

Contract Modernization

Reliance on Information

Alberta Infrastructure has listened to its industry partners. Our new, modernized contracts address how Contractors for all delivery models and Consultants may rely on information supplied by the Province during procurement and project delivery.

Disclaimer: This document is for information and context only. It is not legal advice and must not be used as a substitute for reviewing the applicable contract, legislation, or seeking professional legal counsel. Where interpretation is required, the executed contract and governing law prevail.

Background

Previous contracts did not have the ability for the Contractor or Consultant to rely upon the information available from the Province. The ability to do so was something that Industry requested to improve efficiency and reduce project costs.

Across all construction and consulting contracts, parties may use, apply, and interpret information provided by the Province (such as reports, studies, geotechnical information, or contract documents) when pricing, planning, and performing the work. Clear rules for reliance help ensure parties understand their obligations, limitations, and responsibilities when interpreting or using information supplied by government.

While all contract types now expressly allow reliance on certain provincial information, the scope, limits, and conditions differ between Contractors and Consultants due to the nature of their respective roles.

What We Heard

Industry expressed concern that:

- The Initial language associated with Reliance on Information placed unclear limits on what information could be used for pricing or planning, and uncertainty in scope, deliverables, and risk management.
- Caveats in geotechnical or third-party reports created uncertainty about exposure to costs related to differing site conditions.
- Contractors wanted assurance that reliance obligations would not transfer unreasonable risk associated with information that the Province itself did not create.
- Consultants needed assurance they could rely on supplied information without being held liable for embedded third-party disclaimers.
- Consultants were concerned that reliance obligations sometimes conflicted with their professional responsibility to identify uncertainties.

Reliance on Information in the Construction Agreements

What Changed

The Construction agreements were updated to clarify:

- The Contractor may rely on information formally provided by the Province during the Request for Proposal (RFP) or in the contract, but only to the extent the Province itself can rely on it if the information originates from a third-party.
 - The Province cannot guarantee the accuracy of reports authored by third parties, and therefore the Contractor's reliance is subject to, and no greater than, the applicable terms, qualifications,

- limitations, or restrictions contained in that third-party report or document. This ensures a consistent and fair risk allocation.
 - The Contractor remains responsible for its own due diligence. The contract reinforces that the Contractor relies on both its own investigation and on information it is expressly permitted to rely upon.
- If interpretation of documents is needed, independent professional advice may be obtained by the Contractor, without shifting responsibility to the Province.
 - The Contractor may retain its own professional consultant (at its own cost and risk) to interpret documents, including geotechnical information, but this does not trigger changes to contract documents unless formally authorized.
- Disclaimers and limitations accompanying third-party reports continue to apply; the Province cannot warrant the accuracy, completeness, or interpretation of work prepared by others.

Why We Made the Change

The Province agrees that allowing Industry to rely on third-party information, to the extent that it can, will improve efficiency and reduce project costs. The changes clarify that:

- The intent of the updated language is to reflect a legal constraint: when third-party reports include reliance limitations, the Province cannot give the Contractor a broader right of reliance than the Province itself has.
 - It is not meant to shift risk to the Contractor or suggest that the Province will not stand behind the information it provides.
- The agreement provides relief where third-party information is inaccurate or contains errors or omissions (Sch 19 Relief Event), and where site or geotechnical conditions materially differ from what was known or reasonably foreseeable (Sch 19 Relief Event), provided the Contractor meets the notice and mitigation requirements.

Reliance on Information in the Consulting Services Agreement

What Changed

The Consulting Services (CS) template now:

- Expressly permits Consultants to rely on information provided by the Province, including geotechnical and supplied information subject to the same constraints the Province would face.
- Removes ambiguous language (“any other any information”), correcting and clarifying reliance provisions.
- Establishes a Schedule of permissible disclaimers, ensuring Consultant-issued Instruments of Service are governed by clear, standardized limitations, including standardized consultant disclaimers to support consistent expectations for downstream parties (Contractors, CMs).
- Ensures Consultants are not responsible for verifying the accuracy of information originating from the Province unless required under the contract or professional standards.
- Aligns reliance provisions with professional practice expectations and the need for Consultants to identify, but not assume responsibility for, third-party qualifications or limitations.

Why We Made the Change

- To ensure that any reliance is compatible with the Consultant’s Standard of Care and professional obligations, strengthening accountability and clarity across the project team.
 - For most projects, Alberta Infrastructure procures site investigation (geotechnical, environmental, and survey services) consultants directly. This continues to be the standard practice, and when we do so, we provide their reports as “rely-upon” documents to subsequent consultants.
 - There are project types where bundling this scope under a prime consultant is more appropriate and efficient, for example in planning assignments where site selection is the core objective. This

- is common practice in the engineering community and is often necessary to ensure integrated design accountability.
- Infrastructure will provide the site investigations to the Consultants for their review and use. The Consultants may rely on such information provided only to the extent the Province itself can rely on third-party information, and the Consultant remains responsible for its own interpretation and application thereof (in other words, how the information is incorporated into subsequent design and/or construction). This approach is consistent with market practice, including alternative delivery models, and strikes the right balance between risk allocation and consultant reliance.