

Document 3



National Capital Heavy Construction Association

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Jeff Byrne
Manager, Supply
Supply Management Branch
City of Ottawa
100 Constellation Crescent
Ottawa, ON K2G 0A1

Dear Mr. Byrne:

Thank you for the opportunity to comment on the proposed Purchasing By-law revisions concerning litigation exclusion and excluding contractors from bidding City work who have a substandard record in Health & Safety or a substandard record of apprenticeship support or who do not respect Provincial legislation.

With respect to the litigation exclusion:

- Provision number (1) "The City may, in its absolute discretion, reject a quotation, tender or proposal submitted by the bidder if the bidder, or any officer or director of the bidder is or has been engaged, either directly or indirectly through another corporation, in a legal action against the City, its elected or appointed officers and employees in relation to: (i) Any other related contract or services; or (ii) Any matter arising from the City's exercise of its powers, duties or functions" is extremely broad, and if not interpreted correctly, could prove to be very damaging. Just because the City has the legal authority to initiate the litigation exclusion does not mean that they have to do it.
- We have fewer concerns with Clause (2), which we understand outlines the criteria to be used in determining if the quotation, tender or proposal should be rejected. However, the reasons listed in this Clause for rejecting (or not) a tender have less to do with the fact of the litigation, and more with the contractor's past performance. We believe that the City has a system in place for evaluating this performance already. That being said, we propose the following minor revisions:
 - Drop clause 2e "breach of health and safety conditions" since this is not a legal issue, and would be covered under your proposed substandard record in Health & Safety provision.
 - Clause 2d "history of failing to perform" should be more clearly defined, so as to minimize misinterpretation.

Our concern with the litigation exclusion is that:

1. The City's proposal will give them power to discourage contractors from pursuing their rights through the courts.

2. The fact that the City "in its absolute discretion" may reject a tender is contrary to the spirit of a "comprehensive complaint process".
3. You may reduce the level of competition if you exclude a firm from bidding on work that they are qualified to perform, but are facing an outstanding legal issue. In the heavy construction sector, there are some services that are provided by only a few potential suppliers.
4. Competition could be further reduced if firms felt that the City did not have an incentive to settle any potential disputed issue in a friendly manner since they had the threat of excluding the firm from bidding on future business if legal action had to be taken.
5. The potential of a legal action, which would preclude a firm from bidding on future City work, puts the City in a position of disproportionate power and thus discourages the city from working with the contractor to reach an amicable solution.

As an alternative, the City may wish to adopt the "Referee System" used by the Ministry of Transportation. This system has worked well for the Ontario government and resolves issues without lengthy and expensive litigation. We would be pleased to meet with you to discuss how this process works.

With respect to the Health & Safety exclusion:

- In general we support these proposals.
- The requirement for assessing the 5 year health and safety record could be addressed by requesting a copy of the firms WSIR- Workers Safety Injury Report from WSIB which gives a 5 year history of injuries (both loss time and no loss time) and compares to the firms CAD 7 ratings and industry overall ratings.
- In addition, a simple health and safety questionnaire would also be good and the NCHCA would be interested in developing it in conjunction with the City.

With respect to the Trades and Apprenticeship Act adherence:

- This requirement is much too broad since many members are not affiliated with unions. This requirement should be struck out.
- If the City was to proceed with this requirement it would reduce competition. Non union members of the NCHCA do not have to adhere to the Trades and Apprenticeship Act and it would be unfair for members not to be able to bid City work even though they and their employees are qualified.

I hope that you have found our input helpful. If you have any questions, please contact me at 613-225-0780.

Yours truly



Lyall Steele
President
National Capital Heavy Construction Association