



Issue Update

“ONEROUS CONTRACT CONDITIONS”?

COMMON CAUSES OF ONEROUS CONTRACT CONDITIONS

- An owner has experienced a problem on a particular issue and wants to ensure it does not happen again and/or the owner has obtained advice to address the issue or risk within the project documents.
- Institutions and government now rely heavily on their purchasing departments and in many instances these departments are not skilled in the construction tendering/procurement process.

THE RESULT IS

With the changes in the tendering/procurement process, contractors are finding far more onerous clauses in the contract documents than in previous years. These changes are leading to less competition with fewer bidders because they are not prepared to accept the risk or they are compensating themselves for the higher risk. Hence the burden of these onerous clauses may be one of the contributing factors to even higher costs of construction in an already escalating marketplace.

WHAT CAN A CONTRACTOR DO?

If you find onerous clauses in the documents you are bidding:

- Review all contract provisions to determine any clauses that constitute a risk in submitting a bid and discuss with qualified advisors (insurance, surety, legal counsel and the Regional Association).
- Inform your Regional Association of the onerous clauses by completing an Onerous Bidding Clauses Report submitting it immediately. Provide as much information as possible including a copy of relevant documents and a list of the offending clauses utilizing the “Onerous Clause Report” (found on the BCCA website at http://www.bccasn.com/pdfs/Contractor_OBC_Report.pdf).
- Reply to Bidding Alerts issued by the association when applicable informing the bidding authority of your support.
- Decide if and how you want to bid.

WHAT WILL THE ASSOCIATION DO?

We will:

- Communicate with the Tendering Authority to solicit a change to the onerous clauses.
- In the event that the Tendering Authority will not change the documents or the Tendering Authority has a prior history of not changing the similar conditions BCCA will issue a Bidding Alert to contractors and the bidding authority upon the request of the Regional Association.
- Upon receiving the “Onerous Clause Report”, BCCA will review the project documents and determine what clauses are unduly onerous.
- Post the Bidding Alert in the electronic and regional planrooms.
- Copy trade associations and solicit their support in the Onerous Clauses initiative.
- Assist contractors with responding to Bidding Alerts to make a response as easy as possible.

Summary

Construction is all about competition and taking risks. However, accepting terms which are onerous not only hurt a contractor’s profitability, but undermine accepted industry standard practices. Conditions that undermine industry standards may likely be a forewarning of how things will progress through the project’s duration and historically can lead to costly disagreements. Say NO, say NO to onerous bidding conditions. It’s in your and your industry’s best interest. The BC Construction Association is committed to improving industry practices and recommends the usage of CCA# 29 – A Guide on Standard Contracting and Bidding Procedures.

Building BC’s Future!