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The Construction File

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A Guide to Standards and Practices in the Construction Industry

Construction File - BCCA to Issue Onerous Bidding Alerts

In an effort to advise contractors of the risks associated with onerous clauses in bidding documents, the BC Construction Association will be issuing Contractor Alerts. The Alerts are intended to bring attention to the onerous clauses that some contractors see as an impediment to bidding on projects.

The decision to issue the Alerts was based on a guideline that was created by the Canadian Construction Association, which identified growing concern across Canada over onerous contract conditions. CCA's guideline identified some common causes of the emergence of onerous contract conditions:

- An owner has experienced a problem on a particular issue and wants to ensure it does not happen again and/or the owner has obtained advice to address the issue or risk within the project documents.
- Institutions and government now rely heavily on their purchasing departments and in many instances these departments are not skilled in the construction tendering/procurement process.

Contractor Alerts will be issued by BCCA based on direct input from industry bidders who will identify a project and the onerous clauses that they wish to have recognized. Copies of the Alerts will be sent to all contractors and the bidding authority and will be posted on the BCCA's electronic planroom.

BCCA's intention in the use of the Alerts is to identify onerous clauses and to advise contractors to consider the risks they may assume by responding to a bid. The message from BCCA to contractors is that accepting terms which are onerous not only hurt a contractor's profitability, but undermine accepted industry standard practices. Conditions that undermine industry standards may likely be a forewarning of how things will progress through the project's duration and historically can lead to costly disagreements. The Alerts will assist contractors with deciding if and how they want to bid.

Bidding authorities and owners should be concerned about the impact of onerous bidding conditions. Recently the Major Projects Inventory (www.gov.bc.ca/ecdev) for British Columbia surpassed the \$100 Billion mark. The challenge for skilled labor has been well documented and this list of projects clearly identifies that this challenge will not abate. This unprecedented list of projects will not only challenge the industry's already stretched capacity, it provides renewed importance on all criteria contractors use when determining which projects they choose to pursue. Onerous contract conditions will limit the number of interested parties on any project.

What does all this mean for the future of the building industry in BC? Attracting contractors to bid becomes paramount. BCCA has actively participated in the development of industry standards and public construction policies over the years and have worked hard in concert with public agencies to promote transparent and fair tendering procedures.

Standard practices and procedures mean good business. They provide equity for all parties by appropriately apportioning liability and ensure the most transparent and accountable use of the public purse. This is sound policy. While construction tendering is not reinventing the atomic bomb, it is a complex contractual process. Over the years, many of the stakeholders working together have developed a plethora of material on how to proceed on publicly funded construction projects. This material has never been more important or relevant than it is today. It can be conceded that it may be difficult to attract bidders in today's environment, but the truth is onerous bidding conditions in documents, bad schedules, and difficult buyers along with bad business practices, are the main reasons contractors choose not to bid a project.

Limiting competition from contractors because they don't bid and adding risk that contractors will protect themselves from will eventually raise the cost of construction. Onerous bidding conditions are not in the best interest of the tax payers in British Columbia.

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