

Construction Alert

A Publication for the Buyers of Construction Services

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SICA At-A-Glance - Regional News

The Fundamentals of Design-Build Tutorial

Representatives from the Canadian Design-Build Institute (CDBI) will take you through the fundamentals of the Design-Build process and definitions. You will see a clear comparison of methods of contract procurement and benefits and variations of Design-Build. Review all contractual risks, RFPs, and RFQs and end with a round table discussion. Enhance your knowledge of the Design-Build process!

Register Today! Kelowna, April 14, 7:30 – 4:00 pm www.sica.bc.ca/cdbi.pdf

Reminder: Don't Forget To "Seal The Deal"

CCDC Copyright Seals are required to be used with the printed electronic versions of CCDC documents. Failing to do so could risk a potential breach of contract later on in the proceedings.

A Copyright Seal's application is a representation that the document has not been changed from its original form, with the exception only of additions or modifications as may be set forth in supplementary conditions.

A Copyright Seal must be used on all CCDC documents to be executed from printed electronic versions. For example, if there are three copies to be executed, such as one each for the contractor, the owner and the consultant, each copy must first have a Copyright Seal before being signed. A printed electronic CCDC Document with an affixed Copyright Seal is equivalent to an original CCDC hard-copy document.

MMCD Releases Platinum Edition - User Guide

MMCD is pleased to announce the public availability of the electronic companion User Guide to their Platinum Edition – Volume II Specifications, General Conditions, and Detailed Drawings! This guide to the application and use of the Master Municipal Construction Documents to the tendering and administration of municipal Infrastructure projects completes the Platinum Edition electronic release.

<http://www.mmcd.net/contentpage.aspx?id=platinum>

MMCD anticipate shipping the printed version of the User Guide mid-March.

What are the Implications of Using a Cash Allowance for Change Orders?

When the Owner adds a Cash Allowance (CA), he adds it with the expectation of using it during the Work. The Contractor's CA mark-up and overhead are typically included in the base bid.

SICA- At-A-Glance

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There is some joint risk here - the Owner is not sure if he will use all the CA, but pays overhead and mark-up on the full amount (but the Owner gets to set the amount of the CA they feel is appropriate). Similarly, the contractor really doesn't know how much overhead and profit to add for the CA (unless it's intended use is clearly articulated in the bid documents), as it could be 100 separate and different items at \$1,000 each, or 1 item at \$100,000 - there is a lot more work in 100 individual items.

CCDC 2 says (GC 4.1.4), that the un-used portion of a CA is credited back to the Owner, but not the Contractor's related mark-up and overhead.

So the appropriate thing to do would be for the Owner to issue a negative, or credit, Change Order (CO) which reduces the CA to zero (and reduces the overall value of the contract). Then all the other CO's follow the normal process, which includes the Contractor's overhead and markup.

The CA & CO's are different, stand-alone, contract entities, so are handled as such. So while there might be an interpretation of "paying twice", contractually, that is not the case.

Ultimately, the Owner controls the bid documents, and the amount of the CA. If the Owner is unsure of the potential total cost of CA's, they should likely err on the conservative side, as any overages are treated as a CO anyway.

Sometimes Owners want to "tuck away" some extra funds, and carry it within the Contract (so it is binding, and considered "spent"), rather than carrying some additional contingency funds outside the Contract. But that is not the intent of CA's - which are more for expected costs (eg: utility costs & fees), than a CO fund to draw down.

If an Owner wants to carry some funds within the Contract in anticipation of CO's, then the Owner should use a Contingency Allowance, not a CA. The Contingency Allowance itself carries the Contractor's Overhead and Markup (not the base Contract), so it can then be drawn down on CO's without the perception of "paying twice".

Courtesy Terry Brown, STBR Consulting Ltd.

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MMCD Superintendent Course! – Kelowna

This course is focused on the needs of Superintendents & Field Clerks, but also includes pointers and suggestions for Project Managers & Estimators. Learn MMCD policies and better understand each party's obligations and entitlements!

Kelowna
April 23, 2010
8:30-4:30

Register Today!
www.sica.bc.ca/mmcdkel.pdf

BCCA At-a-Glance - Provincial News



Electronic Bidding System Has Legs

Since the early days of Building Exchanges, facilitating and managing public construction bids has been a focal point for construction associations. The BC Construction Association (BCCA) and its Regional partners are no exception to this rule. For many years the BCCA and the Regions have operated a bid depository system and over the years it has been widely used in the public sector for such projects as educational facilities, hospitals and other public buildings. BCCA recognized, however, that in order to continue to provide a valuable service to its members it would be necessary to revamp it with an eye to the 21st century. Say "Hello" to the BCCA Electronic Bidding System (EBS).

Bid Depository has gone high tech. The EBS allows for the reception of secured bids from trade contractors electronically. The System was developed in concert with our technology partner, Infinite Source and it is an adjunct to the Electronic Planroom services offered across the province through our Regional Construction Associations.

In September of last year the BCCA launched the EBS with little fanfare. Recognizing the need to test the product we started off slowly, seeking appropriate projects to try things out on. We quickly determined that the on-line system provides a number of

HST Questions?

BCCA has established an HST info page on the web. Please refer to:

<http://www.bccassn.com/hst.html> for articles and updates on HST in BC, links to HST info, and to submit your questions regarding HST to BCCA. For questions on the HST, contact BCCA.

advantages for all stakeholders in the industry. It:

- Substantially reduces the potential for bidders to submit non-compliant bids.
- Allows general contractors to receive bids in an efficient electronic format that allows a quicker more reliable method of analyzing the bids.
- Reduces the impact on the environment by decreasing the use of paper and the carbon foot print from vehicles used to transport bids.

To date the EBS has been utilized successfully in five public projects on the lower mainland. Trade contractors using the system reported that they were pleased with the system pointing out that it streamlined the bidding process and eliminated that last minute rush and the stress that goes with it. It also significantly reduced the need to make phone calls to find out who else was bidding.

Training sessions have been and continue to be provided by BCCA through the Regional Associations to make sure that the industry has the support it needs to use the system. Already over 300 users have taken the training workshops which have been held in every area of the province. BCCA recognizes that further training workshops may be needed and we are prepared to set those up where the need is shown.

While all of the projects using the system have so far been in the lower mainland, a project to build a healthcare facility in Prince George has opted to use it as has Defence Construction Canada for a project on Vancouver Island. We expect to see its use increase steadily in the next year.

BCCA's EBS has successfully revitalized the bid depository, increasing its appeal by making the collection of information more responsive and less time consuming to the users. We anticipate that it will also evolve into a system for collection of bids from general contractors to owners. It is simply too useful a tool to keep in a box. If you haven't yet had a chance to attend one of the training workshops in your area or if you would like more information on the EBS, please let us, or your Regional Construction Association, know. We will do our best to bring you up to speed.

[Tercon Contractors Ltd. v. British Columbia \(Transportation & Highways\) 2010 Supreme Court of Canada Decision](#)

On February 12, 2010, the Supreme Court of Canada released its reasons for judgment in the Tercon Contractors Ltd. appeal. At issue on this appeal was whether the successful bidder (a joint venture between Brentwood Enterprises Ltd. and Emil Anderson Construction Co.) was eligible to participate in the tender process instituted by the Ministry of Transportation and Highways and, if not, whether Tercon's resulting claim for damages was barred by an exclusion clause contained in the tender documents.

The majority of the Supreme Court of Canada held that the Ministry breached the express provisions of its bid contract with Tercon by accepting a bid from a party (i.e. the Brentwood/Emil Anderson joint venture) who should not have been permitted to participate in the tender process and by ultimately awarding the work to that ineligible bidder. This egregious conduct by the Ministry also amounted to a breach of its implied duty of fairness owed to all compliant bidders like Tercon. The majority of the Supreme Court concluded that the exclusion clause, which barred claims for compensation "as a result of participating" in the tendering process, did not exclude Tercon's claim for damages. By considering a bid from an ineligible bidder, the Ministry not only acted in a way that breached the express and implied terms of the bid contract, it did so in a manner that offended the integrity and business efficacy of the tendering process.

Canadian Common Ground Alliance Demands National One-Call Utility Locating System

As aggressive infrastructure renewal plans begin to unfold across Canada, the need for a national one call utility locate system gains importance, finds the Canadian Common Ground Alliance. "You have federal and provincial governments pouring billions of dollars into infrastructure renewal and that means opening up congested arteries, roadways and right-of-ways," explains Frank Zechner, a construction lawyer representing the Canadian Construction Association at the CCGA. Read more: <http://www.dcnonl.com/article/id36252>

Buy American Agreement Reached

Recently, the Government of Canada announced Canada and the United States have reached an agreement that would allow Canadian companies to participate in U.S. infrastructure projects financed under the American Recovery and Reinvestment Act (Recovery Act). Under the agreement, Canadian suppliers will be provided

Read BCCA's complete article: http://www.bccassn.com/issues/Issue_Update_221.pdf

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CCA At-A-Glance - Federal News



Budget 2010

In early November, the House of Commons Standing Committee on Finance concluded its annual national consultations with Canadians on measures for inclusion in the upcoming federal Budget.

The focus of this year's hearings was the government stimulus measures and their impact in moderating the effects of global financial instability and economic slowdown on the Canadian economy. CCA appeared before the Committee on November 2, 2009, in Ottawa, and recommended the following:

1. In cooperation with provincial governments, the federal government develop a long-term infrastructure management plan, double existing transfers to municipalities under the Gas Tax Fund and explores new financial measures, such as a federal Municipal Infrastructure Bond, to help local and municipal governments across Canada better cope with infrastructure construction and ownership costs.
2. The federal government alleviate future labour supply shortages by enhancing training capacity at community colleges across Canada through an extension of the Knowledge Infrastructure Program for an additional 5 years and at a funding level of \$1 billion annually.
3. The federal government achieve the environmental and productivity benefits inherent in the early adoption of heavy equipment powered by new Tier 3 and Tier 4 diesel engines through the use of incentives, such as increasing the depreciation rate for these equipment purchases to 50 percent and making them depreciable on a straight-line basis.

The next federal Budget is expected to be tabled in the House of Commons in March of 2010.

Read more from CCA: www.sica.bc.ca/ccadec.pdf

2010 Automobile Deduction & Expense Rates Announced

On December 31, 2009, Finance Canada announced the automobile expense deduction limits and the prescribed rates for the automobile operating expense benefit that will apply in 2010. All of the limits and rates in effect in 2009 will continue to apply in 2010. For the complete report click <http://www.fin.gc.ca/n08/09-125-eng.asp>.

BIM Task Force Struck

The CCA eConstruction Committee has struck a BIM Task Force to define what should be CCA's mandate and role with respect to this new software tool and what kind of relationship CCA should strike with the Canada BIM Council. In the interim, the Committee agreed that CCA should provide a representative to sit on the Council's Board of Directors.

CaGBC Introduces Changes to the Canadian LEED Rating System

The Spring of 2010 will see the CaGBC launching the latest versions of its New Construction and Core & Shell rating systems, LEED Canada NC 2009 and LEED

access to state and local public works projects under the Recovery Act in a range of areas, including programs of the U.S. Department of Energy, the U.S. Department of Housing and Urban Development and the Environmental Protection Agency. Read more: http://www.international.gc.ca/media_commerce/comm/news-communiques/2010/056.aspx?lang=eng

New Study Shows Canadians Want Federal Infrastructure Funding Protected

A new national survey released by the Federation of Canadian Municipalities (FCM) shows Canadians believe that local infrastructure is among the most important areas to protect from federal spending cuts, second only to health care. Read more: <http://www.fcm.ca/english/View.asp?mp=1&x=1244>

Canada CS 2009.

These new rating systems, while built upon the existing rating systems, will feature several changes.

The registration for *LEED Canada NC 2009* and *LEED Canada CS 2009* will open in June 2010 and those registering projects after this date must use the new rating systems. Unfortunately, you will not be able to register for either *LEED Canada NC 1.0* or *LEED Canada CS 1.0* after the new versions are released.

Projects registered prior to the launch of the new rating systems will have three options:

- Certifying under the current rating systems.
- Switching and certifying under the new rating systems.
- Using only some of the credits from the new rating system. Note that not all credits will be available to use in this way, and other limitations may apply.

Read CCA's full article: www.sica.bc.ca/ccajan.pdf

Public-Private Partnerships For Infrastructure Save Time, Money: Conference Board Report

Public-private partnerships (P3s) for infrastructure projects are delivering savings in costs and time compared to conventional procurement approaches used by Canadian governments. But P3s are not appropriate for all public infrastructure projects, according to the conclusions of a Conference Board report that assesses the performance of projects in the so-called "second wave" of P3s, those executed by specialized government procurement agencies. Read more: <http://www.conferenceboard.ca/press/newsrelease/10-66.aspx>

Cautionary Note to Contractors Bidding Infrastructure Stimulus Projects

In order to be eligible to receive funding under the federal infrastructure stimulus programs announced in the January 2009 Federal Budget, municipalities and universities/colleges had to attest that their projects would be completed by no later than March 31, 2011. The Federal Government and Provincial Governments continue to state that they will meet their financial obligations on those projects only up to and including March 31, 2011 and will not pay any amounts after that date.

Given this financial risk, CCA cautions contractors to ascertain prior to bidding such projects:

1. Whether the project is funded under one of the federal infrastructure stimulus programs that is subject to the March 31, 2011 funding deadline;
2. Whether the proposed contractual completion date is realistic and achievable;
3. The degree to which the Contractor will be held liable for damages for failure to meet the contracted schedule, including any loss of federal and/or provincial government funding should the project not be completed by March 31, 2011; and
4. Whether the contract conditions include liquidated damages provisions spelling out the extent of the damages the Contractor will be required to pay in the event of a delay in completion beyond the March 31, 2011 funding deadline.

CCA will be bringing this Bulletin and the issues it raises to the attention of the Federal Government and is asking its Partner Associations to do likewise with provincial and municipal governments.

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**Canadian
Construction
Association
Focusing on Post-
Stimulus Investment**
CCA President
Michael Atkinson was
in Vancouver recently
for federal pre-budget
consultations.
According to the CCA,
the federal
government must find
new ways to fund
infrastructure
investment beyond the
lifespan of current
stimulus fund
programs. Read more:
[http://www.dcnonl.com/a
rticle/id37242/profservice](http://www.dcnonl.com/article/id37242/profservice)
[S](#)