

SHOP DRAWINGS V. CONTRACT DOCUMENTS

There is a common misconception among owners and contractors that shop drawings are part of the contract documents under a typical CCDC construction contract. This misconception can affect the parties' understanding of their contractual responsibilities and result in unintended legal consequences. It is important for owners and contractors to understand the nature and function of the shop drawings compared to design drawings that do form part of the contract documents and other contract documents.

The CCDC 2 (2020) Stipulated Price Contract defines the term "shop drawings" as "drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, and other data which the Contractor provides to illustrate details of portions of the Work". Generally speaking, shop drawings are documents that are prepared for the purpose of showing how the contractor proposes to complete the work contemplated by the construction contract. Shop drawings are often viewed as a means of communication between the consultant and the contractor to ensure that the contractor's proposed method and means of construction comply with the contract requirements.

In contrast, contract documents are written documents that embody the parties' agreement and define the obligations and the rights of the parties regarding the work to be performed under the construction contract. The contract documents are legally binding on the owner and the contractor and may be amended only as provided in the contract. The contract documents typically include the agreement, the general conditions, the design drawings, the specifications and any amendments issued after the execution of the contract. The contract documents, and in particular the design drawings and the specifications, show what the contractor is required to build.

The CCDC 2 (2020) Stipulated Price Contract, at General Condition 3.8, sets out the process for submission and review of the shop drawings. This General Condition imposes the obligation on the contractor to provide shop drawings to the consultant for review. It further expressly sets out that the contractor, by its submission, represents that it has reviewed the shop drawings against the requirements of the contract documents. This provision implies that the shop drawings are not part of the contract documents. Shop drawings are subject to review and may be rejected or further modified. This is why they should not be

part of the contract documents, otherwise any deviation from the original design of the work embodied in the shop drawings could be considered binding on the parties regardless of whether the shop drawings comply with other contractual requirements.

According to this GC 3.8, if the shop drawings contain any deviations from the requirements of the contract documents, the contractor will advise the consultant in writing of such deviations. The consultant must indicate its acceptance or rejection of the deviation in writing to the contractor. These provisions ensure that there is clear communication between the contractor and consultant as to any non-conformity of the contractor's proposed way to complete the work with the contract requirements and any acceptance or rejection of such non-conformity.

Presumably, if the contractor proceeds with completing the work in accordance with shop drawings which contain deviations from the original design without first obtaining an express approval from the consultant, the consultant's review of the shop drawings would not absolve the contractor from complying with the contract requirements or from responsibility from any resulting damages. General Condition 3.8 strengthens this conclusion by providing that the consultant's review is for conformity to the design concept and general arrangement only, and the consultant's review will not relieve the contractor of responsibility for errors or omissions in the shop drawings or for meeting the requirements in the contract documents.

Takeaways

The CCDC 2 (2020) Stipulated Price Contract appears to include contractual language describing the shop drawings and their relationship to the contract documents and delineating the respective responsibilities of the contractor and of the consultant in connection with shop drawings. However, not all construction contracts contain such contractual terms. Parties may be uncertain or mistaken as to how to treat shop drawings under a particular contract. This concern could be addressed by clear language stating:

- that shop drawings do not form part of the contract documents;
- requirements and limitations on the consultant's shop drawing review and the contractor's responsibility for the content of the shop drawings; and
- the process for communicating deviations from contract requirements depicted in shop drawings so that the parties can duly assess such proposed deviations.

January, 2025

Marcela Ouatu



MARCELA OUATU

604.358.7590

MARCELA@CIVICLEGAL.CA

Marcela is an associate lawyer with Civic Legal LLP. Her practice focuses primarily on tendering, procurement, construction matters and local government law. Marcela assists clients with drafting and reviewing construction contracts and procurement documents, contract administration, and general municipal matters. She regularly writes on legal topics of interest to local governments and the construction industry. Prior to joining Civic Legal LLP, Marcela completed a Juris Doctor and a Master of Laws at the Peter A. Allard School of Law at the University of British Columbia.

During her time in law school, she completed the Business Law Concentration and was a student clinician at the Business Law Clinic, where she was providing legal advice to small businesses. Marcela also worked in the legal department of an international franchise company and at a Vancouver boutique law firm, specializing in real estate, corporate law, and estate planning. Marcela articulated at a civil litigation law firm, where she gained extensive legal experience in advocacy by frequently representing clients in the Supreme Court of British Columbia.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

710 - 900 West Hastings Street, Vancouver, BC V6C 1E5
604.639.3639 | www.civiclegal.ca |  @CivicLegal