

Prepared by the Winnipeg Construction Association, and intended as a guideline to increase awareness of recommended industry practice

PRACTICE BULLETIN #4

May 26, 2021 - New

SUBJECT: PRIVILEGE CLAUSE / EXCLUSIONARY BID PRACTICE / BIDDER BARRING

The COVID-19 pandemic and actions taken to reduce its health impact on the population has had a dramatic impact on the market for building materials. Currently, the construction industry is experiencing unprecedented price volatility. For example, some supplier prices for wood and steel are only held for hours, while other materials such as wire and pipe are being held for a maximum of 10 days.

CCDC 23 – 2018 A Guide to Calling Bids and Awarding Contracts states the following regarding items that need to be included in the Instructions to Bidders:

Number of days the bid is irrevocable. The appropriate number will depend on the needs of the Owner but thirty days is recommended as the maximum. Longer periods can create difficulties for Bidders, as Subcontractor and Supplier prices are typically only valid for 30 days.¹

Considering this wording was developed with ‘normal’ market conditions in mind and acknowledging that the current price volatility is well beyond the industry’s normal capacity to manage risk, Owners should strongly consider not using bid irrevocability periods beyond 30 days.

Long award periods create extreme price risk for Prime contractors, which they attempt to mitigate through additional contingency in the price submitted to the owner. The clear result is an increased project cost and a risk to the viability of the project for the owner.

WCA recommends bid irrevocability periods of 15 days with a maximum of 30 days during this period of extreme price volatility.