



APPENDIX D

28 February 2008

Ottawa Congress Centre Redevelopment Program Procurement Policy

CONTRACTING PROCEDURES FOR CONSTRUCTION

1. Scope

As an extension to the Ottawa Congress Centre (OCC) Procurement Policy, this Appendix outlines specific guidelines and procedures for construction contracts as required in the delivery of the OCC Redevelopment Program.

2. Call for Construction Tenders

Notification of a call for tenders will include the following information:

- a brief description of the procurement contemplated
- the place where a person may obtain information and tender documents
- the conditions for obtaining the tender documents
- the date and time limit for submitting tenders
- the time and place tenders will be opened

3. Mandatory Requirements

A construction tender is non-responsive if it does not meet all the mandatory requirements identified in the tender documents and will be rejected. Further, the tender must be “compliant” with the terms of the tender procedure and the OCC Procurement Policy.

For purposes of any construction tender, “comply” and “compliant” mean that the bid/tender conforms to the mandatory requirements without material deviation or reservation. A “material deviation or reservation” is one:

- which affects in any substantial way the scope, quality or performance of the proposed service; or
- which results in the material component of a mandatory requirement not being complied with; or
- whose rectification would affect unfairly the competitive position of other bidders submitting bids/tenders that comply to the mandatory requirements identified in the construction tender document.

A qualified or conditional response to a mandatory requirement will not be accepted and will be deemed “non-compliant” to the full extent of the requirement. In the case that contradictory information is provided within the bid/tender with respect to a mandatory response requirement, the proposal evaluation team will, in its sole discretion, determine whether the response represents a compliant or non-compliant proposal, and may seek clarification from the bidder.

4. Bid and Performance Security

Construction tenders/RFPs with a pre-construction estimate greater than \$500K will be accompanied by a Bid Bond, or other alternative security as described in the construction tender/RFP (the form of the Bid Bond, or other alternative security, will be provided in the Call for Construction Tenders/RFPs as will the list of acceptable bonding companies, if applicable) with a face value equal to at least 10% of the tender price.

Construction tenders/RFPs with a pre-construction estimate greater than \$100K will be accompanied by a Performance Bond or other alternative security acceptable to the OCC in its sole discretion.

5. Opening of Tenders

Construction tenders will be opened publicly at a time and place indicated in the Instructions to Bidders. A representative of the OCC, however, will ensure that all present are advised that the tenders, once opened, must be validated as to mandatory requirements and that all bidders will be advised in writing of the tender results once they have been validated.

6. Single Tender

When only one valid tender is received and OCC determines that the tender represents fair value, the contract may be awarded to the one valid bidder and considered competitive.

When only one valid tender has been received, the bidder may be asked to provide price substantiation. If the information provided is not acceptable to OCC, then price negotiation should take place. If negotiations fail, then the tender will be re-issued for new tenders, if necessary with a revised scope of work that is more attractive to the market.

7. Price Correction

If there are errors in the mathematical extension of unit price items, the unit prices prevail and the mathematical extension is adjusted accordingly.

If there are errors in the addition of lump sum prices or unit price extensions, the tender is not rejected but the total is corrected and the correct amount reflected in the total bid price.

Any bidder affected by mathematical errors will be so informed and given the corrected bid price.

8. Bid Withdrawal

A bidder or proponent that submits a bid or proposal to the OCC may withdraw or amend its bid or proposal only by completing, signing and submitting the bid form or the RFP proposal form to the OCC before the closing time, advising the OCC that the bidder or proponent is withdrawing or amending its bid or proposal. In the case of an amendment, the bidder or proponent shall submit the amended bid or proposal in a sealed envelope or package labelled “Amended Bid” or “Amended Proposal” to the OCC before the closing time.

The last bid or proposal received by the OCC before the closing time shall supersede and invalidate any bid or proposal previously submitted by the bidder or proponent.

The OCC shall return unopened:

- (a) a bid or proposal that has been withdrawn; and
- (b) a bid or proposal that has been superseded by an “Amended Bid” or “Amended Proposal”.

Modifications are not acceptable under any circumstances after bid closing.

At its sole discretion, OCC may exercise a bid bond for higher costs caused by withdrawals after acceptance. Likewise, the payment provision of a bid bond will be invoked if the bidder refuses to execute the contract documents or to provide the specified contract security.

9. Change in Scope of Work Prior to Contract Award

When there are changes in the job requirements or in the funds available that reduce the scope of the work, an attempt should be made to negotiate a new price with the successful bidder. If the change in the scope of the work is significant or negotiations cannot be concluded to the satisfaction of OCC, new bids should be invited. For construction contracts, new bids are normally invited from the two lowest bidders on the original bid solicitation. When more than two bidders have bid in the same approximate amounts, consideration should be given to including these firms on the new bid solicitation.

10. Amendments to Contract

Generally, amendments to a construction contract will occur in the following three distinct categories and documentation will be classified accordingly:

- **Scope Change:**
A requirement generated and approved by OCC.

- **Unforeseen Change in Conditions:**
An amendment to cover additional reasonable costs incurred by a contractor due to unforeseen conditions. This would apply and should be considered only if the circumstances are beyond the contractor's control, and the contractor is without fault or negligence and could not reasonably have foreseen the actual circumstances at the time of entering into contract.

- **Errors and Omissions:**
An amendment to cover additional reasonable costs to repair an error or to include work that should have been included in the original contract documents.

Where errors and omissions are directly related to contract documentation prepared by design consultants, OCC will follow industry standards in applying the principle of reasonable standard of care in determining financial responsibility.

Generally the rectification of an omission involves added value to the end product for which OCC receives the benefit, although at a cost that is not competitively driven. Errors on the other hand may involve dismantling work already performed and therefore, depending on reasonable standard of care, OCC may at its discretion seek cost recovery from the contractor responsible for the error.