



NRCA

July 2008

Dear Member:

During the course of the past several weeks, we've had the opportunity to meet with a number of leading roofing material manufacturers and other industry stakeholders. One theme has dominated those meetings: The staggering and unrelenting increases in raw material prices.

For most members, this isn't news; what is newsworthy is how rapidly the increases have come. There are several forces at work that contribute to the situation.

First, of course, is the steady increase in the price of oil. Asphalt is a crude oil derivative, and its price is directly affected by crude oil prices. In addition, petrochemicals are commonly used in a host of roofing materials, which include polymers used in almost all membrane roof products and board roof insulation.

Second, we have seen dramatic increases in the price of steel. Not only does this affect the price of metal roofing products, but it also affects a number of common roof accessories, such as gutters, copings and counterflashings.

Third, transportation costs have risen continuously with the price of gasoline and diesel fuel. What makes matters even worse is a shortage of over-the-road truck drivers; for many suppliers, the situation has become dire.

Based on all this, we offer the following recommendations for all roofing contractors:

1. Work closely with your material suppliers. Delivery schedules especially take on increased importance.
2. Talk to your customers. Let them know your situation and, whenever possible, encourage the use of escalation clauses. As the accompanying *Special Report* explains, incorporating escalation clauses into contracts can work in an owner's favor; the only other option is to face the likelihood of bids that attempt to account for future prices. Several sample escalation clauses developed by the National Roofing Legal Resource Center are included with this letter.
3. Another approach is to provide for an allowance in your contract for certain items that are subject to price volatility with a stipulation that the actual price may be lower or higher than the allowance. If you are able to obtain the materials for less than the allowance, the amount of your contract is reduced; if the actual cost to obtain the items that is subject to the contractual allowance exceeds the allowance, the contract would be increased.
4. Whenever possible, get price commitments from suppliers in writing and make sure you and your suppliers understand the date the price commitment will expire.

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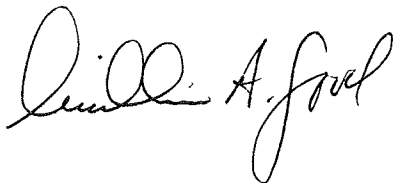
In addition, contractors who perform work for contracts from the federal government may be able to include price-adjustment clauses in some situations. The Federal Acquisition Regulation (FAR), which governs contracts for goods and services issued by most federal agencies, allows such contracts to have certain types of price-adjustment clauses. FAR Part 16, Types of Contracts, Section 16.203-1 provides that a fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types: adjustments based on established prices; adjustments based on actual costs of labor or material; and adjustments based on cost indices of labor or material.

The same section says that a “fixed price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor’s control . . .”

The FAR applies to most federal agencies with some exceptions. The current FAR can be viewed at the following link: www.amer.gov/far/current/pdf/FAR.pdf.

We are convinced these price increases are real. Further, we do not believe this is merely a short-term or cyclical problem; the issue will be with us indefinitely, and we encourage all contractors to act accordingly.

Sincerely,

A handwritten signature in cursive script that reads "William A. Good". The signature is written in dark ink and is positioned above the printed name.

William A. Good, CAE
Executive Vice President



Special Report

July 2008

RAW MATERIAL PRICE INCREASES FACING THE ROOFING INDUSTRY

The U.S. roofing industry is unusually dependent on a number of raw materials that are experiencing dramatic and unprecedented price increases.

Most notable among these, of course, is crude oil. Asphalt, a crude oil derivative, is commonly used in a number of roofing materials, including built-up roof membranes, polymer-modified bitumen membranes and, of course, asphalt shingles. The price of asphalt is directly related to the price of crude oil.

In addition, a host of roofing materials use petrochemicals as key ingredients. These include polymers used in the manufacture of several single-ply membranes, as well as a key ingredient in the manufacture of board roof insulation. There is a direct and immediate effect on roofing material prices when oil prices increase.

The roofing industry also uses steel in a number of ways. There are metal panel roofs, of course, and metal shingles; steel is also used in any number of accessories for more traditional roof systems. These include such things as gutters, copings and counterflashings to name just a few. Worldwide demand for steel—especially in China and India—has contributed significantly to price pressures on steel.

Yet another factor facing the roofing industry is the difficulty in finding regular, reliable transportation. Roofing material manufacturing plants are located throughout the U.S. but cannot possibly serve every market without significant transportation costs. Some material is shipped by rail; most is shipped by over-the-road carriers. The trucking industry, of course, is affected directly by the cost of gasoline and diesel fuel; contributing to the problem is a shortage of truck drivers and a growing number of trucking firms that have been forced to close their doors.

All these factors make it extremely difficult for roofing contractors to bid significant roof projects with confidence—especially those that won't begin in the near future. In some markets, roofing contractors are literally facing the prospect of *daily* price increases for some materials.

NRCA has met with a number of roofing material manufacturers and other industry stakeholders. We are convinced the price increases are real, necessary and not likely to abate any time in the foreseeable future.

NRCA has advised its members to work as closely as possible with their suppliers *and* their customers. Our advice includes getting firm price commitments in writing whenever possible; letting their customers know, to the extent they can, what type of price increases to expect; and, whenever possible, to include price escalation provisions in their contracts.

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NRCA also believes escalation provisions in contracts serve the best interests of roofing contractors and their customers. Done properly, escalation clauses allow for a pass-through of price increases experienced by contractors, enabling contractors to maintain the level of profitability anticipated with an original bid.

Absent escalation clauses, roofing contractors must attempt to anticipate material prices at the time jobs commence and build those prices into bids they provide. It is unlikely a contractor will be able to predict those prices correctly. If a contractor overestimates them, the price of the job becomes inflated. If he or she underestimates them, the contractor can be penalized for causes beyond his or her control.

Another approach to handle the problem that is fair to owners and contractors is through the use of an allowance for certain materials. An owner and contractor would agree in their contract to an allowance to purchase the materials in question, and the amount of the stipulated allowance would be included in the contract. If the materials are obtained for an amount lower than the allowance, the owner receives a credit and the amount of the contract is reduced; if the cost of the materials exceeds the allowance, the contract amount is increased to the extent that the material cost exceeds the allowance.

It is likely an owner can always find a contractor who will offer a firm price without escalation provisions. However, if that contractor subsequently faces dramatic price increases, he or she may be tempted to find cost savings to avoid a financial disaster. And unscrupulous contractors can always find ways to cut corners. NRCA believes it is far better to work with professional contractors who are willing to share as much information as possible and work closely with their customers to ensure projects are completed in a satisfactory manner.

There is a good deal of additional information available about prices affecting building materials generally and the roofing industry in particular. Sources include the American Petroleum Institute (www.api.org); American Iron and Steel Institute (www.steel.org) and American Trucking Associations (www.gotrucking.com).

More information also is available by contacting the National Roofing Legal Resource Center at (847) 299-9092.



The National Roofing Legal Resource Center is pleased to provide possible provisions to include in correspondence, proposals and contracts to deal with volatile pricing of roofing, polyisocyanurate and steel products.

The construction industry is experiencing rapidly escalating and unpredictable prices for petroleum-based roofing products, steel and transportation costs. The pricing of many roofing products is currently subject to sudden and significant changes beyond the control of roofing contractors. Because of the difficulty in obtaining firm prices for petroleum-based or steel products from suppliers, [Name of Roofing Contractor] cannot provide fixed, firm prices for these products for future projects. If there is an increase in the price of petroleum-based or steel products charged to _____ subsequent to making this proposal/contract, the price set forth in this proposal/contract shall be increased to reflect the additional cost to _____ upon _____'s submittal of written documentation of the increase charges.

Due to rapidly escalating prices and extreme volatility in the pricing of petroleum-based construction products, the price set forth in this proposal/contract applies only to orders that are ordered and paid for within _____ days of the date of this proposal/contract. All other orders shall be subject to change based upon changes in the price material charged to _____.

_____ shall perform the work described at the price quoted subject to the following adjustment: In the event that the price of any materials to be used in this work should increase by _____ percent or greater from the price at which the material was available to _____ at the time of submission of this proposal/contract, then the price quote shall be increased to reflect the additional cost of the material to _____.

Due to the extreme price volatility regarding petroleum products, the price quoted in this proposal is valid only for orders placed and paid within the next _____ days. If there is an increase in the price paid by _____ for asphalt, polyisocyanurate, steel or other materials, including transportation charges, the amount of this proposal/contract shall be similarly increased to reflect the increased costs to obtain the materials.

_____ shall perform the work described herein at the price quoted; provided that in the event the price to the roofing contractor for any materials to be used in this work shall increase by _____ percent or greater than the price relied upon by _____ in preparing and submitting the price quote, then the owner/general contractor agrees that the price quote shall be increased to this same extent.

Asphalt products, polyisocyanurate insulation, steel products and other roofing products are sometimes subject to unusual and severe price volatility and availability caused by political and economic conditions that are beyond the control of _____. If there is a substantial price increase in these or other roofing products between the date of this proposal and the time when the work is to be performed, the amount of this proposal/contract may be increased to reflect the additional cost to obtain the materials, upon advance notice and submittal of written documentation to the Customer.

About NRLRC

The National Roofing Legal Resource Center (NRLRC) was formed in 1979 by the National Roofing Contractors Association and is a separate organization funded primarily by legal resource center member dues. It is an association composed of informed roofing contractors who cooperate in compiling roofing-related legal-case histories and developing strategies aimed at understanding legal issues and reducing contractors' legal fees. The legal resource center is the leading resource for roofing contractors.

The legal resource center provides its roofing contractor members with the up-to-date information they need to address effectively the legal complexities of the roofing business. The legal resource center staff is available to help its members in an area where they need it most—the law. To join, please visit NRLRC's Web site www.nrlrc.net or contact Alison LaValley, NRLRC's executive director, at alavalley@nrca.net.

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