

This technical bulletin has been prepared jointly by the Manitoba Association of Architects and the Winnipeg Construction Association, and intended as guidelines to increase awareness of recommended practices

TECHNICAL BULLETIN #13

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SUBJECT: MATERIAL* PAYMENT PROVISIONS

The Manitoba Association of Architects and the Winnipeg Construction Association recognize contractors may encounter potential problems maintaining firm price contracts when confronted with sudden or unforeseen changes in material prices due to factors beyond their control. Potential factors which may result in unforeseen changes in material pricing include, but are not limited to, variations in construction scheduling, site restrictions, or other direct and indirect economic factors.

In order to facilitate scheduling, to improve cash flow and to allow all parties to continue to enjoy the benefits of unconditional stipulated price contracts, the following is suggested:

1. That contracts be awarded quickly (a tender stipulation of 30 days or sooner is suggested);
2. That contracts include a provision, clearly stipulated at the time of tender, for payment for certain materials upon delivery to the site or to a location designated by the Owner, notwithstanding the materials that have not been incorporated into the project and/or not fully commissioned; and
3. That contracts set out the procedure to be followed for early payment of delivered materials referred to in paragraph two above, and that contracts specify:
 - a. The Owner's requirements with respect to insurance, bonding, storage and other fees;
 - b. The terms and/or required evidence upon which early payments will be made (e.g. invoices for purchase and delivery of unincorporated products, evidence establishing the cost of manufacturing a product(s), etc.); and
 - c. And the Owner's requirements with respect to an assignment, if any, of ownership in the materials.

It is ultimately the contractors responsibility, where feasible, to identify, address and consider these issues in their pricing structure prior to tender closing.

For a more thorough discussion on the advantages and disadvantages of the pre-purchasing products, see CCA 61-2008 – "Risks of Pre-Purchasing Equipment and Materials for Construction Projects", the content of which is fully endorsed by the MAA / WCA Committee. Specifically, Appendix A of CCA 61-2008 contains a "Checklist of Best Practices for Pre-Purchasing

Equipment and Materials” that is particularly helpful.

Note: for the purposes of this Technical Bulletin, “product” is defined the same as in the CCDC and CCA documents as: “material, machinery, equipment, and fixtures forming the Work, but does not include Construction Equipment.”