



# BRITISH COLUMBIA CONSTRUCTION ASSOCIATION

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## CONTROLLING COSTS AND NEGOTIATION OF OVER-BUDGET BIDS

### BACKGROUND

The BC Construction Association has identified the ever-increasing frequency of projects being significantly over-budget as a matter of critical concern to its members. Not only can budget concerns jeopardize the potential for a project proceeding, where it does proceed there may be costly over-budget negotiations or a re-bidding of the project.

When construction contractors provide bids for projects, the cost of preparing them is usually part of the company's overhead. If the project is later identified as being over-budget, the bidding authority can request that the contractor look for cost savings on behalf of the owner. Again, the contractor is not likely to be paid for this service and the cost incurred must form part of their overhead. Where contractors are working to provide cost savings the level of return often ends up being at a higher cost for the contractor than preparing the original Bid.

If they are successful at reducing the project to within the owner's budget, their compensation for having done so must come from retention of some portion of the cost savings in the event their Bid is successful. If they are not successful and the project is cancelled or put out for a re-bid, they receive no compensation for their effort.

As a result, contractors would rather avoid over budget negotiations. They would much prefer to see owners making every effort to avoiding over budget projects.

### AVOID BEING OVER BUDGET

**Some of the avoidable yet common themes that cause projects to be over budget and what to do about it:**

#### Reason for higher cost \$↑

Incomplete project documents. Contractors will 'throw money' at the situations that they see as deficient in order to cover the potential risk. Alternatively some bidders will explore opportunities for extra charges and claims. Every loophole, mistake and omission can put your budget and schedule at risk.

#### Solution \$↓

- ▶ Instead of trusting that the bid documents are "right", owners should give serious consideration to doing a bid document review first. Employ construction professionals, who will review your documents from a contractor's point of view. Contact the local construction association to solicit contractors that will provide this service.

**Reason for higher cost    \$↑**

Acceptance periods for bids beyond the normal thirty (30) days. Where there is a risk of rising costs for labour and materials that are unknown to contractors, they may be adding contingencies to the bid (See CCA Bulletin at [http://www.cca-acc.com/news/committee/standard/2004/steelp\\_rices.pdf](http://www.cca-acc.com/news/committee/standard/2004/steelp_rices.pdf)) Longer acceptance periods only increase the risk and the chance for contractor contingencies.

Extended Warranties greater than the normal one year warranty period covered by standard industry contracts such as CCDC 2. Most manufacturers or suppliers do not provide extended warranties, nor are they covered by Surety Companies. Contractors have to cover for these warranties themselves.

Unfair bidding conditions and contracts with supplementary conditions that do not share the risk suitably between the owner and the contractor.

Lower than industry standard mark-ups for changes to the work. Contractors cannot do changes to the work at a loss. If documents are deficient and contractors see that they will likely be compensated a low fee for changes, their mark up on the project bid will reflect the additional cost they may occur.

Budgets that fail to recognize the environmental conditions of the project location. For example, projects in the northern regions of the province may require additional heating and hoarding costs for winter construction.

Limited competition – contractors may not have sufficient time to prepare bids.

**Solution    \$↓**

- ▶ Keep the acceptance period for bids to thirty (30) days or less.
- ▶ Award contracts as expediently as possible.
  
- ▶ Should an extended warranty be a serious consideration, ask the bidders to provide an alternative price for it.
  
- ▶ Use Standard Contracts such as CCDC 2 with a minimum of Supplementary Conditions. Create fair allocation of risk in insurance and indemnification clauses.
  
- ▶ Follow the guidelines for mark ups on changes to the work as defined in CCA 16 Guidelines for Determining Costs Associated with Performing Changes in the Work
  
- ▶ Ensure that the quantity surveyor is familiar with the environmental conditions of the project.
- ▶ Employ construction professionals, who will review your documents from a contractor's point of view. Contact the local construction association to solicit contractors that will provide this service.
  
- ▶ Ensure that there is sufficient time for bidders to prepare a proper estimate. Three to four weeks is appropriate; check with the local construction association to determine the best time period.

**Reason for higher cost    \$↑**

Limited competition – there isn't a wide exposure of the project documents.

Limited Competition – contractors are not willing to pay costs for purchase of documents.

Limited Competition – contractors are not willing to take on a large risk or the surety company has limited their risk.

Limited trade contractor competition – trade contractors are not willing to assume the risk of an unfair competition and the possibility of onerous contracts.

**Solution    \$↓**

- ▶ Put plans in physical planrooms, on the electronic planroom.
- ▶ Do not apply non-refundable plan deposits.
- ▶ Use Bid Depository. Some of the risk will be extended to the trade contractors.
- ▶ Use Bid Depository. Trade contractors will be attracted to the project as they know there is a transparent process for their bidding and they are ensured of a fair contract that limits their risk.

**OVER BUDGET NEGOTIATIONS**

**Be Prepared**

In the event that you are not successful in keeping your project within budget, you should be prepared by including some specific wording in your project documents. There may be legal requirements or requirements under the Agreement On Internal Trade (AIT), that should be included to make this process more expedient and transparent.

It is our understanding that following may apply:

- ▶ Legal Requirements - Generally a Bid must be cancelled in writing to the bidders, prior to an owner beginning over budget negotiations with one of the contractors. However, the bidding documents may circumvent this process by including wording that gives the owner the right to negotiate without cancellation of the bids.
- ▶ Agreement On Internal Trade – Over budget negotiations may be considered to be another separate procurement, which would then require a new solicitation, unless the owner gives themselves the right to do so in the bidding documents.

Some suggested wording from the AIBC Working Group Standard Documents for a Stipulated Sum Bid to accommodate both the legal and AIT requirement that could be included in the Instructions To Bidders in a bidding document would be:

*Notwithstanding the requirements of the Instructions To Bidders for this project, the Owner has the right to enter into over budget negotiations with the lowest compliant bidder, without cancellation of all bids or consideration to the other bidders, and to require that bidder to negotiate with the subcontractors named on their Bid Form.*

## **BCCA Policy for Over Budget Negotiations**

‘ Where the scope of the work is to be changed after bid closing and prior to contract award, the Owner should negotiate the changes with the lowest bidder and the lowest bidder should negotiate with its named subcontractors and suppliers. If an acceptable contract price cannot be reached, or if the suggested changes exceed 15% of the bid price and the Owner requests competitive prices, all bids should be rejected and the bidders so notified. The bid documents should be amended accordingly and new bids called.’

## **Some Additional Resource Information**

BCCA Bulletin – Costs Are Up (<http://www.bccassn.com/lit/bulletins/bullet0405.pdf>)

BCCA Construction File – How Do You Find The Right Trade Contractor For Your Project?  
(<http://www.bccassn.com/constrfile/ConstrFile0104.pdf>)

BCCA Construction File – Standard Documents Provide Good Value.  
(<http://www.bccassn.com/constrfile/ConstrFile1002.pdf>)

BCCA Report – Quality Construction Requires Quality Construction Documents.  
([http://www.bccassn.com/reports/Quality\\_begins\\_at\\_the\\_top.pdf](http://www.bccassn.com/reports/Quality_begins_at_the_top.pdf))

### **Regional Construction Associations of British Columbia:**

#### **Northern BC Construction Association**

3851 Eighteenth Ave  
Prince George, BC  
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Phone: (250) 563-1744  
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#### **Southern Interior Construction Association**

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#### **Vancouver Island Construction Association**

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#### **Vancouver Regional Construction Association**

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