

# ***ACA PUBLIC POLICIES***

*Revised January 27, 2017*

## **1.0 GENERAL STATEMENTS**

### **1. FREEDOM OF ENTERPRISE**

The Association believes that an economic and political system based on individual freedom and individual enterprise is to the greatest advantage and is in the best interest of our country. Individual freedom to compete in the marketplace must be protected at all times, and encouraged wherever possible by Government.

Alberta Construction Association opposes legislation such as mandated wage rates or mandated staffing requirements or quotas that restrict market driven competition and shall actively lobby to prevent or remove any such restrictive conditions.

Governments and government agencies at all levels should refrain from competing against the private sector.

### **2. DISTRIBUTION OF CONSTRUCTION OPPORTUNITY INFORMATION**

ACA believes that the provision of project information is a prime activity of local construction associations. The dissemination and distribution of project and tender opportunity information and documents in support of the construction procurement process must be provided by organizations that have a true understanding of the bidding process and of construction markets. Therefore, ACA advocates the use of local construction association plansrooms as they are the most qualified and competent to fulfill this role. Alberta Construction Association favours province wide advertising for all public expenditure projects.

### **3. RESEARCH**

The Association recognizes that research is essential to the continued improvement and development of construction in Canada and therefore advocates continuing support to recognized centres of Construction Research expertise across Canada and to other agencies engaged in activities for the purpose of improving construction practices. Members are urged to make their own contributions, where practical, to this vitally important activity.

### **4. ENVIRONMENT**

#### Development

The Association endorses the concept of sustainable development, recognizing the need to balance the environment and economic considerations in the decision making process. In pursuit of sustainable development goals, construction industry input should be sought.

### Green Building

ACA supports green building and green building efficiencies and recommends that these objectives be sought and verified by the parties directly involved in the project through the normal building design commissioning and certification processes.

### Waste Management and Recycling

Market based approaches for waste management and recycling are preferable to regulations, and where regulations are applied, they should focus on outcomes, not on technical prescriptions. Industry should have the freedom to determine the best means to comply. Innovations should be pursued in place of punitive approaches (eg. Testing of drywall recycling before contemplating landfill bans for drywall). Changes should be contemplated only after there is widespread consultation with industry and changes should be piloted to learn impacts before there is wholesale enactment. Industry leadership in the design and administration of a stewardship program is essential to maximize program success.

## **2.0 FREE TRADE**

### **1. TRADE BARRIERS**

Under no circumstances should geographical location, political or social affiliation or membership in an organization be considered as a basis for awarding a contract to a contractor or supplier, nor should any price advantage or preferential treatment be given because of location or affiliation.

### **2. LABOUR RELATIONS**

The Association believes that it is desirable to have effective working relationships between employers and their employees and where appropriate, between representatives of employers and employees. The Association supports the following:

- a) Recognition of the rights of employees and employers to associate for the purpose of collective bargaining and labour management relations;
- b) Improvement of compensation and working conditions that are reflective of industry and community economic considerations and functional needs;
- c) Regular and effective communication among the parties to collective bargaining and collective agreements;
- d) Regular and effective communication among contractors, construction workers, and construction purchasers and their respective organizations and representatives respecting health and the future of the construction industry and its participants;
- e) Protection of the rights of workers to choose to associate or not to associate and to participate or not to participate in the lawful affairs and activities of trade unions;
- f) Protection of the rights of employers to contract and perform work irrespective of the decisions of their employees to be represented or not to be represented by trade unions or particular trade unions; and
- g) Promotion and support of sound legislation and consistent enforcement of such legislation in the areas of labour relations, employment standards, workers' compensation, apprenticeship and industry training, occupational health and safety, and unemployment insurance for employees in the construction industry.

The Association supports the development of effective processes and machinery for the resolution of differences between or among the participants in the construction industry.

The Association stresses the need for all collective bargaining with the Building Trades Unions in the general construction sector of the industry to be conducted and coordinated through Construction Labour Relations - An Alberta Association, and urges all contractors having bargaining relationships with construction Building Trades Unions to support this objective.

The Association supports the role of the Progressive Contractors Association of Canada as the employer association for employers that bargain with the Christian Labour Association of Canada.

The Association supports the role of Merit Contractors Association as the Provincial organization coordinating common interests of open shop contractors in the management of their human resource needs.

Only when the labour matters impact on the overall membership such as with fair wage legislation shall the Association take action.

### **3. LABOUR CODE – PAYMENTS BY UNIONS TO CONTRACTORS**

ACA believes that fair and competitive bidding practices are fundamental to the protection of the freedom to compete. Any direct or indirect payment from a union or a union / employer trust, to a contractor (also known as a MERF) is contrary to fair and competitive bidding practices and should be prohibited under Alberta labour legislation.

## **3.0 INFRASTRUCTURE**

### **1. INFRASTRUCTURE INVESTMENT**

The Alberta Construction Association believes sustained and predictable investment in public infrastructure improves the quality of life of Albertans and is an integral strategy to attract new investment and build a strong, competitive economy. Modern, high-quality infrastructure provides efficiencies in producing and transporting goods, providing a return on investment to the province through jobs, profits, and taxes.

Dramatic swings in infrastructure investment discourage young people from choosing a career in construction, discourage existing workers from remaining in construction, disrupt training of new apprentices, contribute to higher accident rates, and lead to financial hardship for companies.

Capital expenditures should be managed within at least a moving three year envelope, on a time frame consistent with Departmental business plans. Government investment in infrastructure that rises during periods when the economy is slowing and construction activity is slowing allows the public to secure lower cost competitive pricing, provides stability of employment for construction workers, and stimulates the economy when it is needed.

Funds for capital should be budgeted and held in an account separate from operating budgets and funds. Quality design and construction that optimizes life cycle costs preserves the limited public funds available for investment in infrastructure.

## **2. PUBLIC-PRIVATE PARTNERSHIPS**

ACA supports the limited use of public private partnerships in certain project situations as outlined in the Merit Contractors / ACA April 2009 paper entitled “Future Directions for Public Private Partnerships (P3’s) In Alberta’s Construction Industry: A Discussion Paper on Government of Alberta Construction Procurement Using P3 Approaches”

## **4.0 INDUSTRY PRACTICES**

### **1. CONSTRUCTION BY CONTRACTORS**

The Association advocates the use of responsible contractors to quote on, administer, supervise and coordinate all phases of construction projects. The Association therefore urges all levels of government and private owners to use to the fullest extent the capacity, skill, experiences and resources of the construction industry and avoid the practice of performing work with their own forces and equipment. The use of own forces is considered sole sourcing which limits the ability to ensure best value through competitive bidding.

### **2. SOCIAL PROCUREMENT / COMMUNITY BENEFITS**

ACA is opposed to using the procurement of construction services to advance unrelated community benefits and other public policy objectives where they jeopardize the integrity of the competitive bid system

### **3. CONSTRUCTION SPECIFICATIONS**

The Association believes that fair and competitive bidding and efficient operation of the contract system depend on proper preparation of the specifications, and enforcement of their provisions throughout a contract. Short, concise, yet complete specifications eliminate waste of time in preparation of bids. Contract documents and drawings should fully describe the intent and detail of the work, except where the bid call is for design-build work, in which case design criteria should be detailed and complete. The selection of the successful bidder through alternate and separate prices rather than the base bid may create bidding confusion and error. Technical references should only be to generally recognized standards.

The Association discourages the use of penalty conditions and disclaimer clauses in the construction specifications.

Further, the Association believes that a sustained effort to ensure the maximum use of Canadian materials and installed equipment in construction projects and operations in Canada is essential for the proper development of the Canadian economy. Specifying authorities should give full and serious consideration to this policy when preparing specifications for their projects.

### **4. STANDARD DOCUMENTS**

The Association urges, as a means of promoting greater uniformity and economy in the use by all concerned, of the standard practices, procedures, and forms endorsed by ACA. The standards referred to may be found on the websites for the Alberta and Canadian Construction Associations. ACA opposes the implementation of supplementary General Conditions which have the effect of altering or subverting the intent or substance of standard documents.

## 5. TENDERING PROCEDURES

ACA is neutral on the procurement and project delivery method chosen by Government and government agencies at all levels when expending public funds. Regardless of the method, all projects must be procured in an open, fair, and transparent manner. Unless the government provides a rationale for an alternate choice, public tendering for its capital projects is recommended whenever practical with the goal of procuring best value through the most appropriate project delivery model. However, when a government project requires specialized expertise and invitational bidding is the method to be used, then every effort should be made to solicit bids from a short list of qualified competitors.

ACA considers the term "Publicly Funded" to include funds from taxes at all levels of government as well as any other public assessments or user fees (such as airport improvement or security fees). These standards must apply regardless of the nature of the corporation or entity that is ultimately given the responsibility for the tendering and construction of these projects.

The Association strongly recommends compliance with the provisions of CCDC-23 - 2005 "A Guide to Calling Bids and Awarding Contracts," the latter of which is endorsed by:

The Royal Architectural Institute of Canada;  
The Association of Consulting Engineering Companies of Canada;  
The Canadian Construction Association; and  
Construction Specifications Canada.

These documents cover a wide range of tendering procedures of which the following merit specific mention:

- a) The invitation to bid should specify the type of contract (or subcontract) which the bidder will be expected to sign;
- b) Bids which are publicly called should be opened at a fixed time and in the presence of the bidders or their representatives. In the federal and provincial area, this long-established practice among some government departments and agencies should be extended to include all other crown corporations, departments and agencies that presently do not follow this practice. Public bid openings afford bidders immediate information concerning their standing and assurance that bids will be considered equitably. This in turn reflects well on the owner and attracts more competition for the projects.
- c) Owners, architects and consulting engineers should permit adequate time and provide, at no cost, a sufficient number of plans and specifications for the preparation of bids. The Association recommends the use of actual scale drawings or electronic versions thereof for the ease of takeoff, which lends to more accurate figures. The appropriate construction association should be consulted concerning the scheduling of bid closing dates in order to avoid conflicts with other bid calls. These factors play an important part in influencing the number of bids that are submitted by trade contractors and general contractors. Care in these respects will serve to assist bidders and thereby increase interest in the project in question.

- d) Bid documents should be made available to the local construction association members of the Alberta Construction Association for display in their Plan Rooms. In addition, it is recommended that documents be made available, under terms of refundable deposits, to all general contractors and all major trade contractors wishing to bid a project. Deposits, so specified for such documents, should be returned to every firm which has submitted a bid for the project and returned the documents within 30 days after bid closing, provided that such documents are in useable condition. Further, contractors who have not bid, but who have returned the documents in useable condition, within 7 days after having drawn them, should also have their deposits refunded.
- e) Addenda should be issued at least 3 days prior to the first trade closing. This allows sufficient time for circulation of the addenda plans and specifications.
- f) Where the call is for lump sum tender and the specifying authority requires breakout pricing information or alternate or separate prices, contractors should be given 48 hours after tender closing to complete the detailed information and provide costs relative to the alternate and separate price requirements. In these cases the base bids should be retained in a sealed condition to be opened in conjunction with the closing for the alternate or separate prices.
- g) The following contract award procedures should be followed:
  - i. The contract should be awarded only in consideration of the base price, and only to a qualified contractor submitting the lowest evaluated compliant bid. However, when alternate or separate prices have been specified to be a part of the bid then award of the contract should be made on the basis of the lowest evaluated compliant bid.
  - ii. The contract should be awarded within 30 days of bid closing. The interests of both the owner and contractor are best served by prompt awarding of the contract.
  - iii. In those cases where competitive bids exceed the owner's anticipated cost and his budgetary resources, the contract should be awarded to the lowest acceptable bidder conforming with the bid requirements through negotiations on changes in the work, provided the contractor can come within a price acceptable to the owner. These negotiations should be conducted by the prime bidder through the affected subbidders named in the original bid and no re-bidding will be necessary.
  - iv) In the event of default by a contractor or subcontractor who has provided a performance bond, the surety should, when engaging a contractor to complete the contract, normally give preference in negotiations to those contractors who originally submitted a bid on the project. The successful contractor in turn should give priority in his negotiations to those firms having cost commitments or having performed work under their contracts. A surety acting on behalf of a defaulted contractor or subcontractor should follow recommended bid procedures. Sub-trades should, to the greatest degree reasonably possible, hold their original prices submitted to the defaulting contractor.

## **6. REVERSE AUCTIONS**

ACA endorse the use of electronic procurement provided that such a system maintains the principles that are intrinsic to the construction bidding process and that it is intended to increase efficiency.

ACA opposes the use of reverse auction. ACA considers the issuance of a post-tender addendum open to more bidders than the apparent low bidder, after prices are released, to be a form of reverse auction.

**7. TRADE LISTS**

ACA recommends that should the specifying authority require the general contractor to submit a list of subcontractors to be used in the performance of the base contract, contractors should be given 24 hours after tender closing to provide this list. Secondary lists may be submitted with the bid should the general contractor wish to name different subcontractors in the event of the owner electing to carry out alternate rather than the base work.

**8. WARRANTIES**

The recognized warranty provided by a general contractor in the construction industry is 12 months after take-over of the project. Any extended warranties should be handed over to the owner at the same time. Warranties for material and labour should not exceed these limits because those providing the warranties have no control over the end use and maintenance of the project by the owner. Any extended warranties required beyond the one year warranty period shall be as specified in the tender documents prior to bidding.

**9. DEFICIENCY HOLDBACKS**

ACA is opposed to the retention of funds to cover unidentified deficiencies or warranty items.

**10. FLOW OF FUNDS**

The Association stresses that the unimpeded flow of funds is vital to all sectors of the construction industry. Any delays in cash flow and departures from recommended payment procedures result in increased costs to all concerned. Furthermore, the use of lien holdbacks after the completion and approval of the work for any purpose other than the protection of unpaid suppliers and subcontractors violates the intention of the lien legislation. The Association therefore recommends the following means of improving flow of funds:

- a) Use of procedures to effect the prompt payment of progress claims;
- b) Recognize the contractor's or subcontractor's right to issue substantial performance certificates as governed by Provincial statute, and promptly release holdbacks for those portions of the work to which such certificates apply, provided that all conditions as laid down in the lien legislation have been met.
- c) Specify and adhere to the "Alberta Standard Guide for Take-Over Procedures," ACA Document C. Use of this Document along with proper use of Statutory Declarations will effect prompt final payments and closing of project accounts.

## **10. DISPUTE RESOLUTION**

The Association encourages the use of Alternate Dispute Resolution (ADR) services to provide an expeditious and inexpensive method of resolving disputes between parties to a construction contract.

## **5.0 HUMAN RESOURCES**

### **1. EDUCATION AND TRAINING**

The Association endorses the standards of achievement as exemplified by the Canadian Construction Association "Gold Seal" program.

The Association strongly urges that to maintain an adequate supply of skilled personnel, the industry must become familiar with, and make the fullest possible use of public educational and training facilities for development and improvement of technical, supervisory and management skills.

The Association strongly urges employers to support young people who are currently enrolled in the K-Grade 12 school system to complete their high school prior to considering a career in construction. The Association endorses the Registered Apprenticeship Program (RAP) as an excellent means to encourage young people to begin an apprenticeship while working to complete their high school. With the exception of students that are engaged in RAP or other work experience programs, employers are encouraged to limit student's hours of employment during the school year.

The Association endorses apprenticeship as post secondary education and recognizes that mature students possessing the necessary technical aptitude, work and life experience, and minimum entrance requirements established by the Apprenticeship and Industry Training Board are a source of valued employees to begin their further education as apprentices.

Employers should encourage enrolment in apprenticeship training programs, and diligently carry out their responsibilities to all apprentices they themselves indenture. The apprentice should be encouraged to complete their training expeditiously, given fair treatment and opportunity to complete their field training hours under the supervision of competent journeypersons. Employers should guard against exploitation of apprentices and restrictions to their training.

The Association recognizes the quality of training provided by the Government of Alberta through the apprenticeship program and believes the construction industry should make the fullest use of this excellent program.

The Association believes that an apprentice should be indentured to an employer only and not an employer association or joint employer-employee councils. Undue restrictions on the indenturing of apprentices should be strongly opposed.

It is essential that the industry provide the opportunities for on-site training for apprentices, student technologists and university undergraduates. The industry should maintain close contact with universities, colleges and technical institutes, the logical sources of management talents essential to the sustained progress of the industry.



Effective permanent liaison should be established between representative regional bodies of the industry, allied professional associations, universities, colleges, and technical institutes in order to develop curricula designed to produce graduates equipped to move swiftly into decision-making positions in the industry.

## 2. **APPRENTICESHIP**

### Apprenticeship Training – Public Funding and Delivery

The Alberta Construction Association opposes the use of private sector facilities for publicly-funded training of Alberta apprentices, including the utilization of facilities managed by Building Trades union / employer trusts to deliver apprenticeship training.

Alberta is widely renowned for having the strongest apprenticeship training system in North America, if not the world. A hallmark of our success is industry leadership through the Apprenticeship and Industry Training Board, Provincial and Local Advisory Committees representing all segments of the industry. This system brings together all participants in the construction industry working to ensure excellence in training, free from labour relations debates and agendas. Private delivery would see some employers consider withdrawing support for technical training because of the consequences of this policy shift.

Along with the Canadian Construction Association and regional construction associations within Alberta, ACA strongly supports continued public investment in facilities, equipment, and personnel for our colleges and technical institutes for trades and technical training. Associations, member companies, and individuals within our industry have each made significant investments in buildings and equipment used by our colleges and institutes, and in scholarships and tuition for apprentices. A move to add private sector delivery calls into question the value of these past investments and continued industry investment in the public system.

### Apprenticeship Tuitions

Apprenticeship training differs from any other type of post secondary training. Unlike university, community college, or non apprentice technical training, industry plays an integral role and funds a significant portion of the cost of training. Industry supplies volunteer representatives to Provincial and Local Advisory Committees to set standards and ensure program content reflects changing technology and workplace practices. Employers make a long term commitment to the future employment through the indenturing of apprentices. Employers pay the wages of apprentices and of journeymen and other senior employees that mentor and supervise apprentices during the 80 percent of the “on the job” component of apprentice training. Many employers and/or employer organizations pay tuition fees for apprentices they employ. Employers also make significant cash and material donations to the capital and equipment requirements of the technical training institutions.

Apprentices should make a direct financial contribution to the operating costs of their apprenticeship technical training at the public post-secondary institutions through the payment of tuition fees. Apprentices are beneficiaries and should pay a portion of the

cost. Apprentice expenditures for tools and for accommodation for the classroom portion of their training are also significant.

Consequently, ACA supports that the proportion of cost of apprentice technical training (ie. classroom) programs paid by apprentices be less than that of students for non-apprentice technical training programs.

#### Apprenticeship Ratios

The Alberta Construction Association believes that on the job training is integral to the apprenticeship system of post secondary learning. Given that this on the job training is the responsibility of employers, decisions about the appropriate ratio of journeypeople to apprentices should rest with employers directly affected by the ratio.

#### Employment Standards

The Alberta Construction Association believes the current Employment standards work well. Any changes should reduce administrative complexity, and foster flexible workplace arrangements between employers and employees. Mediation for dispute resolution is preferred.

### **3. SAFETY**

The Association endorses the Alberta Construction Safety Association and recommends that all participants in the industry likewise support its programs as a means of safeguarding the health and safety of those who are involved in construction.

The Association further advocates all contractors, workers and suppliers to utilize educational programs and information provided by the Safety Association, other industry groups and government designed to improve safety awareness and accident prevention at project and manufacturing sites.

The Association urges government, private owners, architects and consulting engineers to recognize the Alberta Occupational Health and Safety Act and regulations as the minimum standard in Alberta for construction work.

#### ACSA Peer Auditor Program

ACA endorses the Peer Auditor Program of the Alberta Construction Safety Association. The Peer Auditor program is a cost effective means for employers to receive independent audits of their health and safety management system. The use of Peer auditors enhances industry's training capacity and offers the potential to enhance sharing amongst employers, safety best practices.

#### Canadian Model for Providing a Safe Work Place, Alcohol and Drug Guidelines and Work Rule

ACA endorses the Canadian Model for Providing a Safe Work Place, Alcohol and Drug Guidelines and Work Rule. The use of illegal drugs and the inappropriate use of alcohol, marijuana, and prescription drugs can have serious adverse effects on the health and safety of workers, contractors, and the public. The Canadian Model provides a minimum industry standard for the approach, testing, application, and rehabilitation of workers with respect to the use of alcohol and drugs. Adoption of this industry standard minimizes the

confusion, redundancies, and discrepancies that arise when employers have their own individual policies.

#### Safety is a Shared Responsibility

Parties should recognize that a culture of safety requires a partnership of shared responsibility. To be successful, this culture requires an ongoing shared commitment to safety by three partners - employers, individual personnel on jobsites, and the provincial government for regulatory enforcement.

#### Safety Compliance

ACA believes that on-going dialogue and consultation amongst employers and government is essential to moving forwards together. Employers believe they can strengthen the initiatives of government through proactive consultation, rather than reacting after an initiative is in place.

#### Regulatory Best Practices

Adoption of best practices should extend to regulatory compliance and enforcement. Regulations should be rooted in evidence and weigh benefits against costs. Enforcement needs to be consistent across officers and regions. Measures used elsewhere should be evaluated for their impact on improvements to workplace safety before being adopted in Alberta. Failure of existing tools should be understood before proceeding to adoption of new tools. Adoption of new standards should be phased in to provide time for preparation.

Regulatory inspectors should have expertise specific to the sector they are inspecting.

Regulatory approaches that are outcome-based allow for innovation and industry-developed alternative solutions rather than a single prescriptive so-called “highest standard”. ACA would prefer that regulators in any of the three provinces accept a standard approved in one of the other two provinces.

#### Frequency of OHS Code Review

The Occupational Health and Safety Regulations and Code should be updated periodically to reflect changes in technology, safe work practices, and understanding of occupational hazards and their prevention. The frequency of updating the OHS Code needs to reflect a balance between reflecting recent change and the impact of increased cost to employers in revising their employee training programs.

#### Publication of Employer Safety Statistics

Employer experience ratings and lost time claims are inappropriate and misleading indicators of safety performance. Disability claims management data collected by the Workers Compensation Board are not suited as measures of safety performance and their publication distorts the no-fault premise of the WCB to pointing fault at employers.

### **Related to WCB**

#### WCB Premiums

WCB premiums should be set in an actuarially sound manner to ensure that current premiums cover the net present value of current and anticipated future costs of claims, and

WCB and Appeals Commission administration. Investment returns that exceed these costs should be returned to employers.

#### Employer Appeals Advisors

Alberta's Worker Compensation system supports employer premiums underwriting the cost of workers appeal advisors, the Decision Review board, and the Appeal Commission for Workers Compensation.

ACA endorses employer appeal advisors, funded by employers through an allocation of their WCB premiums, with Ministerial accountability separate from the WCB. Employer Appeals Advisors could provide independent advice, representation, and training to employers concerning appeals related to the Alberta Workers' Compensation Act. The services of an EAA to improve employers' ability to determine whether to appeal, to better understand the issues and process of appeals, and to have greater confidence in the fairness of the appeals system.

#### Cost Relief

The Workers Compensation Board should retain cost relief for those industry rate groups that indicate that they wish to retain it. Cost relief recognizes that costs related to the increased likelihood and severity of injury to workers with pre-existing conditions should be borne by the industry as a whole. Given the physically demanding nature of much of construction work, cost-relief is a policy that many construction employers endorse. Cost relief also provides protection to employees and enhances their employability.