

Construction Alert

A Publication for the Buyers of Construction Services

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Kelowna Office

#104-151 Commercial Dr.
Ph: 250-491-7330
Fax: 250-491-3929
E-mail: Kelowna@sica.bc.ca
Website: www.sica.bc.ca

Kamloops Office

908 Camosun Crescent
Ph: 250-372-3364
Fax: 250-828-6634
E-mail: Kamloops@sica.bc.ca
Website: www.sica.bc.ca



SICA At-A-Glance - Regional News

[Review of AIBC Working Group Standard Document](#)

BCCA is undergoing a review of the AIBC Working Group Standard Document (<http://www.pccbc.com/preregistration.html>) with the other stakeholders to incorporate changes to the document for CCDC 2, 2008 and other updates. SICA is looking for advisors to BCCA to assist with input on the review of the document. Warren Perks of BCCA will be attending the meetings as the BCCA representative and forwarding the information to the regional advisors. Any comments for change should be directed to Warren Perks at BCCA 250-475-1077.

[CCDC 2 – 2008 Stipulated Price Contract – Changes of Note](#)

Jenkins Marzban Logan LLP has kindly prepared a chart highlighting the changes of note between the 1994 and 2008 versions of the CCDC 2. Some of the more important changes are to: Indemnification and Waiver of Claims, Claims for a Change in Contract Price, Delays Due to Weather, Insurance, Utility Location, and Toxic and Hazardous Substances/Mould. To review this informative chart, please link to: www.sica.bc.ca/ccdc2_jml.pdf.

[Stability Returning to Marketplace](#)

BC will likely experience a 5% to 7% increase in cost escalation in 2007. The first and perhaps most influential factor is traditional market adjustment. Faced with significant cost escalation, companies and government downsize projects to stay within budget or reconsider and defer projects.

While the rate of escalation is projected to ease, construction costs will remain high as BC is expected to remain in a robust growth phase at least until 2010. Real gross domestic product has been forecasted to grow at 4% a year from 2006 to 2010, compared to below 3% in the previous five years.

Read more of BTY Group's Market Intelligence: www.bty.com/docs/4thQuarterMarketIntelligenceNewsletter.pdf

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BCCA At-a-Glance - Provincial News

["Onerous Contract Conditions"?](#)

Common Causes 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

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**Building an
Effective Team –
right from the
start**

The Steering Committee for *Starting Building Projects* has released the draft of a



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.

The Result Is

With the changes in the tendering/procurement process, contractors are finding far more onerous clauses in the contract documents than in previous years. These changes are leading to less competition with fewer bidders because they are not prepared to accept the risk or they are compensating themselves for the higher risk. Hence the burden of these onerous clauses may be one of the contributing factors to even higher costs of construction in an already escalating marketplace.

What Can A Contractor Do?

If you find onerous clauses in the documents you are bidding:

- Review all contract provisions to determine any clauses that constitute a risk in submitting a bid and discuss with qualified advisors (insurance, surety, legal counsel and the Regional Association).
- Inform your Regional Association of the onerous clauses by completing an Onerous Bidding Clauses Report and submitting it immediately. Provide as much information as possible including a copy of relevant documents and a list of the offending clauses utilizing the "Onerous Clause Report" (found on the BCCA website at http://www.bccassn.com/pdfs/Contractor_OBC_Report.pdf).
- Reply to Bidding Alerts issued by the association when applicable informing the bidding authority of your support.
- Decide if and how you want to bid.

What Will The Association Do?

We will:

- Upon receiving the "Onerous Clause Report", BCCA will review the project documents and determine what clauses are unduly onerous.
- Communicate with the Tendering Authority to solicit a change to the onerous clauses.
- In the event that the Tendering Authority will not change the documents or the Tendering Authority has a prior history of not changing the similar conditions, BCCA will issue a Bidding Alert to contractors and the bidding authority upon the request of the Regional Association.
- Post the Bidding Alert in the electronic and regional planrooms.
- Copy trade associations and solicit their support in the Onerous Clauses initiative.
- Assist contractors with responding to Bidding Alerts to make a response as easy as possible.

Summary

Construction is all about competition and taking risks. However, 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. Say NO to onerous bidding conditions. It's in your and your industry's best interest. The BC Construction Association is committed to improving industry practices and recommends the usage of CCA# 29 – A Guide on Standard Contracting and Bidding Procedures.

[Risks to Owners of In House Construction When Projects Are Over Budget BCCA's Policy - Over Budget Negotiation Process](#)

If the lowest compliant bid exceeds the Owner's budgeted amount, and the Owner is

proposed National Guideline, available for free download at: bcprojectsmanual.com.

This draft explains the management roles and project stages from concept to start of construction documents. The Committee is inviting review and comment on this draft; please email your comments to Debbie at SICA (dhicks@sica.bc.ca).

Building Project Management has created an article, *Teamwork and Hierarchy*, based on the content of this draft as well as a Vancouver seminar. Explaining the value of co-operation right from the start and the requirements for building an effective team, this article may be accessed at: sica.bc.ca/teamwork.pdf.

Tercon Contractors Ltd. v. British Columbia (Transportation & Highways)

Jenkins Marzban Logan LLP has released an informative article regarding the above case. This recent decision by the BC Court of Appeal will likely have serious implications for our industry and tendering practices. Link to this article to make sure you are up to date: sica.bc.ca/tercon.pdf.

unwilling or unable to award a contract at the bid price but is unwilling to abandon the project, the following guidelines for a course of action are recommended:

- Where the amount by which the bid price must be reduced is *less than 15%* of the lowest compliant bid, the *first* step should be to negotiate with the lowest compliant bidder (only) to identify changes in the scope or quality of the work and a corresponding bid price reduction. Where the Owner and lowest compliant bidder can agree on acceptable changes and a corresponding bid price reduction, the changes should be documented as a post-bid addendum and the contract, based on the negotiated reduced price, should be awarded to the lowest compliant bidder. However, where acceptable changes and a corresponding bid price reduction *cannot* be successfully negotiated with the lowest compliant bidder, the second step should be to re-bid on modified Bid Documents under a new bid call. Negotiations should be limited exclusively to the lowest compliant bidder.
- Where the amount by which the bid price must be reduced *exceeds 15%* of the lowest compliant bid, the bidcalling authority may immediately undertake either of the preceding steps described above, at its discretion. That is, the Owner may negotiate with the lowest compliant bidder first to re-bid on modified Bid Documents without any attempt to negotiate.

Re-bidding should be avoided whenever possible because of the additional time and costs incurred by all parties. Where a re-bid is unavoidable, the Bid Documents should be sufficiently modified to achieve a reduced bid price that will be acceptable to the Owner.

A standard 'privilege clause' in the bidding requirements would give the Owner the right to not accept any bid, thereby permitting the Owner to either abandon the project or reject all bids, and subsequently invite a re-bid on modified Bid Documents under a new bid call. However, since it is recommended that the Owner negotiate with the lowest compliant bidder in some circumstances, it is important that the bidding requirements include a clause giving the Owner, if necessary, the right to negotiate a reduced price with the lowest compliant bidder.

The risks for Owners to convert to in house forces when a project is over budget are:

1. The trade prices received by the prime contractor are proprietary to that prime.
2. When the Owner takes on this role they become a NON preferred Owner by the industry. Future projects will be viewed in a different light. *See Construction File of January 2006, Maximizing the Competitive Bid.*
3. The Owner may not be addressing the same General Conditions of the prime contract as the prime contractor.
4. Is it really under budget when the final price comes in i.e. all direct costs and overhead accounted for?
5. A change in contracting structure will impact the relationship with the consultants and may result in increased fees.
6. The Owner loses the benefit of a fixed price contract and now has to absorb labour and material escalation.
7. The Owner must have in-house expertise to evaluate tenders and procedures.
8. Does the Owner understand Division 1 requirements i.e. safety, insurance, contract security, shop drawing review, maintenance manuals?
9. The value of the Superintendent is negated; who does the on-site coordination, job scheduling, project management, material procurement etc?
10. Owner now has safety responsibilities as Prime Contractor of a multiple employer worksite. If an accident occurs it may impact WCB rates and may move the Owner from one class of WCB rates i.e. supervisory staff to construction rates.
11. Owner is now responsible for regular quality control expertise, coordinating and administering latent defects, and warranty costs.
12. Owner is now taking on the prime contractors risk with respect to trade contractor

MMCD Supplementary Specifications

MMCD has posted supplementary specifications on www.mmcd.net. These specifications pertain to Volume II, and clarify/change some items.

2008 CDBI Annual Conference

The next annual conference & AGM of the Canadian Design-Build Institute (CDBI) will be held next Fall in Toronto, ON. For details, link to: cdbi.org/events/index.html

STEP for Women Launches Website

Skilled Trades Employment Program for Women (STEP for Women) has launched a new website — www.stepforwomen.com. This website is for potential new entrants interested in trades, current tradeswomen, employers, and interested stakeholders around BC. It will also host an online mentorship program for tradeswomen to assist with recruitment and better retention on the worksite. We urge the women in trades in BC to sign up for the Tradeswomen Networking Database as a starting place for connecting women in industry.

failure. This risk now carries upwards in the Owner's governing structure i.e. to a Board of Directors.

13. The Owner assumes the insurance and bonding responsibilities which should be maintained for the project.

BC Budget Incorporates PST Recommendations

Not long ago the BC Government was looking for input on how to simplify and streamline PST for contractors and the construction industry. The BCCA together with the Vancouver Regional Construction Association provided input to the Ministry of Small Business and Revenue by way of a brief position paper which can be reviewed on line at: www.bccassn.com/reports.html.

In the most recent budget released by the Province a couple of weeks ago a number of the suggestions put forth in that position paper have surfaced. It would appear that the PST Review Committee has listened to many of the concerns raised and plans to implement several of the recommendations.

In its initial review of PST, the Ministry offered three options for change. We favoured option 3 which was, that the contractor would pay PST on all machinery, equipment and materials installed under a construction contract. We chose this option because it reflected the simple status quo for the majority of construction contractors who use stipulated price or lump sum contracts. The key change with this option was that the contractor would pay tax on the cost of materials, regardless of the contract type for the related installation of the materials. The key benefit was that tax cost would be minimized based on a contractor's cost of raw materials. A detriment with this option was that it did not address the issue of taxable or non-taxable services.

The recent budget accepted our recommendation and has proposed this option.

The BC Government will also adopt our recommendation on the flow-through to contractors for materials purchased for use in contracts with PST exempt end users such as First Nations individuals and bands, aquaculturalists and farmers.

The proposals will not be implemented until October 2008, which will give the government time to design and implement the several legislative and regulatory amendments required. It will also allow contractors time to absorb these changes and to consider what effect, if any, each has on their operations and their contracting methodologies. Once these changes are understood and implemented, they should represent progress towards tax simplification for contractors, both in the administration of the tax and in dealings with Consumer Taxation Branch (CTB) auditors.

Safer And Greener Buildings Coming To BC

On March 10, 2008 the BC Government introduced changes creating safer buildings and a greener BC Building Code. This is the beginning of a Modernization Strategy that will roll out in phases over the next several years as individual components are completed and implemented. Initial changes have begun with the introduction of [Bill 10](#), The Housing Statutes Amendment Act, which has received first and second reading. This amendment package makes changes to several key pieces of legislation related to the construction sector.

Bill 10 ensures we can construct greener buildings and respond to rapidly changing building technology. It is an important first step in improving the way we regulate buildings and construction. Bill 10 amends the Local Government Act, Community Charter, Vancouver Charter, Architects Act and the Engineers and Geoscientists Act. These amendments:

- Allow local governments to make bylaws to conserve energy and water, reduce greenhouse gas emissions, and improve building accessibility for persons with disabilities.

STEP for Women is a joint initiative of the British Columbia Construction Association (BCCA) and the Métis Nation BC (MNBC) with funding support from the BC Ministries of Economic Development and Community Services. For more info, contact: Lindy Monahan, Program Manager (250) 661-3083 or lindy@bccassn.com.

Gold Seal Update

Gold Seal has announced that two major construction projects have been selected as **Gold Seal Designated Projects**, with another close to a launch date. In Quebec, L'Association de construction du Québec (ACQ) and Réjean Roy Inc., the prime contractor, are leading the Gold Seal effort with a \$35 million 6-storey luxury condominium building. In Alberta, the Calgary Construction Assoc., along with the Calgary Health Region and EllisDon, are championing the new Calgary South Health Campus, a \$1.2 billion project, as a designated Gold Seal Project. In Ontario, the Grand Valley Construction Assoc. is working closely with Ball Construction and the University of Waterloo to bring two projects under the Gold Seal umbrella.

- Introduce the use of building specialists trained in new and more complex building technologies such as rain screen and green building techniques. Professional associations that govern engineers, geoscientists and architects will have authority to create building specialist designations and determine the level of knowledge needed for certification as a specialist.
- Permit the Minister responsible for Housing to designate an official to make binding interpretations of the BC Building Code. This will add clarity and lead to more consistent application of the Code.

From the industry perspective the addition of the permission to allow the Minister to designate someone to make binding Building Code interpretations is of great significance. The industry has been requesting the replacement of this support service since it was discontinued by the Building Policy Branch over a decade ago. The timing for implementation of the service is unknown at this time.

Although the inception of amendments that have been introduced to allow local governments to make bylaws may appear to be onerous, it does not permit them to make technical changes. Technical changes are still required to be dealt with by concurrent authority under the Community Charter. The Ministry's Building and Safety Policy Branch, Office of Housing and Construction Standards should be notified where it appears changes are being made to technical requirements that do not meet the Building Code requirements.

Further information regarding the bill and questions related to this bill, can be viewed at the following links: <http://www.housing.gov.bc.ca/modernization/index.htm> and <http://www.housing.gov.bc.ca/modernization/faq.htm>

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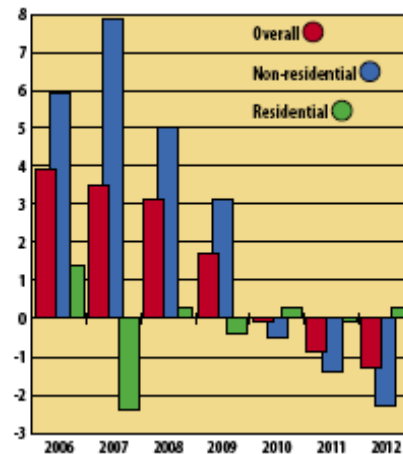


Construction Industry Economic Performance in 2008: Déjà Vu?

If forecast data holds true, the Canadian construction industry is set to experience a remarkable sense of déjà vu in 2008 compared to 2007. As most contractors will know, 2007 was an incredibly strong year for the nonresidential construction sector, whereas compared to previous years, the residential market was soft. The coming year in 2008 is expected to bring much of the same. It will not be until 2009 and 2010 that the industry should experience a noticeable softening in the market.

For contractors looking to obtain more information on detailed provincial economic and employment trends, CSC has set up a new interactive webbased tool allowing for personalized searches and data retrieval. This new website can be accessed at www.constructionforecasts.ca.

The graph illustrates the annual percentage change of construction investment for the residential, non-residential, and overall construction industry for 2006-2012.



CCA Describes Budget 2008 As "Hit And Miss"

OTTAWA – On February 26, 2008, the Canadian Construction Association (CCA) described Budget 2008 as "hit and miss" when it came to the priorities of the Canadian construction industry. CCA reacted to the Budget as delivered by federal Finance Minister Jim Flaherty in Ottawa today.

Want to be a Gold Seal Designated project? Call Debbie at SICA 250-491-7330.

CCA Meets With PWGSC Minister

CCA met with The Honourable Michael Fortier, Minister of Public Works and Government Services Canada (PWGSC), on Jan 31st in Ottawa. Topics included the general state of the construction industry, the proposed federal P3 office, and PWGSC's role with respect to P3s. CCA also raised its desire for a more balanced allocation of risk on federal construction projects, particularly with respect to work on existing properties/structures.

NEW Codes of Ethics Adopted

The CCA Board endorsed for publication two new Codes of Ethics. The first, called *Code of Ethical Conduct for Staff, Directors and Volunteers*, applies to CCA's own operations and the conduct of its staff and volunteers. The second, entitled *Model Code of Ethics for a Construction Firm*, is a template or model Code that can be used as a starting point by individual industry firms wishing to develop their own corporate code. The latter goes beyond the

CCA was pleased that Minister Flaherty announced that the federal Gas Tax Fund was to be made permanent. At present, the Gas Tax Fund was set to expire after fiscal year 2013-14. CCA was also pleased with the announcement of a \$330 million fund over the next two years for a First Nations water and wastewater program (something advocated for by CCA), as well as a new \$500 million third party trust fund for public transit. Also of significance was the announcement concerning a new stand alone Employment Insurance Account, as well as an improved EI premium rate-setting mechanism which will allow rates to be truly set on a breakeven basis.

However, CCA was disappointed that the Budget did nothing to address the pressing human resource needs facing the construction sector and other industries at large. The Budget did nothing to increase trades training capacity in the Canadian college system, and made only a vague promise to continue reforms to the immigration system to facilitate the entry of permanent and temporary foreign workers.

“There were some small victories for the Canadian construction industry in Budget 2008,” stated Michael Atkinson, President of the Canadian Construction Association. “Reforms to the Employment Insurance system and rate-setting process are clearly steps in the right direction for the business community. Furthermore, the announcement regarding the permanency of the Gas Tax Fund, and the First Nations water infrastructure program, both of which were called for by CCA, are good news. However, the lack of any substantial announcements regarding the human resources needs of our industry, especially increasing trades training in the college system, was clearly lacking from this Budget”, he added.

A summary of measures contained in Budget 2008 that will directly impact the construction industry can be obtained as of February 27 from the CCA website – www.cca-acc.com/news/government/reports/2008/08budgetsummary.pdf.

New Immigration Class Introduced

Citizenship and Immigration Canada (CIC) held consultations in January regarding a proposed new immigration class called the “Canadian Experience Class (CEC)” that would provide a new avenue for temporary foreign skilled workers to gain permanent residency. The new format would not involve having to deal with the so-called “points system” and would be based upon a pass/fail system. This class would also be open to Canadian-educated international student graduates who have attained some skilled work experience in Canada. The creation of this new class was first announced in the March 2007 Federal Budget.

The CIC Discussion Paper states that to be eligible, temporary foreign workers:

- Must be in an occupation at the NOC 0, (senior management occupations), A (occupations that normally require a university degree), or B (occupations that usually require college education or apprenticeship training), level; and
- Must demonstrate successful labour market integration as follows:
 - possession of a Canadian credential, (i.e. secondary school diploma or trade certificate or apprenticeship); and
 - 2 years full-time Canadian work experience in the eligible occupation within the three years previous to the application; and
 - moderate proficiency in an official language, (i.e. CLB 6 or higher as measured by a test given by a designated institution).

One of the controversial measures is the need for language proficiency testing. Some argue that the ability to work in one’s occupation for 2 years in Canada and/or to pursue apprenticeship training in that occupation should be demonstration enough. Others argue that independent, empirical testing must be required in order to ensure that person can integrate successfully beyond simply their current employment environment.

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scope of traditional industry codes in that it does not deal exclusively with bidding and contracting practices, but also touches on such matters as environmental practices, safety, and financial disclosure. Both will be posted on the CCA website soon: www.cca-acc.com.

CCA Signs MOU with Architects to Promote CANet

On March 10th, CCA signed a Memorandum of Understanding with the Royal Architectural Institute of Canada (RAIC) that recognizes the importance of the plansrooms operated by construction associations in the procurement process. It commits both to work together to promote and support the Construction Association Network (CANet), a network of electronic and physical plansrooms operated by construction associations across Canada (see <http://www.canet.cc/>).