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Construction File:

Completion of Projects – Getting the Deficiencies Done!

The building of a project starts with finding a good, qualified contractor and ends with making sure the final details of construction are completed. It is the completion of these final details that often gets put to the back burner as the prime contractor and trades are forced to move to the next pressing job that is working against tight time frames and escalating costs. Our advice on getting a project completed and everyone paid:

1. Make sure as the owner or owner's representative that there is a clearly defined deficiency list that is promptly sent to the prime contractor. The prime contractor should then promptly send it to the trade contractor with a clearly specified date for completion.

 2. Managing Deficiencies:
 - I. Should not be confused with warranties which are not addressed by holdback, but appropriate bonding.
 - II. Last minute change orders are not a deficiency and should not be treated as such.
 - III. Owners should avoid multiple deficiency lists for the same project. Contractors can find it onerous to come back to work on what may be called a deficiency but is likely a warranty issue.

 3. Utilize the standard contract documents (ie CCDC 2-2020) for the appropriate process.
 - I. **Value of deficiency:** BCCA recognizes as part of our policies that the deficiency holdback amount could be twice the value of the deficiency, subject to any supplementary conditions.
 - II. **Notification to Contractor:** The CCDC-2 GC 7.1.2 – 7.1.3 states that if the contractor has failed to perform the deficiencies, the owner can, in writing, instruct to correct the default in 5 working days.
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- III. **Completion of the work:** The CCDC-2 GC 7.1.4 states that if the contractor fails to complete the work, the owner will get it done on their behalf and deduct from any payment due.
4. Contractors should be reminded that not completing deficiencies could hold up EVERYONE from getting paid their deficiency holdback. Good business practices can be rewarding in the long run.
 5. Owners should not forget the value of the bonds they hold for the prime contractor and those the prime contractor may hold for the trade contractors. Trade contractor bonds are broadly used these days to extend the prime contractor's capacity and will certainly exist if using BOBS, a Bid Depository system. When an owner or prime contractor is in the last efforts of seeking action, notice to the bonding agent is likely an appropriate method to get some action.

The payment schedule is critically important in the progress of a construction project. Any disruption or inequity in this process can upset the timely completion of the project, not only by causing onerous and time consuming disputes, but also by complicating the movement of funds down the construction chain. It is important, therefore, for owners to evaluate their policies on withholding funds and ensure that those policies are reasonable and appropriate. Funds for purposes other than simple deficiencies retained in an effort to warranty the work or guard against possible problems in the future can result in an inequitable and unstable construction pyramid.

Good business practices can be rewarding in the long run. It is these good relationships that get us through the good and bad times regardless of which side of the fence we sit on – whether as owners, contractors or suppliers. We are all motivated to get the job done to completion, and utilizing industry standard policies, practices and documents makes us all partners with the appropriate tools to get the job done!

Find more guidance and information on the project closeout in BCCA's [Guide to the Closeout of Construction Contracts and Projects](#) It is a comprehensive and in-depth tool that includes practical best practices and guidance on completing your statutory and contractual milestones.

<https://bccasn.com/project-delivery/closeout-guide/>
