

## **Extending the Stimulus Fund Deadline for Construction Gives More Value to the Taxpayers**

For the non-residential construction industry, the issue of the March 31, 2011 deadline for completion of all federally funded infrastructure stimulus projects is of considerable concern.

In the lead up to the 2009 Budget, the Canadian Construction Association, on behalf of its members in the Southern Interior of BC, lobbied the federal government for additional funding for infrastructure construction, because this type of stimulus provides the greatest value for the government dollar when it comes to both job generation and net economic benefit. According to the Federation of Canadian Municipalities, for every \$1 billion spent on infrastructure construction, more than 11,500 jobs are created or sustained.

As proof that these measures have worked, we saw in the first 8 months of the current recession a net decrease in Canadian construction employment of more than 124,000 jobs by July 2009 which is the point at which many municipal governments began tendering federally approved infrastructure projects. Since then, with the exception of November 2009 and February 2010, we have seen consistent month-over-month increases in employment, with more than 54,000 jobs added from July 2009 to March 2010 – an indication that these federal measures are working and helping sustain and create jobs in our sector.

But things have not always been smooth. The first deadline for federal projects closed in May 2009, with the first federal approvals issued in June. However, many municipalities were confused and held off immediately going to tender because they were awaiting a formal letter of approval from Infrastructure Canada.

While frustrating from a contractor's perspective, this process was still far faster than its predecessor programs, in part because of changes the government made to the formal application process and the exemption it gave these projects from federal environmental assessment regulations.

Despite these minor process implementation issues, we as an industry have been pleased with the overall rollout of these projects, particularly since they came at a time when many of our companies were finishing off their backlogs and looking for more work.

However, there is a growing concern within the industry that some of the projects being tendered for this construction season, particularly those civil engineering projects that are seasonal in nature (such as road work), may not be completed by the government deadline. Should we experience an early winter or another wet summer, many of these roadway expansion projects may not be completed before the end of this year's construction season, which is usually late October. And since typically these projects cannot be finished during winter months, many will not meet the deadline.

Moreover, even for projects where construction can continue yearlong (such as commercial and institutional construction or the college and university projects approved under the Knowledge Infrastructure Program) there are concerns about the deadline because they took on projects that were not as so-called "shovel ready". This has forced them to add extra shifts and to work their crews longer hours than normal to stay on schedule. While best efforts will be made by our industry to comply with the government deadline, it is becoming clear that some of the projects will simply not be completed in time.

Our concern is that some municipalities may transfer the liability for a loss of federal funds onto the backs of contractors in the form of liquidated damages. (Liquidated damages are damages defined in the construction contract and chargeable against funds due to the contractor for each day the contractor fails to complete the project beyond the contract completion date.) These liquidated damages clauses will hold the contractor responsible for any loss of federal funding arising from the project completion slipping beyond the March 31 date.

Clearly, the intent of the federal government in developing these programs was to help stimulate the economy through infrastructure construction, not the legal community which may yet benefit from the ensuing litigation required to sort out liability for projects that extend into April of next year.

While our industry supported federal efforts to get these funds out quickly, adhering to the deadline may cause more harm than good to the overall economy. Our members are not calling for additional federal stimulus; simply a more tapered approach to the withdrawal of stimulus. Not only will this create a more natural transition for the industry from government funded infrastructure work to what we hope will be increased private sector demand, but it will also help mitigate against an increase in unemployment should private sector demand not be as robust as hoped come April 2011.

Our hopes are that the federal government will change its position on the deadline and make a change in policy this year, not next year when the damage may already be irreparable.

Many of the tenders going out this spring will be forced to implement liquidated damages clauses that at this date will force contractors to avoid working on federal projects for fear of the liability issues, or for those that do, they may build into their price a risk premium. In the end, this means we will be paying more for the construction of these projects and getting less value for taxpayer dollars.

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