



General Contractors' Section

27th June, 1990

BULLETIN # 66

- TO: ALL EMPLOYERS BOUND BY THE PROVINCIAL CARPENTERS, LABOURERS OR BRICKLAYERS COLLECTIVE AGREEMENTS**
- RE: NEW CONSTRUCTION MANAGEMENT - CARPENTERS, LABOURERS & BRICKLAYERS COLLECTIVE AGREEMENTS MAY 1ST, 1990 TO APRIL 30TH, 1992**

INTRODUCTION

In our earlier bulletins regarding the implementation of the new Carpenters, Labourers and Bricklayers collective agreements, we indicated that a further interpretation would be issued with regard to the new Construction Management provisions of those agreements. The following interpretation was developed by the Labour Relations Bureau of the Ontario General Contractors Association in consultation with our Legal Counsel. The Labour Relations Bureau is made up of representatives from fourteen areas including the General Contractors' Section of the Toronto Construction Association.

CONSTRUCTION MANAGEMENT PROVISIONS - CARPENTERS, LABOURERS AND BRICKLAYERS AGREEMENTS EXPIRING APRIL 30TH, 1992

The above-noted Provincial Agreements contain amendments to the Construction Management provisions of the subcontract clauses in the contracts expiring April 30th, 1990. All three agreements continue to provide that Employers bound by the Agreements acting as Construction Managers must only deal with union trade contractors. Exceptions to this general rule are set out in subs (i), (ii) and (iii) of the new Construction Management provisions attached - Attach. #1. Article 2.07, 2.08 and 2.09 of the Labourers Provincial Agreement is used as an example. The same provisions are found in the Carpenters: Article 4.03, 4.04 and 4.05 and the Bricklayers: Article 1(d), (e) and (f). References following are to the applicable Article of the Labourers Agreement. For Carpenters or Bricklayers please refer to the corresponding provision.

1. DUTY TO ADVISE (NEW ARTICLE 2.09)

Article 2.09 provides that the Employer (operating as a Construction Manager) shall advise the owner of the Employer's obligations under Articles 2.07 and 2.08 of the applicable collective agreement. We would suggest that this be done in writing, at the first opportunity and in any oral presentation to the owner.



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The owner should be asked to indicate, at the outset, whether or not the owner wishes to specify named non-union bidders or to consider non-union prices for work covered by Collective Agreements to which the Construction Manager is bound.

We recommend that any Construction Management proposal contain the following:

1. We are under certain subcontract restrictions to the Carpenters, Labourers and Bricklayers (indicate the unions the company is bound to) unions which may require adjustments to this proposal.
2. If you want to use any specific trade contractors you must specify such contractors.
3. If you want to use non-union trade contractors or open advertising of tenders for any part of work, this proposal may require amendments.

If the owner intends to invite non-union bidders, a mixture of non-union and union or use open advertising, then all tenders should be called by the owner, in the owners name, to the owners address. If the owner is prepared to consider only union prices then tenders may be called by the Construction Manager or the owner.

If the owner chooses not to limit bidding to union trade contractors, the Construction Manager should not be involved in:

1. The selection of such non-union trade contractors or
2. The solicitation or obtaining of bids from trade contractors whether union or non-union. In other words, once the owner has taken a decision to consider non-union prices the Construction Manager must "step-out" of the process until tenders are received by the owner.

Once tenders are received, the Construction Manager is free to review the tenders and make comparisons including the preparation of spreadsheets and other reports necessary to make a decision as to the bids that are valid.

This exception to the restrictions placed on the Construction Manager during the tender process is contained in the phrase "[except as to the validity of the bid(s)] in lines 6 and 7 of Article 2.07(i), attached.

2. **AWARD OF NON-UNION TRADE-CONTRACTS AND PAYMENTS TO NON-UNION TRADE CONTRACTORS**

Award to a non-union trade-contractor can only be made by the owner. In such cases, the owner must contract directly with the non-union company and not through the Construction Manager as the owner's agent. Further, the Construction Manager cannot assume contractual liability for the work of such trade contractor. Similarly, all payments to the non-union trade-contractor must be made directly by the owner. See 2.07 (ii) and (iii).

3. **CONSTRUCTION MANAGEMENT SERVICES**

Following the owner entering into a contract with a non-union trade-contractor the Construction Manager may provide typical services to the owner in respect of the non-union trade-contractor. Included would be job supervision, co-ordination, progress reporting and recommendations regarding billings.

4. **FAILURE TO COMPLY/DAMAGES**

Failure to comply with the Construction Management provisions of Article 2.07 renders the Employer liable for damages equivalent to those for a violation of the preceding sub-contract clause, Article 2.05 (See Article 2.08)

CONCLUSION

Please contact the Section at 499-4101 if you have any questions with regard to the application of these articles to particular Construction Management proposals.



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 General Contractors' Section

ATTACHMENT #1

- 2.07** Without restricting in any way the application of the subcontracting provision contained in Article 2.05 of this Agreement, an Employer who undertakes a contract with an owner to provide construction management services shall be subject to said Article 2.05 unless:
- i)** The owner selects contractor(s) not bound to this Agreement to bid on work covered by this Agreement and solely and directly solicits or obtains bid(s) for such work from such contractor(s) without any involvement or participation by the Employer in the selection of such contractor(s) [except as to the validity of the bid(s)] or the solicitation or obtaining of any bid(s) from any contractor(s) regardless of whether it (they) is (are) bound or otherwise to this Agreement;
 - ii)** The owner accepts bid(s) from contractor(s) not bound to this Agreement; and
 - iii)** The owner contracts or subcontracts directly with contractor(s) not bound to this Agreement without contractual obligation of the Employer for the work of such contractor(s), other than for the negligent acts or omissions of the Employer.
- 2.08** Any failure to comply with Article 2.07 of this Agreement shall render the employer liable for damages equivalent to those for the breach of the subcontracting provision set forth in Article 2.05 above.
- 2.09** The Employer shall advise the owner of the provisions of Articles 2.07 and 2.08 when undertaking the construction management service contract.