



MEMBER ADVISORY – BIDDING FUTURE PROCUREMENTS DURING COVID

The current impacts of COVID-19 on project productivity, schedule and cost are increasing in complexity. With each level of Government pledging that infrastructure projects will play a significant role in economic recovery; members can expect numerous procurement opportunities in the months ahead. Potential changes in law regarding social distancing and hygiene, interruptions to supply chains, and potential construction shutdowns are unknown in the event of future wave(s) of the pandemic, possible new information about transmission of COVID, interactions with influenza, mutations, timing and efficacy of vaccines, etc.

ACA urges bidders to seek as much information as possible from tender authorities about potential compensable costs and / or time available within the agreements for future project. Many agreements feature Force Majeure clauses, what is less clear is whether these FM clauses support compensable claims due to changing circumstances regarding COVID.

Possible questions to clarify with Tender Authorities include:

- Does the Force Majeure clause reference/include COVID? If it does, FM generally only provides relief for time and not costs.
- If the Force Majeure Event will delay the completion date, but the delay can be avoided or mitigated through extraordinary measures, will the Authority direct the contractor that such extraordinary measures be taken by the Contractor at the Authority's expense?
- It may be unclear what an extraordinary measure would be that the Authority would pay for and non-extraordinary measures which the Authority would not pay for.
- If the Contractor proposes extraordinary measures, which are not supported by the Authority, what recourse does the contractor have?
- What protocols (such as the Canadian Construction Association Standardized Protocols) regarding COVID-19 will the successful Contractor be required to follow?
- What is the process to address COVID-19 protocols when the standard protocols do not comply with future directions from Health Canada or the Chief Medical Officer of Alberta?
- Are there any restrictions for site reviews and inspections from the consultants and third-party agencies? If noted site review and inspections are not completed as scheduled, how will the time and cost impacts for the contractor be addressed?

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