



## BCCA MEMBER ADVISORY #2: PROVIDING NOTICE IN WRITING

***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 provides guidance on a key contractual requirement for Trade Contractors and General Contractors: providing Notice in Writing under standard contract provisions.

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: NOTICE IN WRITING

The BCCA reminds all contractors of the importance of providing timely Notice in Writing for any claim under GC/SCC 6.6.1 related to adjustments in the Contract Price.

- ☐ 1. The requirement is that “timely” Notice in Writing be provided, which will depend on the applicable facts and circumstances, in order to preserve the right to seek adjustments to the Contract Price. In fact, Notice in Writing is so important that CCDC/CCA has it as a defined term.
- ☐ 2. Notice in Writing is the formal method of communication required under the Contract – while often viewed as confrontational or negative, it is just part of the agreed process.

### A. Submission

- ☐ 3. Contractors **must** ensure that Notices in Writing are submitted in accordance with the receipt and delivery requirements specified in their Contract (e.g. CCDC 2-2020 Article A-6 and CCA 1-2021 Article A 7), and ensure any supplementary conditions are reviewed too.
- ☐ 4. While you may be in regular contact with others on the project, Notice in Writing **must** be sent to the individual specified in the Contract as the formal recipient. Others can be copied, but they are **not** a substitute.
- ☐ 5. From a relationship standpoint, a quick phone call giving a heads-up that a formal Notice is coming can help reduce the surprise and maintain goodwill.

### **B. Timeframe (GC/SCC 6.6):**

- ☐ 6. As set out above “timely” Notice in Writing is required if a Contractor intends to claim a price adjustment due changes in taxes or duties.
- ☐ 7. This could be interpreted as the announcement of the imposition of tariffs.
- ☐ 8. Some supplementary conditions or contracts may specify a specific time frame in days for giving written notice to preserve rights – read your contract. Also, read the prime contract if you are a trade contractor to see if there are additional notice requirements.

### **C. Documentation and Mitigation (GC/SCC 6.6.2):**

- ☐ 9. Contractors intending to make a claim must take all reasonable measures to mitigate any loss or expense and maintain necessary records to support the claim. This Bulletin addresses this in more detail below.

### **D. Notice Requirements & Waiver (GC/SCC 13.2):**

- ☐ 10. Failure to provide Notice in Writing as per the Contract may result in a waiver of the right to claim for these additional costs.

### **E. Where to Find a Notice in Writing Template**

*CCDC 24-2022, A Guide to Model Forms and Support Documents*, includes a sample Notice in Writing form. Contractors are encouraged to get a copy of this guide through your construction association to access this template and others.