



Standard Practices

A publication of CCA's Standard Practices Committee

Contractors at Significant Financial Risk for Work on Federal Government Properties July 2009

Contractors are currently exposed to effectively unlimited liability when contracting with the Federal Government to carry out work on existing buildings. This risk is unreasonable, goes well beyond the recommended industry standard, and is often unquantifiable.

The Canadian Construction Association (CCA) has suggested a limitation on Contractor liability under the Federal Government Construction Contract ("Federal Contract"). There are two hurdles to be addressed:

1. The Federal Government is a self underwriter. It does not carry insurance on its existing properties. Therefore, any loss or damage to a Federal building and its contents falls wholly on the Federal Government;
2. The Treasury Board argues that this is done to protect the Canadian taxpayer. It contends that any limitation on the liability of a Contractor for damage caused to a Federal building during construction is an unacceptable risk.

This risk to the Contractor cannot readily be addressed through liability insurance – a potential risk must be quantified. In its requests for bids, the Federal Government provides neither the value of the building nor the contents to be renovated. There is also no requirement that a Contractor insure for these amounts. In the absence of accurate information regarding the extent of the risk, a Contractor is not able to determine the amount of insurance required to adequately cover a loss.

As but one example, Federal Government buildings are often older and therefore generally considered more susceptible to damage by fire than modern buildings. In carrying out renovation work, the responsibility on the part of the Contractor to repair any damage to the building caused by its performance of the work becomes a major risk. In the scenario of a total loss of the building, damage would typically be much higher

than the \$5 million dollar liability insurance limit required by the Federal Contract. Without a reasonable limitation on liability, a Contractor is effectively exposed to unlimited liability for loss to the building and its contents.

Currently, a Contractor faces two options:

1. Risk exposing its business every time such work is undertaken; or
2. Allocate the risk as between it and the Federal Government through the purchase of adequate insurance, with the federal government bearing the cost as part of the contract price.

CCA has had prolonged discussions with the Federal Government on your behalf regarding a more equitable allocation of risk under the Federal Contract. CCA has convinced Public Works and Government Services Canada (PWGSC) to prepare a submission seeking the ability to effect changes to PWGSC's Construction Contract. Such changes would impose reasonable limits on Contractor liability for damages to existing property, particularly in "low value/high risk" renovation work. CCA's goal is to have the Federal Contract revised to include indemnification provisions similar to the industry standard established by CCDC2 - 2008 'Stipulated Price Contract' by the end of 2010.

Until such changes can be effected, under current Treasury Board policy, Contractor liability cannot be limited without the establishment of a special "commodity grouping" for the particular service or good being procured by the Federal Government.

CONTRACTORS ARE ENCOURAGED TO CONSULT FINANCIAL, INSURANCE AND LEGAL ADVISORS TO ASSIST IN DETERMINING THE AMOUNT OF LIABILITY TO WHICH THEY MAY BE EXPOSED.