New CCDC Progressive Design-Build Contract (the CCDC32)

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The Canadian Construction Documents Committee (CCDC) recently released a new collection of contracts, including the **CCDC 32 – Progressive Design-Build Contract**. This eagerly awaited template contract presents the CCDC's view of a progressive design-build model (PDB) and makes using a PDB delivery model more widely accessible to the industry. In this article we discuss PBD and the CCDC 32, including its benefits and challenges.

Overall, the new CCDC 32 provides a starting point PDB delivery model but includes some challenging provisions and notable gaps for both owners and design-builders alike. A successful PDB project requires that the parties set the table by addressing some tough commercial compromises, and the new CCDC contract may not (on its own) naturally bring the parties to those critical discussions. As described further below, industry stakeholders seeking to utilize these templates should review carefully and consider revising the template contracts with supplementary conditions or consider whether a standard form template is the best starting point for a more complicated delivery model like PDB.

What is progressive design-build?

PDB is an evolution of traditional design-build that emphasizes early collaboration, flexibility, and improved risk management. Unlike conventional stipulated price design-build contracts, where pricing is established upfront with limited owner involvement, PDB brings the owner, design-builder, and key subcontractors together early to jointly develop the project, with a procurement focus on qualifications and collaborative capability rather than price.

PDB typically operates in two phases: Phase 1 involves pre-construction services (design development, cost estimating, scheduling, and risk analysis) on an open-book, cost-plus basis to establish scope and price certainty; Phase 2 proceeds only once terms are agreed, covering final design and construction on a fixed price or GMP basis.

Although PDB has been used for years, the CCDC's introduction of the CCDC 32 represents the first standardized industry form tailored to this delivery model in the Canadian market. Its release reflects a broader shift toward earlier contractor

involvement, collaborative risk-sharing, and flexible pricing structures in response to increasingly complex projects and volatile construction conditions.

The CCDC 32 approach to progressive design-build

Core structure: Single contract with defined phases

The CCDC 32 adopts a two-phase framework:

- Phase 1: “Project Development Phase” (pre-construction, design advancement, costing), and
- Phase 2: “Design/Construction Phase” (execution following agreement on price and scope).

Both phases are within a single contract from the outset, with the transition governed internally through acceptance of a “Final Project Proposal.” This differs from some other market practice for PDB, where: (a) parties may enter into a Project Development Phase only agreement, and (b) only later negotiate and execute a separate fixed-price design-build contract for the Design/Construction Phase (if the project proceeds). That bifurcated approach preserves flexibility but can result in negotiation risk prior to commencing the Design/Construction Phase. The CCDC 32 instead prioritizes continuity and procedural clarity by embedding the entire contractual framework in one document.

Structured “gating” and final project proposal

A distinguishing feature of the CCDC 32 is the formalization of “Project Gates”, which are defined interim decision points during the Project Development Phase where the design-builder must submit progressively refined proposals addressing scope, cost, and schedule. This culminates in the “Final Project Proposal,” which, once accepted by the owner, triggers the transition to Design/Construction Phase and conversion to a stipulated price design-build arrangement.

While staged design development and iterative pricing are hallmarks of PDB, the level of formalization (gates and defined deliverables) in the CCDC 32 may be too simplistic for a complex delivery model like PDB.

Open-book development with cost classification

The CCDC 32 embeds open-book pricing and progressive cost certainty through the use of standardized CCDC Class D to Class A construction estimates tied to the level of design development.

This aligns closely with traditional PDB models, which likewise require:

- iterative cost estimates,
- visibility into contingencies, allowances, and escalation, and
- increasing precision as design advances.

The goal of a successful PDF model is to permit adaptability in design and to allow an owner to be nimble in assuming, or allocating and paying for, risks as they are identified.

Early work authorization regime

The CCDC 32 introduces a standardized “Early Work Authorization” mechanism, allowing discrete construction packages to proceed during the Project Development Phase before full price agreement.

This reflects a common bespoke practice (often implemented via early works agreements or change orders), but CCDC consolidates the regime into a formalized and repeatable process within the contract, including prescribed content (scope, pricing, schedule, etc.).

Termination / “off-ramp” rights

Consistent with PDB fundamentals, the CCDC 32 provides the owner with an off-ramp during the Project Development Phase, including the right to terminate prior to acceptance of the Final Project Proposal and no obligation to proceed to the Design/Construction Phase.

Unlike some other publicly available PDB contracts, the CCDC 32 likewise grants to the design-builder an equivalent right to terminate and exit the arrangement.

CCDC 33

As is the case with the old and newly introduced CCDC 14 and the companion document CCDC 15 – Design Services Contract between Design-Builder and Consultant, CCDC has introduced a companion document to CCDC 32, CCDC 33 – Progressive Design-Build Service Contract between Design-Builder and Consultant for use by the design-builder and it’s prime consultant when a CCDC 32 has been entered.

Potential challenges for both owners and design-builders

While the CCDC 32 provides a structured and now potentially standardized framework for PDB, it also raises a number of commercial and legal tensions that parties will need to carefully consider when negotiating supplementary conditions.

Absence of a defined compensation if design/construction phase is not authorized

Although the CCDC 32 includes a clear off-ramp for owners during the Project Development Phase, it does not prescribe a detailed amount or certainty for the compensation owed to the design-builder if the project does not proceed to the Design/Construction Phase. Instead, the design-builder is generally entitled to payment for services performed to date, together with “such other costs and damages sustained”.

This creates uncertainty for both parties. For design-builders, particularly where significant early-stage effort is required with no promise of continuing the Design/Construction Phase, the total compensation becomes murky. For owners, the amount a design-builder may claim upon being terminated for convenience is equally opaque. By contrast, other PDB agreements often include express compensation entitlements, negotiated at the outset, to compensate for this risk.

Intellectual property and use of design

The CCDC 32's allocation of intellectual property follows the CCDC 14 – where the consultant retains ownership of the instruments of service and the owner receives only a limited licence. This may prove challenging for owners to accept; particularly in light of the other uncertainties introduced around the early phase work performed (discussed elsewhere).

In many projects, owners expect that if they have paid for the Project Development Phase deliverables they can use and transfer the design if they elect to proceed with another contractor or ultimately transfer ownership over the asset being constructed. Where that flexibility is limited, owners may face practical constraints in exercising the off-ramp. This may encourage negotiating expanded intellectual property rights before signing the contract.

Assignment and continuity risk

The absence of detailed step-in or assignment mechanisms tied to a Project Development Phase exit may create continuity risks if the owner elects not to proceed with the design-builder. Without clear provisions addressing: (i) assignment of consultant agreements; and (ii) continued use of the design deliverables, owners risk loss of continuity and duplication of effort, which can erode some of the efficiencies that PDB is intended to achieve and apply undue commercial pressure on owners.

Agreement to agree

The CCDC 32 structure permits the Design-Builder to terminate for convenience at any time before acceptance of the Final Project Proposal. Without modification this may push Owner's to accept the Final Project Proposal, or risk losing the design team and a large part of the benefit of the Project Development Phase. At the same time, the form does not meaningfully define how the Design-Builder sets the price. There is no binding formula, objective pricing mechanism, or enforceable methodology. There is also no obligation on either party to reach agreement.

More typically, a PDB would not permit the design-builder to exit prior to submitting the proposal for the time and cost to complete the second phase of the project and the manner in which that cost and time are formulated is guided by a pre-negotiated formula. Without these guard rails, the risk of losing the value of the Project Development Phase is significantly higher.

Transparency and the "open book" challenge

A central feature of PDB is the open-book development of pricing, including detailed visibility into contingencies, allowances, and assumptions. While this transparency is intended to improve cost certainty and alignment, in practice it can create friction.

Owners may find it difficult to assess evolving estimates, particularly where pricing includes layered contingencies and assumptions. At the same time, design-builders may be concerned that increased transparency leads to heightened scrutiny and negotiation at a granular level, potentially undermining the collaborative intent of the model.

This can result in the Owner being required to engage its own consultants, to shadow estimate the design-builder's estimates and to advise on complex technical issues. This can erode the benefit of the intended early collaboration.

Liability regime

As with all of the recently introduced or re-issued CCDC documents, the CCDC has introduced a variety of exclusions to the cap on liability contained in the base document. These include, for example, an exclusion for breach of applicable laws and substantial defects or deficiencies in the work.

The CCDC 32 has also limited the liability for Design-Services to claims from errors, omissions or negligence of the Consultant or Other Consultants where covered by insurance to such liability insurance limits, but it does not set out what happens if a claim is not covered by insurance. This is challenging for design-builders as the CCDC 33 introduces a cap on the Consultant's liability tied to the amount paid for professional services or, if no amount is set, $250,000.

Additionally, where the Design-Builder elects to terminate the contract prior to acceptance of the Final Project Proposal, the CCDC 32 framework does not, on its face, relieve the design-builder of liability for the design and preconstruction services performed during the Project Definition Stage. Meaning that any deficiencies in those materials may continue to expose the Design-Builder to claims.

Conclusion

The CCDC 32 brings a standardized form to the Canadian market for PDB. However, consideration and care should be taken prior to using the CCDC 32 as there are challenges that PDB contracts face which are not expressly addressed within the CCDC 32. BLG's Infrastructure Group works with owners, design-builders, contractors, consultants, governments and others and to help provide guidance when procuring, preparing, and negotiating construction contracts.

If you have any questions regarding this article or an upcoming construction project you are involved in, please contact the authors below.

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