

## Site Conditions - Industry Feedback

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These info-sheets are produced by Saskatchewan's construction industry to provide information to all parts of the construction supply chain. Each info-sheet focuses on one particular contract clause that is often seen as problematic and challenging. This info-sheet is intended to encourage discussion between all parties to construction contracts and to support the implementation of best practices wherever possible.

### Example Clause:

*The contractor also declares that in tendering for the work and in entering into this contract, the contractor did not and does not rely upon information furnished by the owner or any of its agents or servants respecting the nature or confirmation of the ground at the site of the work, or the location, character, quality or quantity of the materials to be removed or to be employed in the construction of work, or the character of the construction machinery and equipment or facilities needed to perform the work, or the general and local performance of the work under the contract and expressly waives and releases the owner from all claims with respect to the said information with respect to the work.*

### What the clause is intended to do:

The clause is intended to shift complete responsibility on to the contractor for items like ground conditions, regardless of the accuracy or provision of information to the contractor. A clause like this is used by the owner or their agents to limit their liability for errors or omissions in the information they provide to the contractor.

### Why the clause is problematic for industry:

- Contractors are unable to determine how to cost in unknown risk, and consequently may choose not to bid, or may bid beyond budget, in order to offset this risk.
- The risk transfer to the contractor place projects at risk and could have a catastrophic impact. Unknown conditions encountered result in non-reimbursable cost overruns and schedule extensions, as well as environmental risks and legal complications.
- Asking contractors to conduct additional site investigation that is costly, time-consuming and/or destructive during the bid process is unacceptable, especially if there is no guarantee they will be awarded the project.

### Better option for the owner:

- Revise the clause to state that the information provided is reasonable to the best of the consultant's knowledge and unknown or changed conditions will be addressed when encountered, if brought to the attention of the owner per standard notice provisions.
- Remove the clause and provide bidding contractors with basic site information such as locates and soil conditions.
- Provide as much site information to the bidding contractors as possible (i.e. historical or geotechnical information available.)
- As with all problematic clauses, owners should consider better mechanisms for sharing risk across the project supply chain. Risks should be transferred to the party most appropriate to handle it.



### What Industry can do:

As a contractor, when you face a site conditions clause that would place this kind of liability on you, you should consider:

- Qualifying your bid;
- Not bidding;
- Submitting a request for information (RFI) to the owner/consultant requesting a change the clause including the why;
- Requesting clarification; and/or
- Carry additional costs to mitigate the risks.

For more information about this issue, or any issue related to procurement and contracts within Saskatchewan's construction industry, please reach out to the Saskatchewan Construction Association at 306-525-0171 or [sca@scaonline.ca](mailto:sca@scaonline.ca).

*Prepared by the Saskatchewan Industry Advisory Council, a committee of the Saskatchewan Construction Association, representing 19 industry and trade associations in the province, as a guideline of recommended industry practice.*