

INFORMATION CIRCULAR

To: All Municipalities, Local Service Districts, Inuit Community Governments, Consultants, and, Municipalities Newfoundland and Labrador, Professional Municipal Administrators, Heavy Civil Association of Newfoundland and Labrador, Newfoundland and Labrador Construction Association, Department of Municipal and Provincial Affairs, Department of Environment and Climate Change

Re: Cost Adjustments Risks for Budgets and Form 7 and 15 Clarifications

Date: April 28, 2022

Cost Adjustment Risks

In light of the current fluctuation in oil prices, this circular serves as a reminder of the Supplementary General Conditions (SGC) for Cost Adjustments for Liquid Asphalt and Petroleum Products and the risks they impose to project budgets.

Both SGCs are intended to adjust the contract price to maintain a fair balance to Contractors and Owners if the price of oil, which is outside of their control, should alter greatly between the time of bid closure and construction. In the current climate, it is more likely to result in a larger addition to the contract rather than a smaller addition or credit.

Owners and their consultants should carefully consider their options when dealing with an estimate that places their cost close to the full budget of the project. Consider the scope of work and the asphalt mix design to evaluate the level of risk. Petroleum adjustment increases may be larger than liquid asphalt and are not as easy to control by changes in the design.

The Benchmark pricing for liquid asphalt is located at

<https://www.gov.nl.ca/ti/mi/mwsr/#liquidasphalt>.

The Benchmark pricing for petroleum is otherwise publically available.

The Owner is responsible for funding overruns.

Form 7 and 15 Clarification

Form 7 is a place to identify and track testing and reinstatement allowances.

In accordance with the Master Construction Specifications, payment for piped systems (water, storm, sanitary) will be made to a maximum of 90% and manholes to a maximum of 95% until all applicable tests are completed satisfactorily. Only then can payment above these thresholds for these line items be considered. The value of these testing allowances should be identified and shared with all parties before the review of the first payment for these items. Because they are only related to specific line items on the Schedule of Quantities and Prices, the value of

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these testing allowances can be reviewed on the contractor's invoice and are not identified on Form 15.

As per specification section 01710 Reinstatement and Cleaning under Basis of Payment, a reinstatement allowance is to be established and retained from payment. It is to be 5% of the value of the work completed and therefore increases as the work progresses if reinstatement is not completed. This allowance can be released progressively with each payment on the basis of the Owner's and their consultant's opinion on the percentage of reinstatement completed.

Form 15 has a place added for the Reinstatement Allowance value currently being held from payment. There is also a place to identify the value of deficiencies withheld for incomplete work once the Substantial Performance Certificate (Form 12) has been issued. This is to standardize how consultants were showing these values. This structure should clarify to all parties the difference between funds held for work unfinished and the 10% holdback required as part of the Mechanics Lien Act. Mechanics Lien Holdback is to provide protection to the subcontractors and cannot be used for incomplete or deficient work. 30 days after substantial performance has been issued, Mechanics Lien holdback must be released to the contractor, regardless of the work remaining.

If you have any questions or concerns, please reach out to your local Regional Office:

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Sincerely,



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