



CITY OF SUDBURY SUPPLEMENTARY CONDITIONS TO OAA DOCUMENT 600-2013

In early August, 2024, Pro-Demnity became aware that the City of Sudbury was advising architects who were expressing concern about the Professional Liability Insurance (PLI) implications of Supplementary Conditions (SCs) to OAA Document 600-2013 that the City's SCs were the result of "**collaboration**" with Pro-Demnity Insurance Company. **This statement was untrue and misleading.** We repeat the City's answer to an architect's question here:

*Answer: Thank you for your email. Your question was sent to the City's Legal and Risk Departments. This email is to advise that it has been reviewed and no revisions will be made. **The City has worked collaboratively with the OAA and Pro-Demnity with regards to the Supplemental Conditions.** Thank you. Individual's name, Purchasing Agent.*

Pro-Demnity reached out to those responsible for the misleading advice seeking an explanation or retraction. A month later, in September, we finally received an acknowledgement that the City's statement was inaccurate. However, the City's Procurement Representative declined to make the appropriate amendment to their indemnification wording – deletion of the obligation for the architect to "defend" the City in the event of a Claim – that had been the source of the architect's question in the first place. Despite the rejection, the Procurement Representative advised that the City was planning a review of its Supplementary Conditions in the near future.

Architects considering responding to RFPs issued by the City of Sudbury should pay careful attention to the content of the City's Supplementary Conditions amending standard forms of agreement for architectural services. As correctly noted by the architect who contacted Pro-Demnity, the indemnification obligations authored by the City Pro-Demnity expose the architect to obligations that exceed what already exist at law in the absence of the contract. To the extent the obligations exceed the architect's already existing liability at law, there will be NO PROFESSIONAL LIABILITY INSURANCE COVERAGE should the client attempt to enforce the obligation.

We refer to these types of provisions as "Murder Clauses". Other professional liability insurers describe these as "deal breakers" in the risk management advice they provide to insured architects and engineers.

The City of Sudbury is not alone in pursuing this approach – presumably in the belief that exposing architects to uninsured liability will somehow benefit the City, albeit at the personal expense of the professionals retained by the City.

In our exchange with the City of Sudbury's Procurement Representative we shared the following:

For your information, we typically advise architects to address such a "Murder Clause" in one of three ways:

- *Add a "Notwithstanding Clause" as follows:*

"Notwithstanding the foregoing, the obligations and liabilities of the Architect are limited to the professional liability insurance provided by Pro-Demnity Insurance Company and any specific or excess professional liability insurance coverage in force."

- *Replace the entire item with indemnification wording that is in sync with an architect's*

liability at law and its insurance coverage:

“The Architect shall, within the limits of its insurance coverages as stipulated in the contract, indemnify the Client from claims, demands, losses, costs, damages, actions, suits or proceedings in respect of claims by a third party and from losses, costs, or damages suffered by the Client, provided these are attributable to error, omission or negligent act in the performance of the professional services of the architect or of those for whom it is responsible at law.”

- *Delete the entire item as unnecessary...except to expose the Architect to uninsured liability. The Architect’s indemnification obligations under applicable law already apply in the absence of the clause.*

You note your intention to review your current SCs including amendments to OAA Document 600-2013. It will probably make more sense to familiarize yourselves with OAA Document 600-2021 which has replaced the 2013 version. The second option above is a direct lift from the 2021 version.

We strongly recommend that architects considering responding to an RFP issued by the City of Sudbury, or other client organizations amending a standard form of contract:

- Obtain legal advice on the legal and insurance implications of all client-authored changes,
- Make any response to the RFP conditional on adoption of one of the measures noted above,

- If you decide to not participate in the RFP process due to concerns about the client's contract provisions advise them so in writing, with a copy to the OAA Practice Advisors and Pro-Demnity Risk Services.

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