

# Issue Update

## Notice to Bidders on P3s and LEED Certified Projects

Both general contractors and trade contractors should be aware and mindful of conditions that may exist in bidding documents for Public Private Partnerships and projects that are striving for a LEED certification. Contractors are not to be discouraged from bidding, however, some of the clauses in these documents may have a significant impact on a contractor and should very much be considered when preparing a bid.

For example on a P3, the documents may contain certain performance criteria for standards or schedules that effect the head contract or proponent's contract during construction or even as set out for the long term performance criteria for a facility. These risks could be passed on to an uninformed participant in the process. Bidding documents may not make these conditions totally apparent and therefore contractors should ensure they review all documents relating to their contractual obligations. It may be prudent to engage your legal counsel.

Similar performance considerations could apply to LEED certified projects. The capability of the owner to achieve a desired level of LEED certification could be passed on to the contractors with penalty clauses for non-performance. For instance a contractor's employee may be unaware of a LEED standard and somehow compromise the capability of the owner to achieve LEED Gold. This could result in a financial penalty to the contractor or a subcontractor depending on contractual considerations.

BCCA recommends and expects that before making decisions about these potential risks, contractors will review the relevant terms of the Bid Package, draw their own conclusions, and make their own independent decisions.



