

Awarding Contracts on Criteria Other than Cost



Greg Baynton
President

Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful.

Samuel Johnson

Due to reader interest and feedback on last month's article, The Allocation and Costs of Risk in Construction (www.vicabc.ca/pages/media.asp) this article is intended to the sequel.

While I expect some readers may be tired of my reciting the principles of fair, open and transparent relative to procuring construction services, they are the cornerstones embodied in government procurement policy from the local to the federal level, as is value for

money and protecting the public interest. When it comes to principles in life or procurement, one principle cannot be compromised at the expense of another. Principles are principles and they are critical to best practices, accountability and value across the public sector and it is precisely why the Province of BC has made them the foundation of provincial policy and standards in BC.

The principles and public policy objectives create serious challenges for the most seasoned public purchaser of construction services particularly when an owner receives legal advice suggesting a strategy in the interests of protecting the public interest, and it exposes them to other salient risks such as reducing competition and increasing cost.

There were two situations on the island where the owners reserved the right to evaluate a stipulated (lump sum) price tenders based on other criteria that was not clearly defined, and absent weighting or priority. In addition, one of the owners openly claimed they would make enquiries about one or more of the tenders, but would not be obliged to make the same enquiries of others, and the piece de resistance is the owner claimed to be under no obligation to disclose any of the evaluation information, and reserved the right to negotiate with any bidder for any reason that was most advantageous to the owner.

You don't need to be an expert in procurement policy to understand this is simply not fair, open or trans-

parent, and regardless of whether you are a concerned tax payer or contractor, you probably would have serious questions about the owner, and evaluation and award process. It is interesting to note public and private sector officials are coming under renewed scrutiny and oversight as the US and Canadian governments attempt to address banking failures around the world, and here at home serious issues involving the health sector in Ontario and the construction sector in Quebec. Fair, open and transparent processes contribute to mitigating the risk of any abuse, conflict or improprieties.

Both owners have declared they are satisfied with the outcome of their tendering process with bids coming 1-4% under budget. One project had approximately 15 bidders and the other two. There is clearly a divergence in the number of bidders and there are always anomalies in construction tendering, however the most interesting fact is a majority of stipulated sum projects are coming in 10-25% under budget. The industry's observations and experience is consistent with many issues raised in Stephen Bauld's Towards a Fair and Balanced Approach (www.vicabc.ca/pages/magazine.asp) which states the issues articulated above are costing local government tax payers a 5-20% premium.

Best practices and policy requires that criteria other than price be clearly defined and weighted, uniformly applied and reported out to the proponents or bidders. This

requirement raises other questions such as if there are other criteria should the project have a pre-qualification process prior to bidding or go to market as a Request for Proposal.

Prequalification used as a general practice and absent legitimate health and safety or unique project circumstances or requirements is in appropriate and contributes to increased costs by reducing competition. For legitimate reasons a premium may be warranted, however in these circumstances there are questions such as; who is qualified to evaluate, what is the criteria and how is it weighted, and how is subjectivity of the evaluation maintained?

While VICA is a resource to public owners, their agents and consultants on Vancouver Island, and a partner in project delivery through its online and offline planrooms, and as portal to the ICI sector on the Island, the association's interaction with the owner and their agents on tendering issues often occurs when the tendering period begins, and it is subject to the time constraints of the tender closing. This presents some challenges for effective and positive interaction on complex issues which is clearly a difficult environment for all concerned. The Vancouver Island Construction Association is currently considering a forum in which it can proactively engage owner, tender authorities and design consultants. If you are interested in learning more please contact VICA.

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