

AMENDMENT TO OPSS 100, APRIL 2023, MTO GENERAL CONDITIONS OF CONTRACT

Special Provision No. CMO0008

Construction Act Changes

SECTION GC 1.0 - INTERPRETATION

GC 1.07 Definitions

Subsection GC 1.07 of OPSS 100 is amended by deleting the definition for **Written Notice of Lien** in its entirety, and replacing it with the following:

Written Notice of Lien means as defined in the *Construction Act* ~~Written Notice of Lien in the prescribed form pursuant to the Construction Act, given by a Person with a lien that identifies the payer and identifies the premises, and states the amount that the Person has not been paid and is owed to the Person by the payer.~~

SECTION GC 3.0 – ADMINISTRATION OF THE CONTRACT

GC 3.15 Dispute Resolution

GC 3.15.02 Adjudication

Clause GC 3.15.02 of OPSS 100 is amended by deleting paragraph .01 in its entirety and replacing it with the following:

- .01 The parties agree that for the purposes of section 13.5(1)(1.) (2.) and (7.) of the *Construction Act*, a dispute does not arise in respect of those matters, and therefore a Notice of Adjudication shall not be given, until:
- a) A Decision has been issued on a Compensation Request or;
 - b) Time to issue the Decision on the Compensation Request has expired.

Clause GC 3.15.02 of OPSS 100 is amended by deleting paragraph .04 in its entirety and replacing it with the following:

- .04 The parties agree that:
- a) Further to Section 13.5 of the *Construction Act*, **an Adjudication may not be commenced if the Notice of Adjudication is given more than 90 Days after the date on which the Contract has reached the expiry of the Adjudication period shall be 3 months after Contract Completion, abandoned, or terminated.**
 - b) Further to Section 13.11 of the *Construction Act*, the documents for Adjudication shall include the Compensation Request, and if applicable, the notice of claim. Any offer of compensation made in response to a Compensation Request or offer of settlement made in response to a notice of claim are made on a confidential and without prejudice basis and shall not be mentioned in the Notice

of Adjudication and shall be excluded from the documents for Adjudication and any further dispute resolution or legal proceedings.

- c) Further to Section 13.13 of the *Construction Act*, the deadline for the adjudicator's determination shall be extended by 20 Days.

SECTION GC 4.0 - OWNER'S RIGHTS AND RESPONSIBILITIES

GC 4.10 Termination of the Contract

Subsection GC 4.10 of OPSS 100 is amended by deleting paragraph .03 in its entirety and replacing it with the following:

- .03 If the Contract is terminated, the Owner shall publish the statutory notice of termination prescribed by Form 8 of *Ontario Regulation 303/18* of the *Construction Act*, in the Daily Commercial News, **no later than 7 Days after a Contract is terminated.** ~~and T~~the date of the termination of the Contract shall be the date specified in the statutory notice of termination for the Contracts.

SECTION GC 8.0 - MEASUREMENT AND PAYMENT

GC 8.02 Payment

GC 8.02.04 Certification and Payment

GC 8.02.04.01 Progress Payment Certificate

Clause GC 8.02.04.01 of OPSS 100 is deleted in its entirety and replaced with the following:

- .01 The Contractor shall submit an ~~monthly~~ application for progress payment ~~monthly~~ after starting the Work on the Contract. The application for progress payment shall be for Work ~~completed~~ **performed at by** the agreed to monthly Cut-off Date **and submitted within 7 Days of this date.**

~~Within 7 Days following the agreed to monthly Cut-off Dates, the Contractor shall submit an updated application to the Contract Administrator.~~

~~The updated~~ **Each** application shall contain the following two parts:

Part 1 - A Proper Invoice which shall contain:

- a) Contractor's name and address;
- b) Date of the ~~Proper I~~ invoice and the period for Work performed;
- c) Information identifying the Owner and Contract number for Work performed;
- d) A description, including quantity where appropriate, of Work performed;
- e) The amount payable for the Work performed and the payment terms;
- f) The name, title, telephone number, and mailing address of the Person to whom payment is to be sent; and
- g) Tender item numbers, description, unit of measurement, original tender quantity, agreed upon changes to the tender quantity, total quantity completed to date, quantity completed previous Proper Invoice, quantity completed this period, unit price, dollars this period, and total dollars to date.

Subtotals shall be detailed for tender items, approved Change Orders, and payment adjustments as specified in the Contract Documents.

The tender item information appearing on the Proper Invoice shall conform exactly with those as shown in the bid tender document.

Part 2 - Quantity of Work Completed Sheets detailing:

- a) Tender item numbers, sub-item numbers, unit of measurement, location description, original tender quantity, agreed upon changes to the quantity, total quantity completed to date, quantity completed previous Proper Invoice, quantities completed and reconciled with the Contract Administrator for this period.

The tender item information appearing on the quantity of Work completed sheets shall conform exactly with those provided in the bid tender document. The quantity of Work completed sheet information shall be sufficient to allow the Contract Administrator to verify and confirm the Work on the Proper Invoice for payment.

Proper Invoices and quantity of Work completed sheets shall be submitted in hard-copy or digital format. For payment purposes, the Contract Administrator shall review the ~~updated~~ application for progress payment within 7 Days of receipt for completeness and to verify the quantities of Work have been completed as specified in the Contract Documents.

Applications for progress payments containing deficiencies, errors, or non-compliance with the Contract Documents shall be deemed to contain an invoice that does not meet the requirements of a Proper Invoice and shall be returned to the Contractor, *pursuant to the Construction Act*, for correction.

The Owner shall pay the Proper Invoice no later than 28 Days after receiving the Proper Invoice.

GC 8.02.04.06 Substantial Performance Payment and Statutory Holdback Release Payment

Clause GC 8.02.04.06 of OPSS 100 is deleted in its entirety and replaced with the following:

GC 8.02.04.06 Substantial Performance Payment and Annual Statutory Holdback Release Payment

GC 8.02.04.06.01 Substantial Performance Payment

- .01 Upon receipt of the application for payment at substantial performance, the Contract Administrator shall check the application and advise the Contractor of any discrepancies. Any of these discrepancies that are unresolved ~~prior to the expiry of the lien period~~ shall be treated as set-offs.
- .02 Subject to any outstanding liens and permissible set-offs, the Owner shall issue payment, including the release of the Basic Holdback **accrued** on the Work **performed** ~~completed~~, within 28 Days, where all liens have expired or been satisfied, discharged or otherwise provided for pursuant to the *Construction Act*.
- .03 In addition to any permissible set-offs, Holdback for Finishing Work shall be retained at the rate of 10%, on all Work performed after the date of the Certificate of Substantial Performance.

GC 8.02.04.06.02 Annual Statutory Holdback Release Payment

- ~~.014 If the Contract provides for a completion schedule that is longer than 1 year, Total Bid Price is greater than \$10,000,000 and there are no outstanding liens, the Contractor may request payment of the retained Basic Holdback on an annual basis. When a request is received, the Owner shall issue~~

payment of the Basic Holdback accrued on the Work performed, on an annual basis, pursuant to the *Construction Act* to reduce the holdback on work done from 10% to 2 1/2%, plus the amount of the Owner's set-offs, provided that the Contract had not been substantially performed and the estimated value of the work performed is greater than 60% of the original tender value for a Contract having an expected duration of two construction seasons or less, or 40% for a Contract having an expected duration of more than two construction seasons.

- .025 The Contractor shall submit an application for payment requesting the Basic Holdback amount, as noted in the published form, no earlier than 45 Days but no later than 50 Days after the publishing of the prescribed form, pursuant to the *Construction Act*. If the Contractor fails to request the Basic Holdback payment within the timelines specified, the Contractor shall provide a written notice to the Owner. The holdback may not be released to the Contractor within the timeline according to clause GC 8.02.04.06, Substantial Performance Payment and Statutory Holdback Release Payment, when Form 6 of Ontario Regulation 303/18 of the *Construction Act* is provided to the Contractor to indicate notice of non-payment of holdback and published by the Owner in the *Daily Commercial News* as provided in Section 27.1 of the *Construction Act*. The Contract Administrator shall notify the Contractor, in writing, of its publication no later than 3 Days after the publication of the notice of non-payment.
- .036 Subject to any outstanding liens and permissible set-offs, the Owner shall issue payment, including the release of the Basic Holdback accrued on the Work performed, at least 60 Days but no later than 74 Days after the date on which the notice of annual release of holdback is published, pursuant to the *Construction Act*. Within 3 Days after receiving Form 6 of Ontario Regulation 303/18 of the *Construction Act* from the Contract Administrator, the Contractor shall notify the affected Subcontractor(s) providing a copy of the notice.
- .07 Payments for Work certified as substantially performed, including release of holdback, shall be made no later than 135 Days of the date of publication of substantial performance. The Owner shall release the holdback at the end of the 60-Day lien period provided all liens are expired or been satisfied, discharged or otherwise provided according to the *Construction Act*. This payment shall be made within Days of the expiry of the 60-Day lien period and subject to section 26.1 of the *Construction Act*.

GC 8.02.04.11 Owner's Set-Off

Clause 8.02.04.11 of OPSS 100 is amended by deleting paragraph .01 in its entirety and replacing it with the following:

- .01 Subject to Section 26 and Subsection 27.1 of the *Construction Act* and pursuant to Section 12 of the *Construction Act*, the Owner shall retain from monies owing to the Contractor under the Contract an amount sufficient to cover all debts, claims, or damages related to the Contract, any outstanding or disputed liabilities, the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third-parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner according to paragraph .01, a), and paragraph .02, a), of clause GC 8.01.02, Variations in Tender Quantities, and any assessment due to the Workplace Safety and Insurance Board.

WARRANT: All contracts.