

BEST PRACTICE BULLETIN #4

Approved June 9, 2025

SUBJECT: TARIFFS

This WCA bulletin provides a recommended process for reviewing and advancing potential tariff related claims for price increases. While this bulletin specifically discusses the process for a price increase from the claiming party's perspective, the considerations are equally applicable to both a claiming and responding party:

1. **Follow instructions in project's quote/procurement documents on tariff pricing.** Some procuring entities are specifically assigning tariff risks or requiring certain tariff related information regarding their project supply chains. Be sure the claim complies with any tariff related requirements, or risk not being able to recover those costs.
2. **Review contractual assignment of risk for tariffs.** The contract is the starting point and guide to what can be claimed for a tariff increase and what justification and documentation is required. Consider that there may be various contractual requirements to making a claim for a tariff related price increase:
 - a. **Express allocation of tariff risk** – confirm whether contract terms specifically deal with tariffs, such as by way of tariff related clauses (ex. CCDC 2 (2020), GC 10.1.1) or use of Incoterms (which specifically assign tariff risks).
 - b. **Other price change mechanisms** – check if tariffs are caught within the definitions of a contract change, a change in law, force majeure, or other relief events. Be mindful that different construction delivery model contracts will handle price escalation differently (ex. CCDC 2 vs CCDC 5B).
 - c. **Review tariff timing** - some contracts, such as CCDC 2, specify the time period the tariff changes apply (bid closing). Confirm whether supplementary conditions have changed this requirement and ensure that details of which tariffs were/were not priced into the original bid are well-documented for later backup.
 - d. **Review notice periods** - many contracts have specific periods within which notice of a potential increase in cost, or potential of delay must be given. Be aware of contractual notice periods, as these periods will also likely apply to tariff related claims.
 - e. **Review documentation requirements** - some contracts have specific documentation requirements for price changes and time extension claims. Be aware of the specifics in the claim and, to the extent possible, obtain and preserve that information.

3. **Discuss potential mitigation options with the party the claim is directed at.** Ensure the potential costs (and delays) of tariff related impacts are being mitigated to the extent possible.
- a. There is always a legal duty to mitigate losses – simply passing on a claim without trying to reduce the cost may be met by a refusal to pay.
 - b. Early agreement on mitigation efforts to potential tariff price increases is likely to assist in faster recovery of tariff related costs.
 - c. Additionally, giving the upstream party (Owners, GCs) an opportunity to choose between various mitigation options, where available, such as alternative source of supply (which may have their own risks), can ensure buy-in and faster processing and payment of claims.
 - d. Communication can provide the opportunity to review if the specific goods in question qualify under any tariff remission/relief programs offered by the federal government or any other level of government.
4. **Compile tariff related costs.** The general expectation is that most tariff cost claims are based on verifiable increases in material or equipment costs, and correspond with tariffs that have or will be paid.
- a. Where the costs of tariffs have been directly incurred, documentation should be available showing the applicable tariff was paid.
 - b. Indirect cost increases due to tariffs are more difficult to compile. However, there will generally be an expectation of transparency, and project counterparts (suppliers, subcontractors) should generally be pushed to provide the same information for their claims. If direct documentation from subcontractors or suppliers is not available consider:
 - i. Documentation showing increase in price between current order costs and previous order costs (if attributable to tariffs and not unrelated price increases);
 - ii. Supplier notices of pricing changes due to tariffs (with any backup information on what specific tariff codes are impacted); and
 - iii. Where relevant, documentation showing that materials required for the project are listed on list of U.S. products subject to counter tariffs.
 - c. General, unsupported “tariff surcharge” claims are unlikely to be accepted.
 - d. Where tariff related costs extend beyond the actual product (ex. additional site costs due to delays in delivery of alternatively sourced materials), properly document the actual costs increases – claims may be rejected when they include costs that are not clearly connected to tariffs (or which would have been incurred regardless of the tariff related increases, such as certain site indirects).
5. **Organize the claim.** Considering the above, organize the claim to include the following relevant information:
- a. The contractual basis/provision allowing for a tariff related price increase claim.
 - b. The specific product/materials impacted by an increase in tariffs (and associated backup documentation showing a tariff was paid)

- c. Description, justification, and backup documentation for any indirect costs related to a tariff claim (transportation costs, related site indirects, etc.)
- d. Confirm/note the date the claim arose, and notice was provided (including earlier correspondence as backup).
- e. Provide any relevant context in terms of prior discussions with the customer regarding tariff costs, such as mitigation options which were explored (and note if they were presented to the client and rejected).

For further discussion and guidance on tariff related impacts on construction, see the CCA's Bulletin "Managing tariff risks in construction projects": cca-acc.com/wp-content/uploads/2025/04/250313_CCA_Tariffs-BLD-3.31.25-EN-1.pdf