

Information Bulletin: Contract A Provisions in Procurement

The Alberta Construction Association is issuing a province-wide industry notice following the confirmation of cases of removal of “Contract A” from the procurement process by some project owners, in the province. Instances such as municipalities adopting this language and practice in their procurement process are beginning to increase in the province, and this is a very concerning trend for our construction members. The attempted removal of “Contract A” is a significant violation of the public sector procurement process and may constitute unacceptable levels of risk for contractors.

In Canadian contract law, “Contract A” ensures fairness, openness and transparency between the owner and each compliant bidder who responds to a procurement call. “Contract A” typically includes terms and conditions such as deadlines, evaluation criteria, privilege clauses and often the requirement for bid security. It serves to protect the legitimate expectations and interests of all parties.

“Contract A” is a legal convention that was created in 1981 by the Supreme Court of Canada in *The Queen (Ont.) v. Ron Engineering*. This landmark decision is the cornerstone for fair, open and transparent procurement, providing a mechanism to protect both owners and bidders from unfair practices. It forms the basis of an understanding that all owners have a duty of fairness towards compliant bidders. Through the use of the “Contract A” bidding contract, *Ron Engineering* has brought certainty to the procurement process.

It is important to note that a procurement document that includes wording attempting to exclude Contract A will not necessarily, in and of itself, waive the common law duty of the owner to act fairly. Contractors are advised to:

- read all procurement documents carefully.
- use the RFI process to question the intent of the Owner’s procurement process in cases where “Contract A” has been removed.
- seek legal advice when they have questions or concerns about procurement and contract conditions.
- advise their Local Construction Association and ACA of any irregularities in the procurement process by emailing info@albertaconstruction.net.

The ACA issues this Industry Alert, in partnership with our Local Construction Association partners, as a service to its members and to industry at large to help educate them on the risks associated with changes in procurement. It is not intended to provide legal advice. All opinions stated in this Industry Alert are those of the ACA and reflect the publicly stated policies of ACA.

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About the Alberta Construction Association

The Alberta Construction Association (ACA) represents the collective voice for Alberta's construction industry. ACA is comprised of 3000+ member companies involved in institutional, commercial and industrial sectors that include general contractors, trade contractors, and manufacturers and suppliers. We work in partnership with 8 local construction associations and 10 associate members from across the province, as well as provincial and national counterparts. For more information, please visit <http://albertaconstruction.net/>.

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