



CHECKLIST FOR NAVIGATING TARIFF UNCERTAINTY

Navigating tariff uncertainty requires proactive communication and a thorough understanding of contract terms. This checklist outlines best practices and key considerations for trade contractors and general contractors to help them assess risks, address contract provisions, and take informed action. For a deeper discussion, contact an experienced lawyer specializing in construction law to review your contract and provide guidance.

This is a high-level checklist, and each situation is unique, requiring careful consideration of specific circumstances before deciding how to proceed.

This checklist has been reviewed by Tyler Galbraith, Construction Lawyer and Partner at Jenkins Marzban Logan LLP.

1. COMMUNICATION AND COOPERATION

- Initiate early and open discussions with the owner, general contractor, trade contractors, sub-subcontractors, and material suppliers.
- Foster a cooperative, solution-oriented approach to managing cost fluctuations and uncertainties.
- Maintain transparency about potential tariff impacts on pricing and availability.

2. MITIGATION AND COST CONTROL

- Engage in early discussions to explore solutions and cost-saving strategies.
- Explore and evaluate alternative products, materials, or sourcing options where permitted under the contract, ensuring compliance with bid documents or existing contractual obligations.
- Document all communication regarding tariff-related cost changes and mitigation efforts—you may need to provide proof.

3. BIDDING AND PURSUING NEW PROJECTS

- Read and understand all procurement and contract documents: this includes the prime contract if flow down clauses exist*.
- Use the Request for Information Process: Seek written clarification from the owner/GC on who bears tariff-related costs and/or their process.
- Follow the substitution submission process outlined in the bid documents to propose and recommend products of Canada.
- Make the bid/no-bid business decision based on your own risk assessment.
- Ensure duty and tariff provisions are included, using the standard CCDC/CCA language as a template (see CCDC 2-2020 GC 10.1 and CCA 1-2021 SCC 10.1).
- Do not submit a bid without clear duty/tariff provisions included in the contract or expressly stipulated in your bid as a requirement of the contract.**

* WHAT IS A FLOW DOWN CLAUSE?

Flow-down clauses are provisions that pass obligations from the prime contract down to subcontractors and suppliers, meaning you may be bound by terms you didn't negotiate directly. In the CCA 1-2021, this is reflected in Article 2A Conflict Between The Prime Contract And Subcontract.

4. CURRENT PROJECTS

- Do not sign a contract without clear duty/tariff provisions included in the contract.**
- Read and understand all your current contracts for applicable duty and tariff clauses, this includes the prime contract if flow down clauses* exist.
- Follow your contract: provide notice in writing per contract requirements.

5. LONG-TERM CONSIDERATIONS

- Monitor tariff policy changes, assess potential supply chain risks and the risks to your business.
- Incorporate duty and tariff clauses in future contracts.
- Strengthen supplier relationships.