

October 1, 2026

Dear Municipal Partners,

Re: Urgent Need for Fuel and Material Price Adjustment Mechanisms on Public Construction Contracts

On behalf of the members of the Ontario Sewer and Watermain Construction Association (OSWCA), Greater Toronto Sewer and Watermain Contractors Association (GTSWCA), Toronto and Area Road Builders Association (TARBA), Heavy Construction Association of Toronto (HCAT), and Ontario Association of Foundation Specialists (OAFS), we are writing to urge you to immediately consider implementing fuel and material price adjustment mechanisms into your contract documents, and look at how ongoing contracts can also be adjusted in similar fashion, in response to the extraordinary volatility currently affecting global energy and construction markets.

Recent geopolitical events have created significant disruption in the global energy market and have driven substantial increases in the price of diesel and other fuels; up 58% since the beginning of this calendar year. Most recently, the United States has been considering measures to restrict diesel exports to increase domestic supply and reduce U.S. prices. While the precise form and timing of this action remain uncertain, the prospect of export restrictions at a time of already constrained global supply introduces another significant source of volatility into the Canadian market.

For the construction industry, the concern extends well beyond the price contractors pay to fuel their equipment. Diesel is embedded throughout the construction supply chain. It is required to extract and process aggregate; manufacture and transport asphalt and concrete; operate crushing, paving and earthmoving equipment; transport materials to construction sites; and, move excavated materials and construction waste. Significant changes in fuel prices can therefore affect both the direct cost of performing construction work and the delivered cost of many of the materials incorporated into that work. This creates an immediate challenge for both projects currently under construction and projects approaching tender.

Contractors bidding work today are attempting to quantify what amounts to an indeterminate risk and incorporate it into their bid price. The result can be higher bids, greater variation between bids, reduced competition and, potentially, contractors declining to bid work where the risk cannot reasonably be assessed. Ultimately, the owner pays for this uncertainty, whether the anticipated price escalation actually materializes.

A more efficient approach is to share this risk through independently verifiable indices. We recommend that you consider implementing two complementary mechanisms for your construction contracts:

1. Fuel Price Adjustment Mechanism

Contracts should contain a fuel-price adjustment mechanism tied to the Ministry of Transportation's (MTO) RAQS Fuel Cost Adjustment Index. The mechanism should establish a baseline at the time of tender and provide for adjustments where fuel prices move beyond an agreed threshold during construction. Importantly, the mechanism should operate in both directions. Contractors would receive an adjustment where prices rise beyond the established threshold, while the owner would receive the corresponding benefit where prices decline. This is not a novel approach as MTO has operated a fuel index on their contracts for many years, and several municipalities across the province have also adopted indices to account for this risk.

2. Material Price Escalation/De-escalation Mechanism

We similarly recommend establishing an objective material indexation mechanism for major construction inputs (e.g. asphalt, aggregate, concrete, steel) experiencing volatility. There are existing Ontario models upon which a mechanism can be modelled. Metrolinx, for example, has used a material indexation regime under which specified material costs are compared against an approved index at the RFP submission deadline, with adjustments subsequently calculated using the applicable index when the material supply contract is executed (Appendix A). This model identifies specific materials and connects those materials to independently published Statistics Canada Industrial Product Price Index categories. Significantly in the present circumstances, the same framework identifies diesel and gasoline as indexed energy and petroleum products. Many other public buyers have been working towards developing similar indices as a means of reducing project risk.

Mechanisms required to address the current situation do not need to be created from scratch. Ontario public owners already have models that can be adapted relatively quickly. Most importantly, it allows contractors to bid projects based on the costs they can reasonably anticipate rather than incorporating substantial contingencies against price fluctuations that may or may not occur.

We encourage you to:

1. Introduce fuel-price adjustment provisions for new construction tenders;
2. Establish material escalation/de-escalation provisions for key construction inputs, including asphalt, concrete, steel and other appropriate materials; and
3. Develop a mechanism to address fuel and material escalation on existing contracts where these cost risks could not reasonably have been contemplated.

Given the speed at which fuels costs are currently changing, we believe these measures should be considered urgently. Contractors and public owners have a shared interest in maintaining competitive tendering, protecting project budgets, and ensuring that planned infrastructure continues to be delivered.

OSWCA, GTSWCA, TARBA, HCAT, and OAFS would welcome the opportunity to work with you to develop an appropriate framework, drawing upon the existing MTO, Metrolinx, and municipal models already in use or previously contemplated in Ontario.

Sincerely,

Raly Chakarova
Executive Director
TARBA

Patrick McManus
Executive Director,
GTSWCA & OSWCA

Peter Smith
Executive Director
HCAT & OAFS

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1.0 Definitions

- 1.1 **"Adjustment Factor"** means for each Indexed Material Subcategory Total, the amount calculated in accordance with Section 3.5.
- 1.2 **"Advance Procurement Application"** has the meaning given in Section 2.2.
- 1.3 **"Advance Procurement Materials"** has the meaning given in Section 2.1.
- 1.4 **"Approved Index"** means the approved indices to be used in the calculation of the Index Adjustment Value set out in Column 4 of Table 1 of Appendix A to this Schedule 21.
- 1.5 **"Custodian"** has the meaning given in Section 2.4(a).
- 1.6 **"Discounts"** means all discounts, rebates, credits, or any other benefit offered by a supplier in relation to the purchase of materials for the Project, including any discounts, rebates, credits, or any other benefit offered by the Supplier on the basis of the total materials purchased by the Contractor from the supplier for the Project and for any other project or purpose.
- 1.7 **"Index Adjustment Value"** means the amount determined in accordance with Section 3.5.
- 1.8 **"Indexed Material"** means those materials that form part of the Work to which the indexation regime in Section 3.0 of this Schedule 21 applies and more specifically set out in Table 1 of Appendix A to this Schedule 21.
- 1.9 **"Indexed Material Categories"** means the categories of materials set out in Column 1 of Table 1 of Appendix A to this Schedule 21.
- 1.10 **"Indexed Material Notice"** has the meaning given in Section 3.2.
- 1.11 **"Indexed Material Payment"** has the meaning given in Section 3.6.
- 1.12 **"Indexed Material Subcategories"** means those sub-categories of Indexed Material Categories set out in Column 2 of Table 1 of Appendix A to this Schedule 21.

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- 1.13 **"Indexed Material Subcategory Total"** means the aggregate total dollar value assigned to each line item that contains an Indexed Material Subcategory as set out in Schedule 7 – Schedule of Values.
- 1.14 **"Indexed Material Supply Contract"** has the meaning given in Section 3.2.
- 1.15 **"Temporary Storage for Advance Procurement Materials"** has the meaning given in Section 2.4.

2.0 Advance Procurement

- 2.1 The Contractor may request approval from Metrolinx to purchase materials, Equipment, or Products in advance of when required for performance of the Work (the **"Advance Procurement Materials"**) and if Metrolinx approves the Advance Procurement Materials in accordance with this Schedule 21, then Metrolinx shall pay the Contractor for the Advance Procurement Materials in accordance with this Schedule 21.
- 2.2 The Contractor shall submit an application to Metrolinx at least twenty (20) Working Days prior to the intended purchase of Advance Procurement Materials (each an **"Advance Procurement Application"**). The Contractor may submit multiple Advance Procurement Applications during the Term and each Advance Procurement Application shall:
 - (a) identify the type and quantity of Advance Procurement Materials that the Contractor intends to purchase;
 - (b) identify when the Advance Procurement Materials purchased pursuant to the Advance Procurement Application will be used in performing the Work;
 - (c) include a written statement identifying the reasons for procuring the Advance Procurement Materials in advance of when required for the performance of the Work, supported by evidence demonstrating that procuring the Advance Procurement Materials will result in a savings to Metrolinx or allow for the procurement of materials not otherwise readily available;
 - (d) provide details regarding how the Contractor will satisfy each of the applicable requirements related to Temporary Storage for Advance Procurement Materials set out in Section 2.4;

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- (e) include a quotation from the supplier that the Contractor intends to purchase the Advance Procurement Materials from, provided that Metrolinx may require that the Contractor provide quotations from at least three (3) suppliers and the Contractor's recommendation of which supplier the Advance Procurement Materials should be purchased from;
 - (f) identify any Discounts that the supplier offers and how such Discounts will be secured by the Contractor for the benefit of Metrolinx; and
 - (g) identify any costs associated with the storage of the Advance Procurement Materials until required for the performance of the Work.
- 2.3 Metrolinx shall, no later than ten (10) Working Days after receipt of an Advance Procurement Application, notify the Contractor that (i) the Advance Procurement Application is approved in full or in part, (ii) the Advance Procurement Application is not approved, or (iii) additional information or amendments are required in order for Metrolinx to assess or approve the Advance Procurement Application. The Contractor shall respond promptly to any Metrolinx request for additional information or amendments to assess or approve the Advance Procurement Application. If Metrolinx fails to respond to an Advance Procurement Application within ten (10) Working Days of receipt, then the Advance Procurement Application shall be deemed to be approved.
- 2.4 Following approval by Metrolinx of an Advance Procurement Application pursuant to Section 2.3, the Contractor shall purchase the Advance Procurement Materials and arrange for the secure storage of same until required for the performance of the Work (such secure storage being the **"Temporary Storage for Advance Procurement Materials"**). The Contractor shall, in relation to any Temporary Storage for Advance Procurement Materials, (i) ensure that all materials are stored in accordance with the recommendations of the manufacturer or supplier, (ii) take all reasonable measures to ensure that the Advance Procurement Materials are protected from loss, damage, and degradation, and (iii) ensure that appropriate insurance is in place to address any loss, damage, or degradation that may occur. If the Temporary Storage for Advance Procurement Materials involves the storage of Advance Procurement Materials at:

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- (a) the facilities of the supplier of the Advance Procurement Materials, a contractor, or a third party (each a "**Custodian**"), the Contractor shall ensure that the Temporary Storage for Advance Procurement Materials is pursuant to a written agreement between the Contractor and the Custodian that expressly provides that:
 - (i) the Advance Procurement Materials shall be stored in a secure location with appropriate environmental protections to prevent loss, damage, or degradation, and shall be segregated from other material at the Custodian's facilities and be clearly labeled as the property of Metrolinx and available for pick-up on demand by Metrolinx;
 - (ii) Metrolinx shall be entitled upon written demand, at any time and from time to time, to immediate possession of all or a portion of the Advance Procurement Materials, and the Custodian shall not be entitled to withhold relinquishing possession of the Advance Procurement Materials on any basis;
 - (iii) Metrolinx shall be entitled to access the applicable portion of the Custodian's facilities to inspect the Advance Procurement Materials and confirm whether the Advance Procurement Materials are being stored in accordance with the terms of the Temporary Storage for Advance Procurement Materials agreement and any other obligations of the Contractor, provided that such access shall be limited to regular working hours and Metrolinx or the Contractor shall provide the Custodian with twenty four (24) hours notice of any such access; and
 - (iv) the Temporary Storage for Advance Procurement Materials agreement can be assigned to Metrolinx without the consent of the Custodian;
- (b) the facilities of the Contractor, in which case:
 - (i) the Contractor shall ensure that the Advance Procurement Materials are stored in a secure location with appropriate environmental protections to prevent loss, damage, or degradation, and shall be segregated from other material at the Contractor's facilities and be clearly labeled as the property of Metrolinx and available for pick-up on demand by Metrolinx;

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- (ii) Metrolinx shall be entitled upon written demand, at any time and from time to time, to immediate possession of all or a portion of the Advance Procurement Materials, and the Contractor shall not be entitled to withhold relinquishing possession of the Advance Procurement Materials on any basis; and
 - (iii) Metrolinx shall be entitled to access the Contractor's facilities to inspect the Advance Procurement Materials and confirm whether the Advance Procurement Materials are being stored in accordance with the terms of this Schedule 21, provided that such access shall be limited to regular working hours and Metrolinx shall provide the Contractor with twenty four (24) hours notice of any such access; or
 - (c) the Site, in which case the Contractor shall ensure that the Advance Procurement Materials are stored in a secure location with appropriate environmental protections to prevent loss, damage, or degradation and in a manner that avoids creating any health and safety risk or nuisance.
- 2.5 The Contractor may include the applicable portion of the Advance Procurement Materials within its applications for payment upon the earlier of the Advance Procurement Materials being (i) delivered to the Site, or (ii) stored in Temporary Storage for Advance Procurement Materials in accordance with the requirements of Section 2.4. The application for payment shall:
 - (a) identify the Advance Procurement Materials included within the application for payment;
 - (b) include a copy of the Advance Procurement Applications and associated Metrolinx approvals applicable to the Advance Procurement Materials included within the application for payment; and
 - (c) include evidence, acceptable to Metrolinx acting reasonably, that the Advance Procurement Materials have been delivered to Site or have been stored in Temporary Storage for Advance Procurement Materials in accordance with the requirements of Section 2.4, as applicable.
- 2.6 Title to the Advance Procurement Materials shall pass to Metrolinx upon payment therefor or upon incorporation into the Work, whichever occurs

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first. For greater certainty, title to Advance Procurement Materials stored in Temporary Storage for Advance Procurement Materials or delivered to the Site but not installed shall pass to Metrolinx when paid for. The Contractor shall promptly execute and deliver to Metrolinx, from time to time as Metrolinx may require, any further documentation required to identify, evidence, perfect, or protect Metrolinx's interest in the Advance Procurement Materials including, without limitation, any registrations pursuant to the *Personal Property Security Act* (Ontario). Notwithstanding the foregoing, the Contractor shall continue to bear the risk of loss or damage with respect to the Work, including all Advance Procurement Materials, until Substantial Completion of the Work.

- 2.7 If the Contractor purchases Advance Procurement Materials without having obtained the prior approval of Metrolinx pursuant to Section 2.3, then the Contractor shall include the Advance Procurement Materials within its applications for payment delivered in the normal course of the performance of the Work as and when the Advance Procurement Materials are eligible for payment in accordance with the terms of the Contract which, for clarity, is no different than the eligibility for payment of any materials incorporated into the Work.

3.0 Material Indexation

[Note to Proponents: As instructed in Section 23 of the RFP, Proponents will insert fixed dollar amounts for each Indexed Materials Subcategory to which the Material Indexation regime applies in Attachment #2A - Contract Price and Adjusted Contract Price. Such fixed-dollar amounts must be a Proponent's genuine estimate of the cost of materials under each subcategory. The values inserted by the Preferred Proponent's under each Indexed Materials Subcategory in their Attachment #2A - Contract Price and Adjusted Contract Price will be inserted into Schedule 7 - Schedule of Values and identified as being subject to the Material Indexation regime prior to Contract Award.]

- 3.1 Metrolinx shall pay the Contractor or request payment from the Contractor, each an Indexed Material Payment, subject to and in accordance with this Schedule 21. This Section 3.0 applies solely to the cost of Indexed Materials and not to labour, delivery, transportation, insurance or storage or profit and overheads of such materials.
- 3.2 The Contractor shall provide Notice to Metrolinx (each an "**Indexed Material Notice**") no later than 10 Working Days following the execution of a contract with a Supplier for the purchase and supply of Indexed Materials (each an "**Indexed Material Supply Contract**"), regardless of whether

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there has been any adjustment to an Approved Index. Each Indexed Material Notice shall identify:

- (a) the date of the Indexed Material Supply Contract and the delivery terms associated with that Indexed Material Supply Contract;
 - (b) the line item or line items in the Schedule of Values to which the Indexed Material Supply Contract applies to; for clarity, only those line items in the Schedule of Values which have been specifically marked as being subject to the Material Indexation regime are to be identified by the Contractor, and no other;
 - (c) the proportion of the Indexed Material Subcategory Total that the Material Indexation regime requested in the Indexed Material Notice applies to.
- 3.3 If an Indexed Material Supply Contract includes purchases of materials that are not Indexed Materials, there shall be a delineation of materials so that the Indexed Material costs are clearly set out. For clarity, the Contractor may enter into multiple Indexed Material Supply Contracts for each Indexed Material Subcategory Total. Metrolinx may request any additional information related to an Indexed Material Supply Contract that is necessary to review and approve an Indexed Material Notice. If deliveries for Indexed Material Subcategories occurs and the Contractor does not deliver an Indexed Material Notice for each deliveries in accordance with Section 3.2, then Metrolinx may, in its sole discretion, suspend the Material Indexation regime set out in this Section 3.0 until such time as the Contractor provides an Indexed Material Notice associated with that delivery to the satisfaction of Metrolinx, in its sole discretion.
- 3.4 Metrolinx shall, no later than five Working Days after receipt of an Indexed Material Notice, notify the Contractor that (i) the Indexed Material Notice is approved in full or in part, (ii) the Indexed Material Notice is not approved, or (iii) additional information required for Metrolinx to assess or approve the Indexed Material Notice. The Contractor shall respond within three Working Days to any Metrolinx request for additional information to assess or approve the Indexed Material Notice. Metrolinx shall not be required to make any payments on account of an Indexed Material Notice until it has received and reviewed all required information, to its satisfaction.

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- 3.5 The Adjustment Factor and Index Adjustment Value for each Indexed Material Subcategory Total shall be calculated in accordance with the following:

$$\text{Adjustment Factor}_i = \frac{\text{Index}_{\text{Date of Indexed Material Supply Contract}} - \text{Index}_{\text{RFP Submission Deadline}}}{\text{Index}_{\text{RFP Submission Deadline}}}$$

Where:

Adjustment Factor_i is the adjustment factor to be applied to the Indexed Material Subcategory Total *i*;

Index_{Date of Indexed Material Supply Contract} is the value of the Approved Index (as identified in Table 1 to Appendix A) as at the month and year when the Indexed Material Supply Contract for the Indexed Material Subcategory Total *i* was executed; and

Index_{Date at RFP Submission} is the value of the Approved Index as at the month-year of the RFP Submission Deadline.

And

$$\begin{aligned} \text{Index Adjustment Value}_i &= \text{Adjustment Factor}_i \times \text{Proportion of Subcategory Total}_i \\ &\times \text{Percentage Delivered to Site} \end{aligned}$$

Where:

Adjustment Factor_i is the adjustment factor calculated in the preceding formula;

Proportion of Subcategory Total is the proportion of the Material Indexed Subcategory Total that the Contractor has identified in their notice in keeping with Section 3.2(c); and

Percentage Delivered to Site is the percentage of the Proportion of Subcategory Total that has been delivered to Site and verified as such by the Payment Certifier.

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- 3.6 For each Adjustment Factor i , payments on account of the corresponding Index Adjustment Value i under each Indexed Material Subcategory Total i will be valued as follows (each an “**Indexed Material Payment**”):
- (a) if the Adjustment Factor $i > 0$, then the Indexed Material Payment shall be equivalent to the amount of the Index Adjustment Value;
 - (b) if the Adjustment Factor $i \leq 0$, the Index Adjustment Value shall be deducted from any payment owing to the Contractor after Substantial Completion and if there is no amount owing to Contractor, then Contractor shall remit the value of the Index Adjustment Value to Metrolinx.
- 3.7 Contractor or Metrolinx, as applicable, shall be entitled to payment of an Indexed Material Payment, provided that:
- (a) Metrolinx has approved the Indexed Material Notice applicable to such Indexed Material Payment in accordance with Section 3.2(c); and
 - (b) the Indexed Materials have been delivered to the Site and are being stored in accordance with Section 3.9.
- 3.8 Provided the conditions in Section 3.7 have been met, Contractor shall include all Indexed Material Payments that have been approved by Metrolinx in its applications for payment delivered in the normal course of the performance of the Work.
- 3.9 The Contractor shall ensure that all Indexed Materials are stored in a secure location with appropriate environmental protections to prevent loss, damage, or degradation and in a manner that avoids creating any health and safety risk or nuisance. Metrolinx shall be entitled to inspect the Indexed Materials and confirm whether the Indexed Materials have been delivered and are being stored in accordance with the terms of this Schedule 21, provided that such access shall be limited to regular working hours and Metrolinx shall provide the Contractor with 24 hours notice of any such access. In accordance with Section 14.1 of the Contract, Metrolinx may audit Contractor’s records to determine whether or not the Contractor’s records in support of any Indexed Material Payments or the application of the Indexed Material regime set out in this Section 3.0 are compliant with the requirements of this Section 3.0. If any such audit determines that the Contractor is not complying with this Section 3.0, or if the Contractor does not provide the requested information to Metrolinx related to the Indexed Material regime, then Metrolinx may, in its sole

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discretion, suspend the Material Indexation regime set out in this Section 3.0 until such time as the Contractor provides such information and documentation to the satisfaction of Metrolinx, in its sole discretion or until such time as the Contractor is in compliance with this Section 3.0, as determined by Metrolinx, in its sole discretion.

- 3.10 Once the entirety of an applicable Indexed Material Subcategory Total has been claimed by the Contractor, the Contractor will not be entitled to any further Indexed Material Payments in relation to such Indexed Material Subcategory Total. If the entirety of an applicable Indexed Material Subcategory Total has not been claimed by the Contractor as of Substantial Completion, no further Indexed Material Payments shall be payable in relation to such Indexed Material Subcategory Total.

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APPENDIX A TO SCHEDULE 21

MATERIAL INDEXATION

Indexed Material Categories (Column 1)	Indexed Material Subcategories (Column 2)	Approved Index (Column 3)
Fabricated metal products and Construction materials	Structural Steel	Statistics Canada, Table: 18-10-0266-01, Industrial product price index, by product, monthly - Fabricated metal products and construction materials [P63]
	Reinforcing Bars	
	Steel Piles	
	Steel Pipe	
	Manhole Frame and Grates	
Fabricated steel plate and other fabricated structural metal,	Rails and railway track materials	Statistics Canada, Table: 18-10-0266-01, Industrial product price index, by product, monthly - Primary ferrous metal products [P61]
Cement, glass, and other non-metallic mineral products	Ready-mix and precast concrete products	Statistics Canada, Table: 18-10-0266-01, Industrial product price index, by product, monthly - Cement, glass, and other non-metallic mineral products [P81]
	Glazing	
Lumber and other wood products	Lumber for formwork and Rough Carpentry	Statistics Canada, Table: 18-10-0266-01, Industrial product price index, by product, monthly - Lumber and other wood products [P41]

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Indexed Material Categories (Column 1)	Indexed Material Subcategories (Column 2)	Approved Index (Column 3)
Energy and petroleum products	Diesel	Statistics Canada, Table: 18-10-0266-01, Industrial product price index, by product, monthly - Energy and petroleum products [P51]
	Gasoline	

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