



PRACTICE NOTE 07: PAYMENTS TO THE ARCHITECT ON ACCOUNT OF PROJECT SUSPENSION

1. Standards Of Practice

The "Canadian Standard Form of Agreement Between Client and Architect" (CCAC-6, 1994 edition) is the accepted standard form of agreement (cf. AIBC Bylaw 28.1) for the engagement of architects. Under AIBC Bylaw 29.0, the Institute establishes, maintains and publishes a "Tariff of Fees for Architectural Services", the third edition of which (January 1996) is complementary to CCAC-6/1994.

With respect to "Payments to the Architect on Account of Project Suspension", this extract from the Tariff is noteworthy:

3.8.4. Suspended, Deferred or Delayed Work

In the case of suspended or deferred work, or work delayed by labour action or strike, the architect is entitled to payment at the start of the delay for all services rendered, reimbursable expenses and applicable taxes to that date. In addition, the architect will be paid for all services and costs and applicable taxes arising from the delay of the work. Furthermore, if a project is delayed by the client for more than a total of 60 days whether consecutive or not, the architect will be paid for the costs involved in demobilization (and, as may apply, subsequent remobilization) of staff and facilities. The corresponding paragraph (4.8.1) in CCAC-6/1994 reads as follows:

4.8 Project Suspension or Abandonment

4.8.1. If the Project is suspended or abandoned in whole or in part for more than a total of 60 days whether consecutive or not, the Architect shall be paid within 30 days of the date that an invoice is submitted for all services performed, together with reimbursable expenses then due and suspension expenses calculated in the same manner as termination expenses in paragraph 5.7.5. If the Project is resumed after being suspended or abandoned in whole or in part for more than a total of 60 days whether consecutive or not, the Architect's fee shall be equitably adjusted.

The referenced paragraph 5.7.5 of CCAC-6/1994 provides a means of determining "suspension expenses" in the same manner as would be determined "termination expenses":

5.7.5. Termination expenses mean expenses directly attributable to suspension or abandonment of the Project or termination of this Agreement for which the Architect is not otherwise compensated, and in addition, an amount computed as a percentage of the total fee for the Architect's basic services and additional services earned to the time of termination, as follows:

1. Twenty percent if suspension or termination occurs during the schematic design phase; or
2. Ten percent if suspension or termination occurs during the design development phase; or

3. Five percent if suspension or termination occurs during a phase subsequent to the design development phase.

This agreement paragraph is, in turn, complemented by article 3.8.5 from the Tariff:

3.8.5. Termination

In the event that the project is abandoned, or the agreement between the client and the architect is terminated by either party, the client is required to pay the architect for all professional fees for that portion of the services which the architect has carried out, reimbursable expenses and applicable taxes to the effective date of termination and, in addition, for all termination expenses and applicable taxes. Termination expenses are those which are directly attributable to abandonment of the project or termination of the agreement (including the architect's cost of concluding the architect's legal and contractual commitments relating to the project), plus an amount which represents compensation for loss of anticipated earnings (opportunity loss). The latter amount is calculated as a percentage of the fees earned to the effective date of termination, typically:

4. 20% during schematic design phase
5. 10% during design development phase
6. 5% during later phases.

2. Consistent Terms and Conditions

Other forms of acceptable, AIBC-endorsed client/architect agreement contain similar terms and conditions. Any client/architect agreement (including earlier editions of CCAC-6 or its abbreviated form, CCAC-7) should be checked individually on a client-by-client and project-by-project basis before any "suspension of project" billings are rendered to a given client on a particular project. **The Ministry of Health's Standard Client/Consultant Agreement (Dec. 94 edition) contains these similar terms and conditions:**

5.7 Project Suspension or Abandonment

If the project is suspended or abandoned in whole or in part for more than three months, the Consultant shall be compensated for all services performed prior to receipt of written notice from the Client of such suspension or abandonment, together with Reimbursable Expenses and Taxes then due and all termination expenses as set forth in Paragraph 8.4. If the Project is resumed after being suspended for more than three months, the Consultant's compensation shall be equitably adjusted to reflect increased costs incurred by the Consultant as a result of such suspension.

8.4 Termination of Agreement

In the event of termination not the fault of the Consultant, the Consultant shall be compensated for all services performed to the termination date, together with Reimbursable Expenses then due and all termination expenses reasonably and necessarily incurred by the Consultant.

The Ministry of Education's Standard Client/Architect Agreement (June 95 edition) contains these similar terms and conditions:

8.1 Project Suspension or Abandonment

If the project is suspended or abandoned in whole or in part for more than three months, the Architect shall be compensated for all services performed prior to receipt of written notice from the Client of such suspension or abandonment, together with reimbursable expenses and taxes then due and all

termination expenses as set forth in paragraph 8.6. If the project is resumed after being suspended for more than three months, the Consultant's compensation shall be equitably adjusted to reflect increased costs incurred by the Architect as a result of such suspension.

8.6 Termination of Agreement

Termination expenses include expenses directly attributable to suspension, abandonment or termination for which the Architect is not otherwise compensated, and in addition, an amount computed as a percentage of the total fee for basic and additional services earned to the time of termination, as follows:

1. twenty percent if suspension or termination occurs during the schematic design phase; or,
2. ten percent if suspension or termination occurs during the design development phase; or,
3. five percent if suspension or termination occurs during any subsequent phase.

3. Practical Application

The pertinent client/architect agreement will govern. As practical matters, however, architects should consider and apply the following practices when invoicing:

1. Include professional fees for services rendered and as required to suspend the services cleanly;
2. Include reimbursable expenses, similarly;
3. Include any "opportunity loss" factors allowed under agreement (typically shown as percentages of fees earned, on a sliding scale which decreases as the project progresses);
4. Include any layoff or severance costs resulting from the suspension, accounting for both the Employment Standards Act and such individual employment contracts' terms as may apply, covering (e.g.) salary, vacation, statutory holiday factor and benefits (as well as employer's contributions);
5. Include (e.g.) costs of space or equipment, rented or purchased for the project, which cannot be recovered;
6. Include applicable taxes (in full, not "net" as may be variously determined by clients entitled to rebates) calculated against all services, costs and reimbursable expenses;
7. Interest on overdue accounts should be noted and enforced;
8. Reasonable efforts need to be made to mitigate one's costs (and, therefore, associated billings to clients);
9. Log all time and expenses clearly; be fair;
10. Submit a single invoice wherever practical, collecting all billable items together;
11. Submit the invoice under the cover of a letter which provides proper rationale and backup documentation;
12. The foregoing apply equally to not only the architect but also to any and all of the architect's sub-consultants and suppliers; ensure all team members are consistent.

Further suggestions and feedback would be sincerely appreciated on this topic.

4. Capital Spending Freeze

At this writing, British Columbia's provincial government has announced a six month suspension on many capital projects not "legally committed", i.e. not yet the beneficiary of an authorized construction contract. That announcement is universally acknowledged and is recorded in writing, along with associated press releases and project lists.

Given the funding and approval powers of the provincial government, notwithstanding the fact that (e.g.) school boards and hospital boards are the actual signatories to their projects' client/architect agreements, it is clear that (as a general statement) all architects (and other consultants) have indeed received due notice of project suspension for a period longer than any such period contemplated in any referenced client/architect agreement.

Accordingly, it is entirely appropriate for all architects so affected to prepare and submit invoices in accordance with their projects' agreements' "suspension" clauses at the earliest opportunity. Doing so will clarify the situation for all parties; will enable timely compensation; and may provide articulate rationale for continuing a given project's professional services to the conclusion of working drawings (i.e. so the project is ready for tender).

The latter is the AIBC's strong recommendation to the government, so as to minimize the current impact on professionals; minimize payment of "suspension" and subsequent "startup" costs; allow proper evaluation of project feasibility; and facilitate timely construction later.

The foregoing notwithstanding, there are projects, clients and ministries which may choose (or be allowed) to continue for good reason. Architects engaged in such cases are advised to confirm funding authority and capacity regarding continued provision of professional services and reimbursable expenses.

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