

## **BULLETIN 7** *Revised*

### **USE OF SUPPLEMENTARY CONDITIONS WITH CCDC STANDARD CONTRACT FORMS**

*November 1998*

Concern is occasionally expressed to the Committee regarding the use of unnecessary and improper modifications to CCDC Standard Contract Forms. These may take the following forms:

1. Introduction of subject matter already addressed in the text of the standard form which may cause conflict and/or uncertainty.
2. Introduction of subject matter more appropriately dealt with (e.g.) In the Instructions to Bidders, the technical specifications or the General Requirements (Division 1).
3. New or replacement wordings which are clearly designed to undermine the fundamental nature of the CCDC Standard Contract Forms or the equitable balance of rights and obligations of each party.
4. Variations which do no more than re-state or paraphrase the standard text, in the author's own words.

If, due to particular circumstances, it becomes necessary to modify the text of a CCDC Standard Contract Form for the use in a specific instance, the appropriate method of effecting such modifications is by the use of supplementary conditions. In this regard, however, the Committee wishes to re-affirm the following statement which appears in the Introduction to CCDC 20 'A Guide to the Use of CCDC 2':

"CCDC Contracts are an accumulation of the experience, thought, and talent of architects, engineers, owners, contractors, and sub-contractors. They and others have been ably assisted by legal counsel and insurance and surety advisors, and there is a long history of judicial precedents based on the language used in the document. Persons intending to substitute their own provisions for those in the printed CCDC documents should obtain expert advice. Modifications may cause the Owner, Consultant, Contractor, or Subcontractor to unintentionally assume unnecessary or inappropriate responsibilities or risks. Furthermore, modifications may weaken the relationships among the document's provisions or between the documents and the other project agreements with which it should be coordinated."

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The Committee directs industry participants to CCDC 20 ‘A Guide to the Use of CCDC 2’ and CCDC 24 ‘A Guide to Model Forms and Support Documents’. The Committee does not endorse supplementary conditions prepared by other parties. However, the Committee appreciates that certain Owners or market sectors, as a matter of public policy, local conditions, or project-specific particulars, may with legitimacy seek to amend or customize a CCDC Standard Contract Form.

The Committee issues these precautions to the four concerns above:

1. The CCDC Standard Contract Forms General Conditions, Definitions and Agreements are interrelated. Before introducing any new or amended subject matter, it would be prudent to ensure that the subject is not already addressed.
2. Experienced industry participants anticipate, and conduct their business operations based upon, familiar document structures, with clearly separated (but integrated) components. Changing that order may introduce confusion and increased costs of document preparation, bidding and contracting.
3. A biased, inherently one-sided form of construction contract would likely deter most contracting parties; minimize (if not eliminate) competition, especially from those who are more experienced, qualified and aware; change the balance of risk; increase costs; and be difficult for any Consultant to administer fairly and professionally. Furthermore, such a contract may be unlikely to be upheld if tested in court.
4. Altering the standard wordings presents a variety of risks in addition to those already noted above, and chiefly because the CCDC Standard Contract Forms have:
  - (a) compatibility with the standard wordings, roles, and responsibilities of such critically interrelated industry documents as agreements between Clients (Owners) and Architects or Engineers; construction subcontracts; and construction administration forms;
  - (b) compatibility with standard wordings, terms and forms of industry acknowledged insurance policies and surety bonds; and, especially
  - (c) an accumulated history of use and interpretation by the courts.

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