



Tendering – Do's And Don'ts to Promote Best Practices

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Tendering – Do's And Don'ts to Promote Best Practices

Description:

As a method of procurement, tendering is hazardous. Errors in accepting or evaluating bids can have expensive consequences, either in lost business opportunity, or in legal liability. The law of tenders is complicated and constantly changing as the courts and the construction industry grapple with the evolving business climate.

In spite of all the care and caution involved in preparation of bid packages, problems have arisen many times in accepting a bid and awarding a contract. From preparation of tender document to the award of a contract there are a number of activities performed by owners, consultants and contractors. All of these activities have legal implications. This seminar will address such implications and define the legal rights and obligations of each participant in the process.

After participating in this course, you will be able to:

- Prequalify contractors with the understanding that you gain from the seminar of the prequalifying criteria and its implications
- Differentiate between contract prices and subcontract prices and develop the right practice to deal with the latter
- Apply the knowledge of what happens if the tender is not awarded to the lowest bidder
- Use in your tendering practice the learning from the seminar about what happens if there are allegations that a bid is non-compliant

- Recognize the liability of the owner for mistakes of a tendering contractor which are induced by a negligent misrepresentation or omission on the part of the owner in the tender package
- Improve your tendering practice with the knowledge of the liability of the consultant to the owner and to the contractor arising out of the tendering process
- Develop a checklist to ensure that all requirements for a tender are complete

Who should attend?

Officers of construction firms and officials of government agencies responsible for the tender calls, negotiation or awarding of contracts: facilities executives, building code advisors, plant managers, chief engineers, project managers, architects, engineers, technologists and technicians and lawyers.

Special Feature:

This seminar is unique. One case study threads through all presentations and many other examples are used to illustrate the topics.

Course Objectives:

To provide a forum where owners, consultants and contractors can understand legal implications of tendering from each other's' perspective for the general benefit of the construction industry.

Course Outline:

Introduction to the Program

- What is tendering?

- Why tender?
- The economic rationale
- The political rationale
- Presentation of case study
- A real life situation of where bidders allege that other bids are non-compliant and that the owner is potentially liable for evaluating bids unfairly

Introduction to the Law of Tenders

- The legal rules governing the tendering process
- Statutes, regulations, by-laws and policy
- The common law – contracts
- The traditional law of tendering

The Contractor's Obligations to the Owner

- The Ron Engineering revolution – the Supreme Court makes the rules
- The limits of Ron Engineering
 - RFPs and other forms of procurement versus tenders
 - Owners' representations
 - Contractors' defenses to owners' claims

The Owner's Obligations to the Contractor – Unintended Consequences

- The logical implication of the Ron Engineering decision, and what it means for owners.
- The Supreme Court makes some new rules:
 - M.J.B. Enterprises v. Defense Construction – non-compliant bids

- Double N Earthmovers v. Edmonton – extent of owners' obligations when evaluating bids
- The Supreme Court makes a safety net: Tercon v British Columbia – exclusion of liability for owner's breach of the tendering process

Before the Bid is Open – Practical Issues in Calling for Tenders

- Preparation of tender documents
- Prequalification
- Bid depository
- Time of bid submission
- Bid withdrawal
- Compliant bids – the minimum requirements
- The problem of the single bidder

Once the Bids are Opening

- How to evaluate bids without running afoul of the law
- Bid evaluation – what are the rules?
 - Implications of not awarding to a low qualified bidder
 - What happens if no tender is awarded?
 - What happens if all bids are over budget?
- What constitutes compliance – substantial versus perfect and the owners' right to
- waive imperfect compliance
 - Incomplete tenders
 - Failure to nominate subcontractors

- Unbalanced tenders

The Consultant's Obligations in Bid Evaluation

- To the contractor
- To the owner

Other Issues

- Use of subcontract prices and implied acceptance, subcontractors' rights and duties – the Supreme Court's decision in R. v. Design Services
- Local preferences
- Use of fax and email
- Bid shopping
- Liability for errors in tender documents
- Bid disclosure – freedom of information legislation

Best Practices - A Checklist

- Checklists for owners and contractors will be discussed and developed for the participants to carry with them.