



## **BCCA MEMBER ADVISORY #3: DOCUMENTATION & MITIGATION REQUIREMENTS**

***As always: read your contract, understand your contract and use your contract.***

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This is part of a series of Member Advisories and checklists developed by BCCA for members of BC's regional construction associations in response to newly implemented tariffs, countermeasures, and the general uncertainty in the construction marketplace. To access the full set, including this bulletin, visit [bccassn.com/industry-priorities/us-tariffs/#memberadvisory](https://bccassn.com/industry-priorities/us-tariffs/#memberadvisory).

- **Member Advisory #1:** Navigating Tariff Uncertainty
- **Member Advisory #2:** Providing Notice in Writing
- **Member Advisory #3:** Documentation & Mitigation Requirements

In light of recently implemented tariffs, counter-tariffs, and broader market uncertainties, this Member Advisory highlights the importance for Trade Contractors and General Contractors of **documenting impacts and demonstrating mitigation efforts** in support of potential claims.

Under CCDC 2-2020 and CCA 1-2021, contractors must follow specific notification procedures to preserve their right to claim additional costs and provide documentation to support those claims (GC 6.6 and GC/SCC 13.2).

### **Notice to readers:**

- While this advisory references the CCDC 2-2020 and CCA 1-2021 contracts, the principles may equally apply to non-standard or boutique contracts; however, those contracts should be carefully reviewed to confirm Notice in Writing and documentation requirements for claims and changes.
- This bulletin refers to both general and trade contractors as "contractor", though trade contractors should typically address matters through the general contractor as set out in the contract.
- This is a high-level checklist, and each situation is unique, requiring careful consideration of specific circumstances before deciding how to proceed.

## BACKGROUND

Under GC/SCC 10.1.2, the parties have the ability to seek an adjustment to the Contract Price for any increases or decreases in costs resulting from changes in taxes and duties, which includes newly implemented tariffs, including retaliatory tariffs, between Canada and other jurisdictions.

Contractors should also note that GC/SCC 10.1.1 provides the Contract Price includes all taxes and duties in effect at the time of bid closing, meaning that claims for cost increases or decreases due to tariffs are analyzed from that time. Contractors should refer to our **previously issued** checklist for suggestions on how to proceed during the bid period.

However, even if the contract allows for adjustments due to tariffs, entitlement is not necessarily automatic as the adjustment will need to be properly supported. Similarly, providing Notice in Writing does not guarantee that a claim will be accepted - you will be preserving your contractual rights. The strength of the claim will depend on its supporting documentation.

## CHECKLIST: DOCUMENTATION, DOCUMENTATION AND DOCUMENTATION

Contractors making a claim will need to demonstrate both reasonable efforts to mitigate the impact and provide documentation to support the claim. This includes working with and educating suppliers to obtain information that helps explain any tariff-related cost increases.

### A. Contract Awareness & Communication

- 1. **Read your contract:** Review your contract for any specific documentation requirements, especially related to taxes, duties or tariffs - newer contracts may include updated language that specifically address these issues.
- 2. **Get and read the Prime Contract if you are a trade contractor:** where flow down provisions exist, trade contractors must request and review the prime contract for any specific documentation, mitigation, or tariff-related requirements - it is not enough to rely solely on your subcontract.
- 3. **Ask the Owner:** Especially during procurement, what specific documentation they expect if a claim is made. Get that in writing.
- 4. **Process and Proper Channels:** Trade contractors should send RFIs, claims and notices in line with their contract, which likely means through the general contractor, not directly to the owner.

## B. Documentation & Recordkeeping

- 5. Create a specific location in your files just for documentation relating to tariffs.
- 6. **Discuss mitigation efforts with the Owner before implementation:** Make the Owner aware of the issue early, present available options, and explain how each can be substantiated. Acting unilaterally may result in the effort being rejected, deemed non-compliant with the contract, or not recognized by the Owner as necessary or a cost saving.
- 7. Save all proof of costs, impacts and mitigation efforts.
  - What may seem like routine project management can help demonstrate good faith efforts.
  - Screenshot text messages.
  - Save emails.
  - Had a phone call? Summarize it in an email, send it to the person, and save that email.
- 8. **Keep “contemporaneous” notes:** Make brief notes at the same time as the conversation happens regarding pricing, delays, etc. These real-time records are far more reliable and persuasive than trying to reconstruct details later.
- 9. **Audit rights:** Be aware that an Owner’s supplementary conditions or contract may include broad audit rights - review these carefully to understand what documentation may need to be provided if requested.

By keeping clear and accurate documentation, emails, texts, and notes that flag price increases caused by tariffs, you help demonstrate that the issue is legitimate plus save time later when assembling the claim.

## C. Supporting Evidence

- 10. **Duty Invoice First and Foremost:** The clearest and most effective documentation is the duty invoice from the customs broker / supplier - get it and keep it.
  - Can't get it? Document your efforts to receive it.
- 11. **Get comfortable being uncomfortable:** Be prepared to provide more detailed information than may have been required in the past, including from your suppliers.
  - Supplier Quotes or Invoices – Show original vs. updated pricing for affected materials, ideally with dates and context (e.g. tariff implementation date, shipping delay).
- 12. **Summary Sheet:** Make it easy for the Owner to evaluate.
  - Prepare a brief cover sheet that connects your claim, supporting documents, and mitigation efforts to the specific scope and relevant contract clauses.
  - This can help the owner understand your position quickly and clearly.

## D. Cost Tracking & Due Diligence

- 13. **Track Supplier Pricing Closely:** Review and verify all costs coming through from suppliers to trades and up to the general contractor.
  - Owners get irritated by cost pass-throughs that haven't been reviewed - due diligence is critical.
  
- 14. **Track and detail administrative costs:** Keep track of administration costs incurred to mitigate and manage tariff-related changes. Be specific about the activities involved and the date.

## E. Alternatives & Schedule Impacts

- 15. **Track Alternates and Substitutions:** Keep a clear record of all proposed alternates or substitutions, including rationale and impacts.
  
- 16. **Document Schedule Impacts:** It is not just about cost - track and document any impacts to schedule caused by tariffs, mitigation efforts, substitutions, or supply issues.

Keep in mind - consistency matters. If one supplier, trade or general contractor provides clear documentation and another does not, it can raise red flags to an owners.