

The Cost of Onerous Bidding Conditions

In the June 2002 BCCA Bulletin (<http://www.bccassn.com/lit/bulletins/bullet0206.pdf>) we published an article called 'A Fine Day to be a Lawyer'. At that time we expressed concerns about the implementation of the BC Government's Capital Asset Management Framework and in particular the removal of the BC Government's Standard Stipulated Sum contract, which was removed under the guise of reducing red tape. It did remove red tape for the government but added excessive red tape for the industry as it resulted in every agency creating their own form of contract. The industry lobbied for many years to have this standard government document and although what we had may not have been idyllic it was much better than what we have today.

As we predicted in the article this outcome has resulted in a lot of work for lawyers. Many agencies went down the road of hiring lawyers to draft contracts and supplementary conditions that heavily distributed the risk in bidding and contracting to the construction community. Despite the lead taken by industry stakeholders, first with the development of the AIBC Working Group Stipulated Sum document in 2004 and its predecessor document BCDC 2 in 2008, many government agencies chose to rely upon one sided legal advice that produced onerous bidding conditions for contractors. Seven years later BCCA and its Regional Associations continue to engage the local agencies in discussions about this unfair distribution of the risk and for the most part it falls on deaf ears.

Despite the falling cost of construction these days we believe this onerous risk to

general contractors and trade contractors comes at a cost to the taxpayers of BC. Not only are agencies paying for unnecessary legal fees, which could be saved if agencies used BCDC 2, 2008, but the onerous conditions add to the cost of construction.

Recently, an article from the Daily Commercial News stated that in Ontario 'Realistic and better structured construction contract procurement practices could save governments province-wide \$1 billion, an industry study concludes'. The article went on to say that the study "conservatively estimates that taxpayers are paying at least five per cent more than they should because of these practices and that's very much on the low side. At the upper end, it could be as much as 20 per cent. Government purchasing policies and contract documents are at the root of the problem. They have become "so onerous" in the transfer of the risk to construction contractors that many qualified companies simply do not bid. This purchasing and contract landscape creates a less competitive marketplace for public sector work. Savings that could be found in this area could be used to fund additional needed infrastructure work or reduce looming deficits."

We believe the same situation exists in BC. Not only are these onerous conditions adding to the cost of the construction but they are at a burden which belies the efficiency of the industry and affects everything from human resources to the future capabilities of the industry to maintain a skilled workforce.

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The solution is relatively simple. Savings can be achieved by public owners who adopt the industry standard BCDC 2, 2008 Stipulated Sum Bidding documents and stop spending excessive funds on unnecessary legal fees that are adding to the cost of construction. Other

public owners across Canada, both at the provincial and the federal level, have acknowledged the value of a standard document. Its time to be accountable to the tax payers and to do the same thing in British Columbia.

HST UPDATE

By Carl Beck, Beck & Associates

On October 14, 2009, the BC Government released HST Notice #1, entitled “*General Transitional Rules for British Columbia HST*”. This document confirms some common-sense rules. For example, HST will apply to sales where goods are delivered and ownership is transferred on or after July 1, 2010.

Services will be subject to HST *to the extent* that the service is performed after June 30, 2010. Construction contractors must start collecting HST *now* on prepayments for work that will not be completed before July 1, 2010. Residential contractors will be allowed to file a PST Inventory Rebate for PST-paid inventory of materials not installed in a residential project at July 1, 2010.

Holdbacks will be subject to the same allocation of HST as the underlying progress billing. HST will not be charged on a holdback if the underlying progress billing is for work to June 30, 2010. A clean work-in-progress cut-off at June 30 would be advisable to minimize errors

and confusion in your progress billing system.

Other transitional rules specific to residential housing in BC are to be announced later, after the BC Government conducts more “consultations” with the industry.

Key Dates to remember:

- July 1, 2010, the obvious one;
- May 1, 2010, the date a business starts collecting HST on prepayments for goods and services to be provided after June 30, 2010;
- October 14, 2009, the date that HST must be collected by contractors on prepayments for services to be performed after June 30, 2010.

The full text of HST Notice #1, General Transitional Rules, is available at: http://www.sbr.gov.bc.ca/business/Consumer_Taxes/Harmonized_Sales_Tax/HST_Transitional_Rules.html

NOTE: BCCA has established an HST information page on the web. Please refer to : <http://www.bccasn.com/hst.html> for more information and updates on HST in BC.

NOTE: New standards for the design and construction of adaptable housing have been added to the BC Building Code, effective December 31, 2009. Information on the new standards can be found at http://www.housing.gov.bc.ca/building/adaptable_housing/index.html.

HAPPY HOLIDAYS FROM
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The mission of the BCCA is to provide leadership and excellence in the representation of and service to British Columbia’s construction industry