

April 17, 2025

BULLETIN – PRICE ESCALATION AND SUPPLY CHAIN CHALLENGES

Limitation: the following information is being shared as information for MCA Canada members, and does not constitute and should not be considered as legal advice. As well, it is important to note that the terms and conditions of any Contract take precedence over any information contained herein. The Mechanical Contractors Association of Canada encourages all members to use their independent judgment, or, as appropriate, seek the advice of professionals.

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INTRODUCTION

As the global supply chain continues to adapt to challenges associated with US tariffs, the Mechanical Contractors Association of Canada (MCAC) is sharing the following bulletin with members, outlining current issues and key considerations.

MCAC has been actively engaged on this file, including efforts early this year to lead a coalition of associations in asking for federal reprieves from countermeasures on any construction related materials. Since that time, several other trade associations have made similar requests to the government, and MCAC has included this recommendation as part of its 2025 federal election platform.

The association continues to discuss and monitor the impact of tariffs on the supply chain, and is advocating on the sector's behalf to limit the impact of this evolving issue.

INDUSTRY CONCERNS AROUND PRICE ESCALATION

Of particular concern for the association is a growing number of suppliers unilaterally increasing product pricing without referencing a particular cause, and without any express reference to the impact of US tariffs or Canadian countermeasures.

While some standard-form contracts contain duty or change of law provisions—which may allow for Contractors to adjust a Contract Price because of duties—**blanket increases to product pricing imposes unfair risk on Contractors** who may not be able to exercise those contract provisions. Citing tariff-related issues, such as the valuation of the Canadian dollar or transportation costs, may provide an opportunity for Contractors to exercise price escalation provisions built into their contracts signed prior to the imposition of US tariffs and Canadian countermeasures.

MCA Canada stands ready to work with suppliers to pursue the recourse associated with items such as tariff impositions and associated risks, and encourages the industry supply chain to explore the existing tariff-relief programs available as the industry navigates the challenges brought on by US tariffs.

Contractors are reminded to review their existing supplier arrangements to determine how price increases are reflected in those contract terms and conditions.

IMPORTANT CONSIDERATIONS

For both current and future projects, there are distinct considerations for Contractors to be aware of.

For those projects already underway (where the bid closing date was prior to the imposition of tariffs), it is critical that Contractors review their existing contract language to determine whether there are any contractual provisions that deal with the issue of duties and tariffs.

As an example of a duty provision, the CCA-1 Subcontract form, in GC 10.1.2, notes that *Any increase or decrease in costs to the Subcontractor due to changes in taxes and duties after the time of the bid closing shall increase or decrease the Subcontract Price accordingly*. Other contract forms may contain similar provisions. It is important to understand when the provision takes effect (in the example of a CCA-1, the taxes or duties will have had to come into effect **after the bid closing date**). Contractors may also wish to explore and discuss with Owners/General Contractors whether provisions such as force majeure clauses or change of law provisions address the issue of tariffs.

For those entering into a new contract, MCAC is advising member companies to work with suppliers to lock-in pricing in order to mitigate the impact of any price fluctuation on supplies and materials now that tariffs are in place. The association is advising Contractors to explore with Owners/General Contractors the use of price escalation clauses, including the required notice provisions that would be necessary to change a contract price.

Contractors should undertake all efforts to document and record the types of products affected by price escalation.

OTHER CONSIDERATIONS – CONTRACT SECURITY

As with any other change in contract price, Contractors should also be aware of their insurance and bonding requirements, and whether existing contract security is directly related to and affected by Contract Price.

In the case of a bid bond, if a Contractor is unable to proceed with the Work due to price escalation, the Obligee (either the Owner or the General Contractor) would have a valid claim against the bond. A recommendation for both Contractors and sureties is to ensure the tender package will allow for price escalation, or, if that option is not available, build additional cost into tender prices, or qualify a bid, if possible.

BID QUALIFICATION

It is important to recognize that in some jurisdictions, the use of bid qualification clauses may not be acceptable to bidding authorities. If there are any questions on the use of these clauses, we encourage members to seek legal advice.

The following represents an example of a bid qualification statement to address price escalation and volatility:

Price Volatility and Increased Costs Due to US Tariffs

As a condition of accepting this bid submission, the parties acknowledge that some of the materials and products to be used and installed in the construction of this project may be subject to price increases due to US tariffs and Canadian countermeasures. If there is an increase in price of materials, equipment or products between the date of this contract and the time when the job is ready for the installation of the affected material or equipment, the amount of this contract shall be increased to reflect the additional costs to obtain the materials, provided that the Contractor gives the Owner/General Contractor timely written notice and documentation of increased costs.

COMMUNICATION & DOCUMENTATION

As with any construction project, communication between stakeholders is critical when addressing potential conflicts or challenges. When price escalation arises, it is important the Contractors communicate with Owners/General Contractors in a timely manner, and within the notification requirements outlined in the Contract Documents. Clear communication ensures both parties can adjust plans accordingly.

It is also essential to keep high quality records and comprehensive documentation when dealing with price escalation challenges. This includes, but is not limited to, quotes, bid proposals, purchase orders, invoices, and other financial documents. These records can illustrate and clarify cost increases, and can assist in dispute resolution.

REMISSIONS PROCESS

A full list of products impacted by Canadian countermeasures is available through the Government of Canada website. The Department of Finance has implemented a remissions request process, through which companies and associations can request a reprieve where goods cannot be reasonably sourced from within Canada or from non-US suppliers.

Contractors should maintain records and any relevant documentation that demonstrates a particular product impacted by tariffs cannot be sourced from within Canada or non-U.S. suppliers, or where alternative products would not meet Canadian safety certification standards.

Remissions are granted by Cabinet. The anticipation is that the first set of approvals will follow shortly after the federal election on April 28. In 2018, remissions related to U.S. steel tariffs were processed quarterly, although the volume of impacted products in 2025 is significantly higher.

Further to the ongoing advocacy efforts, MCAC is preparing a remissions application that highlights certification and safety standards and the need to provide reprieve for construction-related materials and supplies.