

# Canadian Design-Build Institute

A Special Committee of the Canadian Construction Association  
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## INTRODUCTION

### Practice Bulletin #2 – February 1999

This is the first bulletin issued by the Standards of Practice Committee. It is our intention to attempt to issue on a monthly basis, dependent entirely on available material, topics etc. If there are subjects that you want covered or you think should be covered, or you are able to contribute, then please let either Eric Lee or myself know. My telephone number and e-mail address are listed at the end of this bulletin.

### Copyright

Although copyrights are, by law, the property of the author of the design, i.e. The Consultant of Record. You will, on occasion, be asked to assign copyright to the Owner. This is becoming fairly commonplace, particularly on large public facilities. Whether or not you decide to "assign" is entirely up to you. [Some may well argue that it cannot be assigned, I do not happen to share that opinion] If it is a contractual requirement then really you have no choice, if you are party to that contract. To safeguard your interests I would suggest that your legal council should address issues of this nature. They should be reviewed at the outset, when the contract is prepared, it is too late to argue about this when the drawings are issued and the building constructed. Unfortunately however, in the normal course of events, this is when the Consultant first becomes aware that he is being asked to assign his copyright.

In reality is it that important? Obviously it is of great importance to many professionals, therefore let us have your views on the subject. We will publish them in the next bulletin. In the meantime our only advice can be that if you object to the assignment of copyright, and the owner will not drop that requirement, then don't participate in the project.

### Honorarium for Design Build Proposal Calls

This subject has possibly generated more paper than any other issue with respect to the Design-Build process. In many respects it is easy to understand why, all of the participants have to invest heavily to respond to proposal calls, some of which are extremely onerous, with respect to the amount of material, design detail etc. that has to be prepared and submitted. Generally the honoraria is no more than a token payment, that at best may cover reprographics costs, but little else.

My own experience has been varied, I would suspect like most of you, there have been those projects where the investment has been large, for little or no return and others where the investment was reasonable. It is unfortunate that few owners consider that the requirements of their proposal calls are such that the honoraria will be inadequate, or that they should make any payment at all. So, what can we do about this, we could, as some have suggested, refuse to participate. Probably not the best solution, as there will always be those who will, even with no honoraria. We could just complain, but without constructive comment that achieves very little. We can, as many of us do, elect to participate with the acceptance that this is part of the cost of doing business, and that's ok if you have reasonably deep pockets, but obviously there are limits.

What I suggest we need to do, is follow the example of the Ontario Association of Architects and the Ontario General Contractors Association, who recently challenged the Ontario Realty Corporation's proposal call process. The OAA and OGCA, following the award of the second of the "Super Jail" projects initiated the discussion with representatives of the OAA, OGCA and ORC. With the prospect of further proposal calls being issued this year it was felt that the cost to participants of the first two had been out of all proportion to the honoraria paid, and that the situation should be addressed as quickly as possible. As a member of one of the unsuccessful participating teams, I can confirm that the costs were exceptionally high for all members of the team, not just the design consultants.

The first proposal call had provided honoraria of \$35,000, total team costs were reported by the various participants, to be in the order of \$200,000 to \$500,000. Architectural consultants costs alone were in the region of \$100,000 to \$200,000. The second project had similar conditions, however one of the pre-qualified participants withdrew, and ORC agreed to divide that teams honoraria among the remaining teams, which helped us to some extent. While it could be argued that no one twisted our arm to participate. It was argued from the other side, that if such conditions continued, and with the

present resurgence of construction activity that is happening in Ontario, then ORC may find difficulty in getting qualified teams to respond to proposal calls.

There had also been considerable discussion focussing on the amount of information that ORC required to be provided, with the proposal. This was considered by many to be totally unwarranted, given that the project was designed to such an extent that no major changes were permitted to the compliance design, leaving little or no opportunity for design innovation. It had even been suggested that the use of the term, Design-Build, was inappropriate, that really these projects were Draw- Build, or Risk-Transference projects. It is worth noting that these comments came not only from unsuccessful proponents but also from the successful teams.

A second meeting was convened in early December 1998, which pulled together not only representatives of the associations but also a cross representation from the participating teams. From the discussions at that time a letter was drafted, reviewed, and following comment and revision, forwarded to the Ontario Realty Corporation on December 9 1998. In that document the concerns of the participants were outlined; that this was not really true design build, that the compensation to the participants was inadequate, and that the issue needed to be resolved prior to the next project being put out into the market place. The letter also offered several suggestions as to how the costs to the unsuccessful proponents could be mitigated:

- By setting an honoraria at 1% of the budgeted cost of the project.
- Alternately that all proponents carry a cash allowance in their price that would reflect an amount that would be paid to the unsuccessful teams.
- Or that the requirements of the submission be reduced significantly.
- A fourth option was a combination of any of the above.

An offer was also made to discuss this matter further.

ORC decided at that time not to respond to the letter. They did, however, with the next proposal call, increase the honoraria, slightly, and to some extent reduce the extent of material, which was required to be submitted with the proposal.

Unfortunately at this time the unified resolve of the participants started to come apart, and for what ever reason, some of the original participants did not wish to continue the "fight". This is somewhat unfortunate as further Design-Build proposal calls are being issued by ORC, which will again place a burden on the shoulders of the industry which could have been, and may perhaps yet, be mitigated.

However valuable lessons were learned, the issue was aired, and some relief was obtained. In my view the only way we can effect change in this sector of our industry, is by discussion which presents reasoned argument and constructive comment. Hopefully this Institute and this committee will eventually be able to bring some influence to bear on institutions issuing proposal calls.

Your views, comments, and suggestions on this topic are welcome.

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Chairman, Standards of Practice Committee.

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