

City of Mississauga Corporate Report



9.1

Date: June 2, 2021

To: Chair and Members of General Committee

From: Shawn Slack, MBA, Acting Commissioner of Corporate Services and Chief Financial Officer

Originator's files:

Meeting date:
June 9, 2021

Subject

Formal Bid Protest by Mastercrete Construction Inc. Regarding Procurement No. PRC002941 Construction of Concrete Sidewalks at Various Locations

Recommendation

1. That the report dated June 2, 2021 from the Commissioner of Corporate Services and Chief Financial Officer titled "Formal Bid Protest by Mastercrete Construction Inc. Regarding Procurement No. PRC002941 Construction of Concrete Sidewalks at Various Locations" be received.
2. That the bid received from Mastercrete Construction Inc. continue to be disqualified on the grounds of unsatisfactory references.

Executive Summary

- A Request for Tender (RFT) was issued for 2021 Construction of Concrete Sidewalks at Various Locations.
- Mastercrete Construction Inc. submitted the lowest priced bid.
- The references submitted by Mastercrete are not comparable to the City's contract and are unsatisfactory, resulting in rejection of the bid.
- Mastercrete is making a Formal Bid Protest in accordance with City Policy 03-06-08 - Bid Awards and Bid Protest to dispute the City's rejection of their bid.

Background

Construction of concrete sidewalks at various locations is an annual program for the City, managed by the Capital Works Delivery Section of the Transportation & Works Department. The 2021 program includes construction of approximately 3700 metres (12000 ft.) of sidewalk.

A Request for Tender was posted on April 5, 2021 and closed on April 20, 2021.

We received nine bids as follows:

Bidder	Bid Amount
Mastercrete Construction Inc.	\$1,178,000.00
Associated Paving & Materials Ltd.	\$1,183,705.00
Aqua Tech Solutions Inc.	\$1,382,223.80
Royal Ready Construction Limited	\$1,537,825.00
Serve Construction Ltd.	\$1,540,675.00
DIG-CON International Limited	\$1,572,890.00
PTR Paving Inc.	\$1,603,223.60
Pave-Tar Construction Ltd.	\$1,918,560.00
Neptune Security Services Inc.	\$1,971,517.00

Mastercrete, the lowest priced bid received, provided references.

Reference requirements were for the three scopes of work included in the contract: sidewalk installation, road resurfacing and concrete vehicle lane pavement, and that the reference projects should be not less than \$1,300,000 for each contract and completed within the past three years. The references are required for projects completed by Mastercrete, who is the Bidder.

Mastercrete provided three references. The references are not satisfactory, as summarized below:

- **Project 1 - 2016 Intersection Improvements, City of Mississauga**
 - The project experienced delays and the City was not satisfied with Mastercrete's performance.
 - There were delays on large portions of the project work. As a result, the City issued a claim for liquidated damages to Mastercrete in October 2017.
 - This project was in 2016/17.
- **Project 2 – Watermain Project, City of Toronto**
 - This reference project was a watermain project and not similar to Mississauga's sidewalk project. It did not include sidewalk and road resurfacing as is required for Mississauga's contract.
 - This project was in 2015.
- **Project 3 – Appleby Mall Plaza Project, Embee Properties**
 - The reference from Embee Properties provided project details verbally. They did not fill out the reference form.

- This reference project was not similar to the requirements of Mississauga's contract. It was a plaza site servicing project, mainly construction of a new stormwater sewer, sanitary sewer and asphalt pavement in the plaza. It is not a municipal road project and only 152 metres (500 ft.) of sidewalk inside the plaza is included in the work scope.
- This project was in 2015/16.

Mastercrete was notified that their bid was rejected on May 6, 2021 and they were provided with the standard three-day period to raise questions or concerns. Mastercrete objected and were provided with further information in response to their concerns on May 13, 2021. Staff met with Mastercrete on May 18, 2021 but were unable to resolve the matter.

Present Status

The procurement process is currently on hold, pending resolution of Mastercrete's bid protest.

Comments

Mastercrete is disputing the rejection of their bid and has asserted that:

1. The RFT did not state that references had to be within the past 3 years and that not stating this upfront was unfair.

The RFT stated that the Bidder must, on request, provide references satisfactory to the City, demonstrating its ability to perform the work and, if applicable, that of its subcontractors and/or suppliers. The City will consider the size, scope, nature and complexity of the Bidder's contract with each reference provided and its comparability with the City's requirements.

The RFT also includes Reserved Rights (Item 14 of the Standard Instructions), which states that the City, without liability, cost or penalty, and in its sole discretion, may disqualify and reject any Bid at any stage of the Bid Request process in any of the following circumstances: (d) the references submitted by the Bidder are deemed unacceptable by the City.

References are important to the City in determining contract awards. In staff's view, when the City is contemplating the award of a million dollars plus contract, the bidder should demonstrate good, current references that are relevant to the contract at hand.

2. A representative of Mastercrete, who will be assigned to the contract, has significant experience working for the City on previous contracts held by Con-Ker Construction, which should be sufficient for the City.

Mastercrete is the bidder; a track record of successful performance by the bidder helps to mitigate project risks. In staff's view, references of the bidder are relevant and not those of

related companies or persons. Mastercrete's lack of recent, relevant references exposes the City to risk of non-performance issues.

3. The reference projects are relevant. Project 2 – Watermain Project, City of Toronto, is the most relevant.

The references provided by Mastercrete are not comparable to the City's contract. In staff's experience and professional opinion, the references are unacceptable as they do not correspond with "the size, scope, nature and complexity" of the City's contract. The City's own experience with Mastercrete was unfavourable, and they have not produced references for the period of time since then which would give staff confidence that Mastercrete is better positioned for success now.

The City of Toronto reference form indicates that this was a watermain project. The City of Toronto's award report, posted on their website also describes a watermain project. These documents are Appendix 1 to this report. The scope of work for this project did not include sidewalk construction or road resurfacing.

4. Mastercrete was not notified of previous issues or formally excluded from bidding.

The City awarded a contract to Mastercrete for the City's 2016 Intersection Improvement Program, as noted above. There were delays to completion and the City was not satisfied with Mastercrete's performance.

The City notified Mastercrete of its concerns, and issued a claim for liquidated damages; a clear indication of performance issues. Mastercrete was not formally excluded from bidding; had they been, the ban would have been for two years and lifted by now.

Financial Impact

There is no financial impact associated with the recommendations in this report.

Conclusion

Mastercrete Construction Inc. submitted the lowest priced bid in response to PRC002021 for Construction of Concrete Sidewalks at Various Locations. The bid was rejected due to unsatisfactory references. The references provided by Mastercrete are not comparable to the City's contract and do not demonstrate recent, relevant experience. The City's own experience with Mastercrete in 2016/17 was not favourable. Given Mastercrete's lack of recent, similar project experience and the City's experience with Mastercrete, staff are not confident that Mastercrete is better positioned for success now and are concerned that there is a risk of non-performance issues. Staff in their professional opinion continue to assert that the bid should be rejected.

Attachments

Appendix1: City of Toronto Reference Form (redacted) and Contract Award Report



Shawn Slack, MBA, Acting Commissioner of Corporate Services and Chief Financial Officer

Prepared by: Erica Edwards, Manager, Materiel Management – External Services