general and trade contractors, BCCA recommends that owners aspiring to be an "owner of choice" seek advice from their legal team regarding the implications of these changes for contractors and their subcontractors/supply chain. Questions such as "What would you advise if they were your client?" and "What will be the cost to me?" can provide valuable insights.



SUPPLEMENTARY CONDITIONS

IT'S NOT THE CLAUSE THAT IS ONEROUS, IT'S THE IMPLICATION

CCDC and CCA documents are relied upon as industry standards for their fairness and balance for all parties. But Supplementary Conditions often greatly modify their intent.

FIRST RULE:

Read the supplementary conditions.

SECOND RULE:

You are in control. If they are too onerous for you: Don't Bid & Don't Sign

Good supplementary conditions are clarifying. They are reasonable. They don't alter risk assignment or the responsibilities of the various parties.

EXAMPLES OF CLARIFYING SUPPLEMENTARY CONDITIONS:



Designating the contractor as the "Prime Contractor"



Written permission to change personnel



Requiring a CCDC9B statutory declaration



Align contractual timelines to match statutory timelines in the BC Builders Lien Act



Setting markups on changes where not included in Division 01

Ask yourself, how do they "feel"? If you don't understand, ask for the intent.

