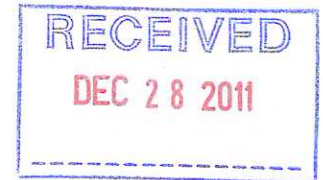




Newfoundland & Labrador Construction Association
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December 15, 2011



Mr. Geoff Emberley, CEO & Registrar
Professional Engineers and Geoscientists
of Newfoundland & Labrador
P.O. Box 21207
St. John's, NL A1A 5B2

Dear Mr. Emberley:

We write to you today to express our collective concern about a current trend we have been experiencing within the tendering process. This trend is that of the issuance of addenda very close to project deadline.

We have witnessed this issue with multiple tenders over the past few months and our members have expressed concern that this seems to be becoming an acceptable practice. To illustrate the issue with one particular instance from a couple of weeks ago, an addendum was issued to a tender with only 2 hours remaining until tender close. The wording of this addendum also changed the tender documents to allow addenda issuance "up to 1 hour before tender close". As you may imagine, this practice may create ill effects to the tendering system and may ultimately lead to conflict or legal issues for the issuing Consultant and Owner.

According to the feedback our association has received, this practice could result in the following scenarios:

- ***A tender may have already been submitted by this time and the bidder has not indicated receipt of the addenda on his tender form***
A bidder can sometimes submit his/her bid hours in advance of the closing time and rightfully assume that no other addenda will be issued. If all addenda are not acknowledged on the tender form, technically, the bid is invalid. Given the nature of these last minute addenda, legal action would certainly occur if a low tender is disqualified in this manner.
- ***Last minute changes can lead to estimating mistakes***
When there are material changes being made at the last minute, confusion and chaos often follow. The process to relaying this last minute change throughout a complex system of subcontractor and suppliers is difficult and most time



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ineffective. This may lead to errors in calculations or direct omission. This would ultimately be an issue that would most likely be brought forth as a conflict once the project is awarded and work begins.

- **Complicated tender forms cannot easily be altered in a quick manner**

The tender forms for many jobs can be complex in nature and contain many separate/alternate pricings. Common practice is to submit the official tender early and amend by fax. These last minute changes may create a ripple effect throughout these separate/alternate pricings that may not be able to be changed within a couple of hours. Again, this may lead to errors and omissions, or even complete withdrawal of bid submission. This may also create conflict or reduce competition.

- **Tender system fairness**

Ultimately, an Owner or Consultant has the obligation to treat all bidders in a fair manner. This practice is simply not fair to a bidder who has invested a relatively large resource to place a bid for a project. There are avenues within the contract to deal with changes or omission within the tender documents which can easily be followed, without confusion, once the tender has been awarded.

We present these collective concerns to better illustrate the consequences of this issue and hope that your Association can portray the issue to your members accordingly.

Regards,

A handwritten signature in black ink, appearing to read "R. Neary", is written over a horizontal line.

Rhonda Neary
President/COO
Newfoundland & Labrador Construction Association