Keep Your Friends Close: CCDC 30 and Integrated Project Delivery

In early 2019, the Canadian Construction Documents Committee (CCDC) released the CCDC 30 Integrated Project Delivery Contract 2018 (the CCDC 30). Various other North American and international industry organizations have also introduced their own form of Integrated Project Delivery (IPD) contracts. Though the CCDC 30 creates exciting new possibilities for the optimization of construction contracting, early adopters should ensure they are well equipped if they want to implement what is, in many ways, an unconventional contractual arrangement.

IPD is at its core a method of contracting that seeks to replace the adversarial nature of segmented traditional construction contracts with a collaborative partnership among the key players. The terms and conditions of IPD contracts are drafted to discourage litigation and increase communication and cooperation throughout the life of the project.

CCDC 30 promotes these goals by, among other things, having major parties involved in a project enter into the same contract, engaging the services and insights of all parties early in the life of the project, working together to create a shared risk/reward pool, and by instituting a waiver of liability between the parties to the agreement to reduce the likelihood of finger pointing in the event of issues during the various phases of a project.

Some of the key differences and areas for concern with CCDC 30 are as follows:

- At the time of contract formation, the design specifications, cost of the project, and scopes of work for the project are not complete. Though a “Contract Task Matrix” may be included as a Schedule to the CCDC 30, there is no detailed scope of work included as part of the agreement at formation such as a change order process, occupational health and safety requirements, lien protection provisions, design reviews, etc.

- The risk pool in CCDC 30 includes the anticipated profit of all the parties to the agreement. This is adjusted throughout validation and design and procurement phases of the project. Parties are compensated for their direct and hourly costs throughout the project and paid out of a risk pool if the project costs come below the agreed upon target cost. All participants collectively benefit or suffer based on one party’s actions or omissions. IPD parties should be aware that once the risk pool has been eliminated, the parties are not entitled to any profit, but the owner is still responsible for all reimbursable costs.

- With few exceptions, the CCDC 30 requires that the teams render decisions unanimously. While this is a laudable concept, in the event of a stalemate, the

standard terms of the CCDC 30 do not adequately provide for a quick way to resolve an impasse.

- The CCDC 30 includes an indemnification and waiver of liability regime that requires the IPD parties to waive all claims against each other, except for certain claims that are specifically enumerated. Those enumerated claims, which are not waived, may also be captured by limitations of liability. While this likely falls in line with the philosophy behind CCDC 30 and IPD contracts generally, participants should ensure they are aware of the impact these waivers and limitations may have before executing an IPD contract.

In addition to the above, CCDC 30 raises various other concerns which parties will likely want to address through the use of supplementary conditions. Parties to an IPD construction project should carefully consider the benefits and sacrifices that are inherent within CCDC 30 and determine whether the project and the participants in question are well suited for this type of arrangement.

There will be a steep learning curve for the industry as the CCDC 30 rolls out. But if parties are able to embrace the cultural shift IPD is designed to encourage, select the right projects, and perhaps most importantly choose the right participants, then the authors are optimistic that CCDC 30 and IPD contracts generally could have a positive impact on an industry that is traditionally slow to change.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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