



Contracts Workshop

Best Practices Conference XIX
Contract Promotions Workshop

**Heavy Industrial Contracting:
Philosophies, Risk, and Application**



Contracts Workshop

Introductions

Workshop Presenters:

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Project Business Manager, AMEC Oil Sands, Natural Resources

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Agenda

1. History of the Contracts Committee
2. Introduction to COAA Contract Forms
3. Practical look at COAA Contract Terms
4. Wrap-Up





COAA & Best Practices

About COAA

COAA is an association of Owner companies working together to achieve construction excellence in the heavy industrial sector in Alberta.

COAA provides leadership in the drive towards safe, effective and productive project execution.



COAA & Best Practices

About COAA

Board comprised of senior representatives from Owner companies

Best Practices Committee - creation and promotion of best practices for heavy industrial construction

Executive Director and COAA Office Staff



COAA & Best Practices

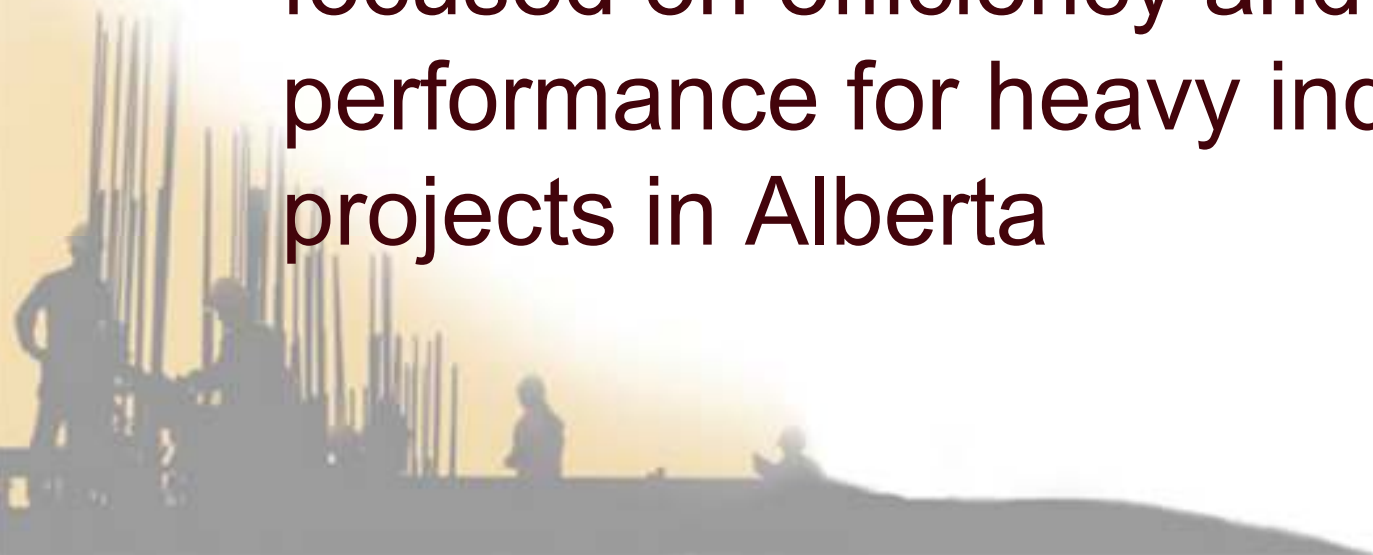
Best Practices Committees

Best Practices Committees:

- Safety
- Workforce Development
- Productivity
- Contracts
- promotion through workshops, seminars, COAA Best Practices Conference, and training programs

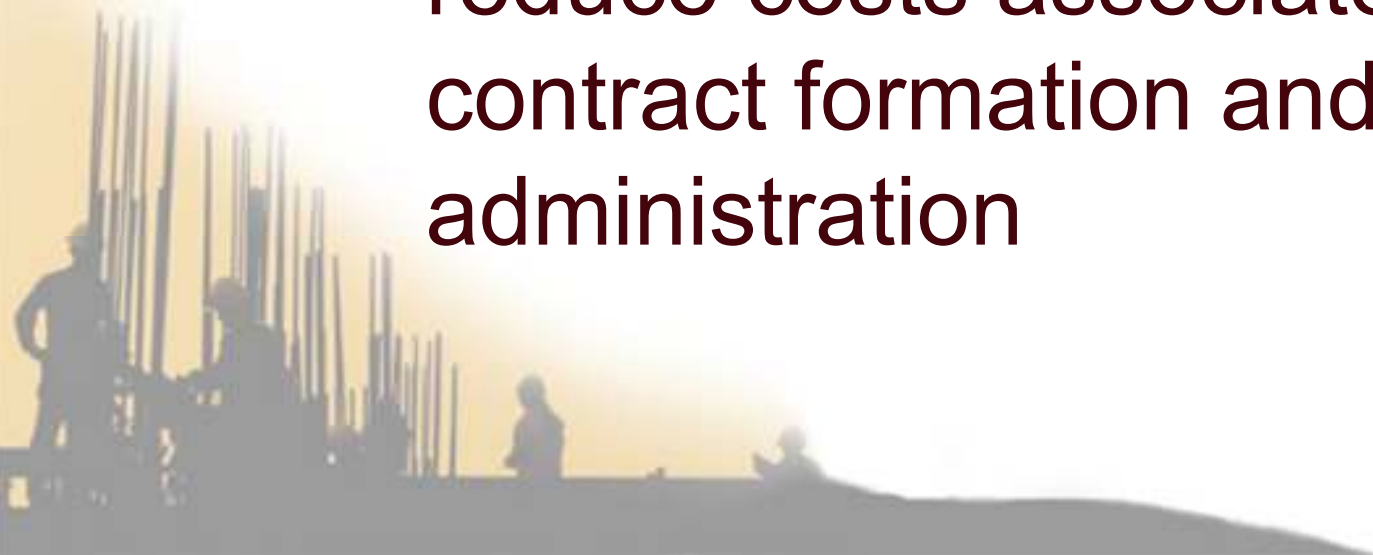
Contracts Committee

- a large, active committee of volunteers
- representation from the industry stakeholders
- Purpose: develop best practices focused on efficiency and high performance for heavy industrial projects in Alberta



Contracts Committee

- Goal: to provide tools to assist contracting parties that:
 - Provide clarity on obligations and risks
 - reduce costs associated with contract formation and administration



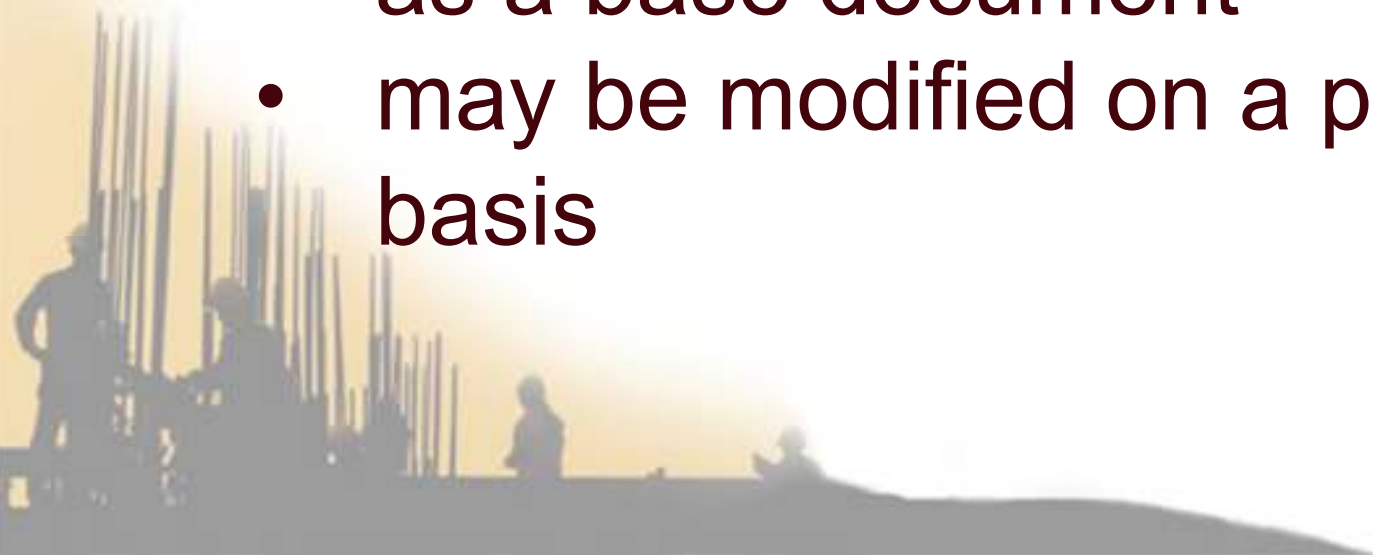
Overview of Contract Forms

- *Stipulated Price Contract (2003)*
- *EPC Contract (2005)*
- *EPCM Contract (2008)*

- *Best Practices for the industry*
- *Philosophy Documents*
- *Available at www.coaa.ab.ca*

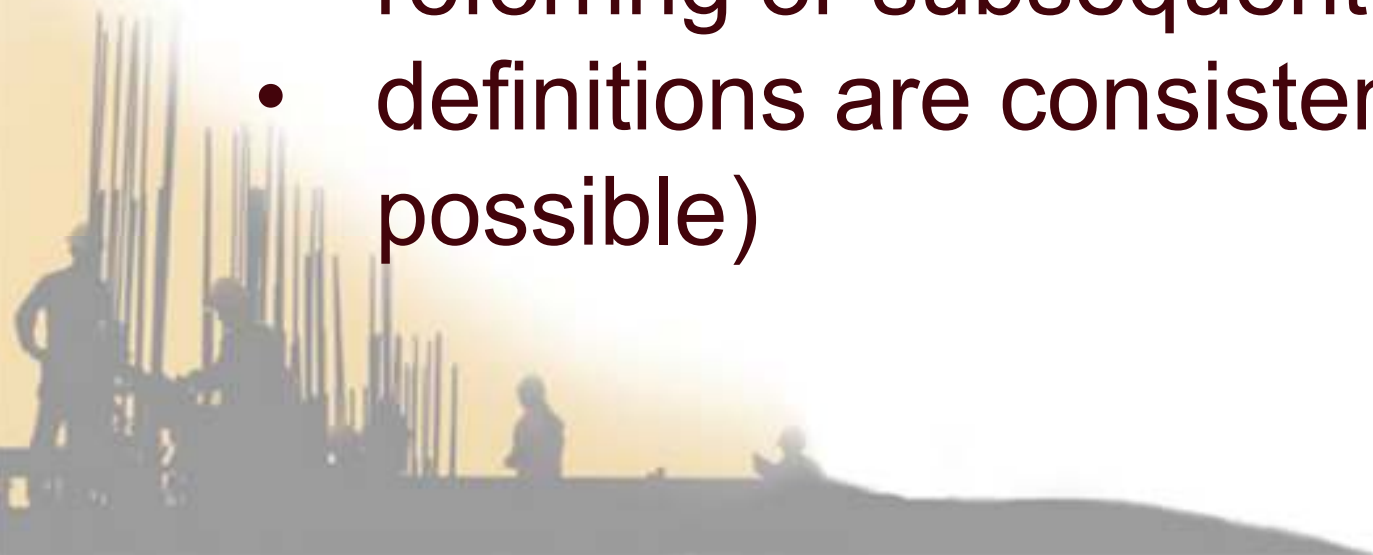
Overview of Contract Forms

- Free, and free of copyright
- Goal is to provide *flexibility*
- Use of COAA documents is encouraged
 - as a base document
 - may be modified on a project-specific basis



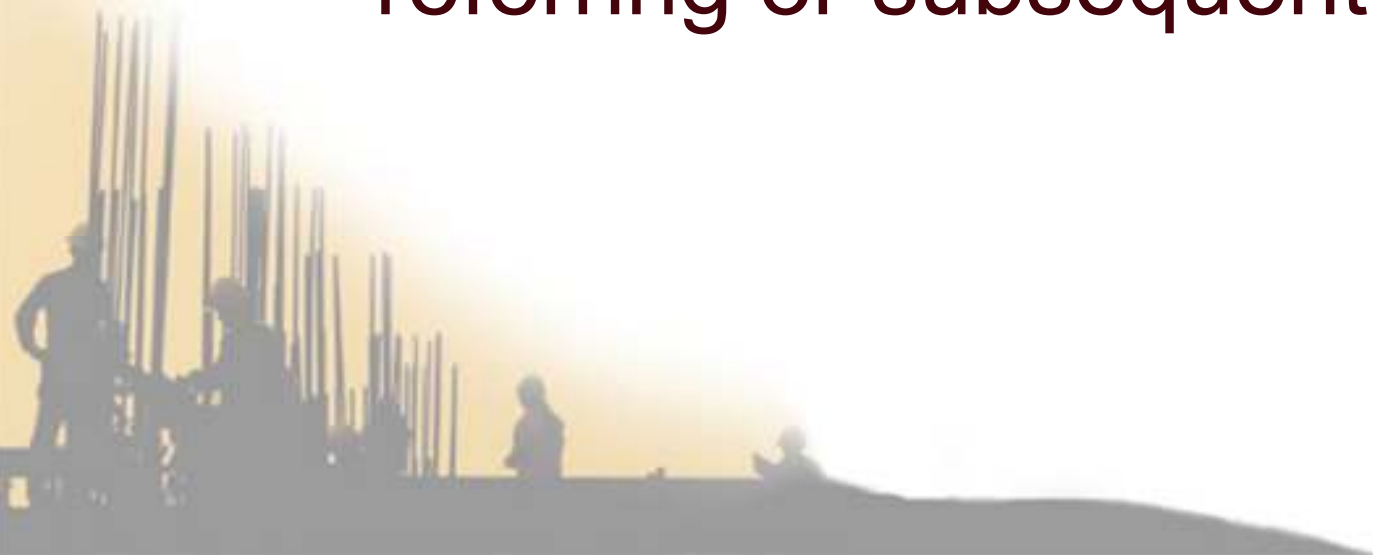
Overview of Contract Forms

- make changes as supplementary conditions (e.g. *Appendices & Forms*)
- take care when editing specific clauses to retain the intent of referring or subsequent clauses
- definitions are consistent (where possible)



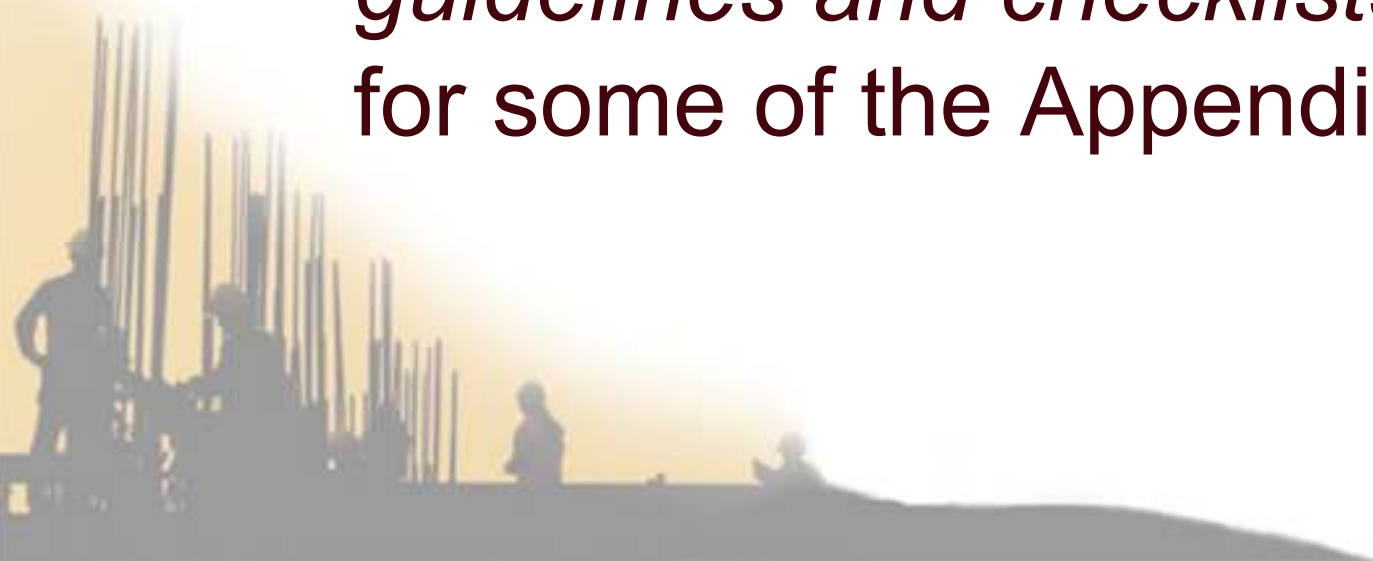
Overview of Contract Forms

- ‘blanks’ (e.g. insurance) need to reflect project requirements
- take care when editing specific clauses to retain the intent of referring or subsequent clauses



Overview of Contract Forms

- *philosophy documents* provide background and context
- review *philosophy documents* in conjunction with the application
- *guidelines and checklists* are helpful for some of the Appendices





**PRESENTER:
W.J. KENNY**



1. Three forms of Contract to be considered

- Stipulated Price Contract
- Engineering, Procurement and Construction Contract (EPC)
- Engineering, Procurement and Construction Management Contract

2. These are forms of Contract that are intended for industrial projects
 - There is no “Consultant” role
 - There is no “Payment Certifier”
 - The Owner is in control of the Project, and assumed to have the expertise and management capability to execute the Project
 - The Contractor is likewise assumed to have the skill and resources necessary to execute the work

3. The Stipulated Price Contract includes:
- Bid Conditions
 - General Conditions
 - Schedule “A” Scope of Work
 - Schedule “B” Payment for work
 - Schedule “C” Release and Certificate of Final Payment
 - Schedule “F” Key Personnel, Confidentiality, Proprietary Information and Consent Agreement

4. What you will not find in Contract:
- The Contractor's Proposal
 - Separate Articles of Agreement
 - Exhibits and Appendices
 - Supplementary General Conditions although these are contemplated

5. Assumptions:

- The work is an industrial project
- The owner has completed the design
- The owner will provide the site
- The owner has arranged for timely delivery of owner supplied items

- The Contractor is experienced in executing this type of industrial project and has the resources and supervisory personnel to do so
- The Contractor is familiar with local conditions, including the local labour market, and can staff the Project with adequate skilled labour

6. The Bid Conditions

- Contemplates exceptions
- Warrants that the Contractor has satisfied itself of all conditions affecting the work, particularly labour
- invites alternatives
- contemplates a clarification meeting
- reserves the right to award to anyone, not necessarily the low bidder, but will review for commercial and technical merit

7. The General Conditions

GC 1-Definitions

GC 1.1.37 Work

Work means all labour, supervision, administration, materials, transportation, supplies, tools, equipment, temporary facilities, storage facilities, and such other work and materials, necessary to be performed or supplied for the work required by the *Contract Documents* including the

GC 1.1.37 – con't

work described in Schedule "A" - Scope of Work, and including any work which is not expressly described in the *Contract* but which is nevertheless necessary for the proper execution of the work required by the *Contract Documents*;

GC 6-LABOUR

6.1 The *Contractor* shall provide a sufficient number of qualified personnel to enable timely and proper execution and completion of the *Work*. All such personnel shall be competent, literate in English and qualified by education, training, experience and in all other respects capable of carrying out the tasks to which each is assigned.

GC 8 – Change mechanism

- Owner issues contemplated Change Notice to Contractor
- Contractor provides Change Quotation
- Owner accepts and issues Change Order, or issues Change Directive
- Contractor may request change through a Change Quotation
- Dispute on entitlement resolved under dispute resolution mechanism

GC 8 – Change mechanism – con't

- all changes to the Contract must be made by change Order or Directive
- all impact costs or costs of acceleration are to be included in the Change Quotation
- materially different subsurface or actual physical conditions merit a Change Order

GC 9 – Completion & Acceptance

- Owner may take partial completed work
- Functional Completion can be for the entire Work or a Component system
- Final Completion notice after all Work completed and all known deficiencies corrected.

GC 18-Force Majeure

- Event of Force Majeure defined 1.1.14
- *Event of Force Majeure* means any occurrence, other than the financial capability of a party or an event constituting a delay under GC 19, which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of

reasonable diligence that party could not at the time of bidding have reasonably contemplated happening and is unable to prevent or provide against;

- If Owner does not agree, revert to change mechanism
- time extension is the remedy for Event of Force Majeure

GC 20 – Suspension Allowed to Owner

- payment of direct costs
- no payment for damages or loss of profit

GC 21 – Termination

- for convenience available to Owner, for all or a portion

GC 25 – Warranties

- from Functional Completion
- that the Work meets the requirement of the Contract Documents
- come back warranty for specified time
- applies to re-performed work



GC 26 – Indemnities

GC 26.4 Limitation on consequential damages

26.4 Notwithstanding anything else in this *Contract*, the *Contractor*, its *Subcontractors*, *Suppliers*, and their respective officers, directors, employees, consultants and agents shall not be liable to the *Owner*, or anyone claiming through or under it, whether by way of indemnity or by reason of breach

of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:

26.4.1 special or consequential loss or damage;

26.4.2 loss of use, whether complete or partial, of the *Work* or existing facilities of the *Owner* or third parties;

26.4.3 loss of product;

26.4.4 loss of revenue, overhead and profit; or
26.4.5 loss of any contract that may be
suffered by the *Owner*,
except to the extent of amounts recoverable
under a policy or policies of insurance
required to be maintained by the *Contractor*,
or provided by the *Owner*, pursuant to the
provisions of this *Contract*, provided

however that in the event of the failure by the *Contractor* to complete the *Work* by the *Contract Time* the liability of the *Contractor* under this GC 26.4 shall be limited only to the greater of the insurance recoverable and \$ _____.

Schedule A – Scope of Work

- Describe Scope of Work
- Contractor's General Responsibilities
- Hours of Work
- Milestone Dates
- Work Schedule

Schedule A – Scope of Work – con't

- Drawings, Code and Standards
- Connecting Work
- QC Program
- Safety and Loss Management
- Document Submission Requirements

Progress Reporting and Other Reporting

- Meetings and Reports

Schedule C – Release and Certificate of Final Payment

- payment of Subcontractors and Suppliers
- release of all claims in respect of which notice in writing has not been given

Schedule E – Statutory Declaration

- payment of all Subcontractors and Suppliers
- complied with all of its lawful obligations

Schedule F – Key Personnel confidentiality undertaking

ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT (EPC)

1. To the extent possible, definitions and terms are the same as the Stipulated Price Contract.
2. In this Contract, there are 49 Articles and 9 Appendices, as follows:

- Appendix A – Owner’s Requirements
- Appendix B – Compensation
- Appendix C – Policy and Guidelines
- Appendix D – Warranty Items Procedure
- Appendix E – Liquidated Damages
- Appendix F – Incentive Fee
- Appendix G – Forms
- Appendix H – Dispute Resolution Procedure
- Appendix I – Key Personnel [**NTD: Use if not in *Execution Plan***]

3. Definitions:

Construction Work

1.1(s) *Engineering Services* means those services described in the *Owner's Requirements* and provided by the *Contractor* for the design, planning and engineering of the *Project*, but does not include *Construction Work* or *Procurement Services*;

1.1(rr) *Procurement Services* means the procurement of *Procured Goods* performed by the *Contractor*, which may be performed as agent of the *Owner*, or for the *Contractor* on its own account, as stipulated in the *Owner's Requirements*;

1.1(kk) *Owner's Requirements* means the description of the scope, standards, design criteria, *Performance Guarantees, Milestones* and the programme of work set out in Appendix A – Owner's Requirements, as amended by any *Changes*;

- 1.1(u) *Execution Plan* means the programme developed by the *Contractor* for the *Work* in accordance with Section 4.2 and which shall be updated from time to time as may be required by the *Owner* and which shall include, but not be limited to:

1.1(u) – cont'd

- the organisation to be established by the *Contractor* for carrying out the *Work*, including, but not limited to, the identities and curriculum vitae of *Key Personnel*, or if not yet identified, then the titles of the positions that will be held by *Key Personnel*;
- the sequences and methods for the performance of the *Work*; and
- a detailed schedule with dates for the completion of *Milestones*;

- 1.1(x) *Functional Completion* means that date when the *Work*, or a *System*:
- has passed the required *Performance Tests* that are stipulated in the *Owner's Requirements* to be performed before *Functional Completion*; and
 - is certified by the *Owner's Representative* pursuant to Section 19.4 as being complete or ready to be put into service, or being used for the purpose intended and a *Functional Completion Certificate* is issued;

8. Article 8 – Construction Work

8.2 Except for those materials, services and equipment to be provided by the *Owner* and described in Appendix A – *Owner’s Requirements*, the *Contractor* shall supply or cause to be supplied all services, equipment and materials required for the proper execution and completion of the *Construction Work*.

9. Article 9 – Commissioning

9.1 The duties of the *Owner* and of the *Contractor* in relation to *Commissioning before Functional Completion* and *Commissioning after Functional Completion*, together with the *Milestones* to be reached for commissioning, are as set out in the *Owner's Requirements*.

17. Warranty – begins on Functional Completion

18. Article 30 – Proprietary Information

- technology developed by Contractor is Contractor's unless resulting from Owner's Confidential Information

- 42.3 Notwithstanding any other provision of the *Contract*, the *Contractor's* total aggregate liability to the *Owner* shall be limited to \$ _____.
- **[NTD: Section 42.3 is to be used only where the parties choose not to include *Liquidated Damages* in the *Contract*. In addition, if Section 42.3 is to be incorporated, the Committee suggests that the parties negotiate whether the following indemnities obligations of the Contractor should**

be carved-out of the cap: Section 28.1 (intellectual property infringement); Section 39.1 (liens); Section 41.1 (third party claims); Section 45.3 (independent contract indemnity); obligations relating to workers' compensation premiums if the *Owner* is held accountable; and any taxes payable by the *Contractor* for which the *Owner* is held accountable.]

COAA EPCM CONTRACT

Where possible, definitions used in the COAA Stipulated Price Contract and EPC Contract have been incorporated in this EPCM Contract in an effort to use consistent terms. To accommodate a variety of projects, project-specific information is contained in the Appendices to the EPCM Contract.



The EPCM Contract is intended to serve as a starting point for negotiations and can be modified by the parties with respect to a specific project. It is preferred that changes be made to the EPCM Contract by way of supplementary conditions so that the COAA form remains as a precedent. However, care must be taken in the modification or editing of specific clauses without consideration of changing the intent of referring or subsequent clauses.

Risk in Allocation in EPCM Contracting

EPCM contracts require the EPCM Contractor to provide pre-construction to post-construction services. The services start at the front end with engineering, move to procurement and follow through with construction management, which will last to project closeout and sometimes through the construction warranty period.

The Committee recognized that, in some cases, the EPCM Contractor will provide fabrication as part of its scope. The actual construction work is provided by parties referred to as "Works Contractors". The EPCM Contractor would not provide direct-hire construction forces without the Owner's consent.

The EPCM model allows the Owner to be more involved in the design process and this relationship needs to be addressed between the Owner and the EPCM Contractor prior to project commencement. The Owner needs to be realistic as to what involvement to have and what resources are available to provide effective and timely input to the design process. The Owner's expectations and resources should be reflected in Appendix A - Owner's Requirements.

An EPCM Contractor is agent for the Owner both in relation to procurement and Construction Management

Works Contracts

As the EPCM Contractor will be the agent of the Owner, works contracts for the performance of the construction are entered into between the EPCM Contractor, as agent for the Owner, and the Works Contractor. Works Contractors may be recommended by the EPCM Contractor to the Owner, or may be selected by the Owner.

The works contracts can be let on any basis that the contracting plan determines is appropriate for the project (for example: stipulated price, unit price, cost reimbursable, guaranteed maximum price).



Contracts Workshop

Wrap-up

Contracts Seminars - Planning to run ½ day sessions again in Fall 2011 – what topics interest you?

Workshop Evaluation Form

Interested in joining the **Contracts Committee**?

Co-Chairs:

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Dan Mowat, AMEC Americas, Limited (403) 298-8054