

CONTRACT LANGUAGE MANAGEMENT PLAN

The purpose of the Contract Language Management Plan is to provide CEBC members with a guide to developing the appropriate contractual agreement between the Client and the Consultant. The reason for this Management Plan is that CEBC is becoming increasingly concerned with the unbalanced nature of agreements that are being presented to, and accepted by, the consulting engineering community in this province. These agreements unfairly shift risks associated with construction projects onto engineers without due regard for their role and responsibilities in relation to these projects. Therefore, negotiating the proper agreement is essential to reducing your liability.

The proper agreement between Client and Consultant is governed by the size, complexity, duration and other aspects of the assignment. For simple projects with well defined parameters and requirements, a simple agreement may suffice, appended with a mutually accepted set of standards, terms and conditions. On the other hand a mega project may require documentation drafted by Legal Counsel. Projects between these extremes may use one of the four standard documents most commonly used in British Columbia.

The following Contract Language Management Plan should be used by CEBC members as a guide to developing the appropriate agreement.

GENERAL USE OF STANDARD DOCUMENTS

- a) The following standard contract agreement documents have been broadly supported by the industry and clients,. At present there are two for use in working for a client directly:
- MMCD Client/Consultant Agreement (Master Municipal Construction Documents Agreement);
 - ACEC Document 31 Engineering Agreement between Client and Engineer (Association of Consulting Engineering Companies Agreement);

There is also one for use in sub-consulting:

- ACEC Document 32 Agreement between Engineer and Sub-consultant.
- b) Encourage all municipal and regional government clients (especially those that are members of the MMCD Association) to use the MMCD client-consultant agreement.
- c) Encourage other clients to use ACEC Document 31
- d) Request that clients who have an issue with any of the standard documents bring the issue to the attention of the sponsoring agency for consideration and possible action.

- e) Members with short-form agreements should base their agreements on provisions of the various approved standard documents.
- f) Discourage the use of custom agreements from clients if one of the approved standard documents is appropriate.
- g) Where there is good reason for clients to use a custom agreement, work with the client to ensure that the custom agreement has appropriate provisions, and that with CEBC's review and endorsement, this document could be considered industry approved and appropriate for most consulting contracts.
- h) Prior to reviewing custom agreements from clients, members should review the CEBC position papers, as discussed below, along with obtaining advice from Insurers and Legal Counsel.

POSITION PAPERS ON KEY CONTRACT LANGUAGE ISSUES

The CEBC goal is to level the contractual playing field by identifying for its members key contractual terms that will facilitate appropriate risk allocation and enable consulting services to be provided on reasonable and fair terms throughout the province.

In order to achieve a more level contractual playing field, the CEBC Business Practice Committee has started to develop position papers on key contractual issues. The first six position papers are as follows:

1. Standard Form Agreements
2. Limitation of Liability
3. Indemnities and Claims Against Individual Engineers
4. Disclaimer Clauses
5. Ownership of Work Product
6. Termination of Contracts

The Business Practice Committee will continue to develop more of these position papers.