

City of Mississauga  
**Corporate Report**



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| <p>Date: May 1, 2024</p> <p>To: Chair and Members of General Committee</p> | <p>Originator's files:</p>                            |
| <p>From: Raj Sheth, P.Eng, Commissioner of Corporate Services</p>          | <p>Meeting date:<br/>                 May 8, 2024</p> |

**Subject**

**Formal Bid Dispute by Royal Crown Construction RE: PRC004414 Area Roadway Maintenance and Miscellaneous Repairs**

**Recommendation**

That procurement no. PRC004414 proceed with award of the contract to the lowest, compliant bidder, as outlined in the report dated May 1, 2024 from the Commissioner of Corporate Services entitled "Formal Bid Dispute by Royal Crown Construction RE: PRC004414 Area Roadway Maintenance and Miscellaneous Repairs"

**Executive Summary**

- In September 2018, Council approved staff's recommendation to implement the requirement for Contractors to be certified with an Occupational Health and Safety Management System (OHSMS) certification for High Value Acquisition construction projects.
- The City took a phased in approach, with the current requirement being Contractors undertaking work with a project value of more than \$5M requiring certification with an OHSMS.
- A Request for Tender (RFT) was issued for works associated with area roadway maintenance and miscellaneous repairs with a total project estimate of \$10M.
- The City included a mandatory requirement related to certification with an OHSMS based on the total project estimate at time of tendering.
- OHSMS certification requirements are not based on bid prices submitted but are based on the total project estimate at time of issuing the bid request to ensure an open, fair, and transparent procurement process.
- A bid was received by Royal Crown Construction that did not meet the requirement for certification with an OHSMS as outlined in the RFT document and was disqualified in accordance with City Policy No. 03-06-02 Bid Review and Evaluation – High Value Acquisitions.

- Royal Crown Construction is making a Formal Bid Protest in accordance with City Policy 03-06-08 Bid Awards and Bid Protest to dispute the City's disqualification of their bid.
- Staff do not recommend accepting the bid submitted by Royal Crown Construction as the RFT document was clear regarding the mandatory requirement for OHSMS certification and the consequence of not meeting that requirement.
- The RFT process included a question period that permitted Royal Crown Construction to submit any concerns regarding the City's requirements. No questions were received by Royal Crown Construction.

## Background

In September 2018, Council approved a staff recommendation to implement the requirement for Contractors to be certified with an Occupational Health and Safety Management System (OHSMS) for HVA construction projects. The City took a phased in approach to implementation, with the most recent phase requiring Contractors be certified for projects with a value of \$5M or more.

The City issued a RFT for works associated with area roadway maintenance and miscellaneous repairs with a total project estimate of \$10M. The work was split into four (4) service areas with the intention of awarding each service area in whole to a single bidder. Each bidder could be awarded a maximum of two (2) service areas, based on the lowest acceptable bid for each area. The RFT was posted on March 1, 2024, and closed on March 26, 2024.

The City includes a question period in all its tendering processes. The purpose of the question period is to allow bidders to ask questions about the specifications, express concerns around any requirements and to communicate with the City any possible changes that may need to be addressed so that all necessary review and action can be undertaken prior to the closing date.

The question period for this project ended March 19, 2024 and there were five (5) questions related to the work, none of which were from Royal Crown Construction. At no time during the tendering period was a concern or question posed regarding the City's mandatory requirement for certification with an OHSMS included in the RFT document.

There were ten (10) bids received and subsequently checked for compliance to the City's RFT mandatory requirements, which included:

- (1) Bidder must demonstrate it has minimum average annual value of \$5M in construction activities over the last five (5) calendar years.
- (2) Bidder must demonstrate it has undertaken, as a general contractor or subcontractor, similar projects or scope and size.
- (3) Proof of certification with an OHSMS.

- (4) Acknowledgement that the bidder has not been charged with a violation of ESA, OHSA, have not been in default of contract requiring surety involvement and are not in bankruptcy proceedings.
- (5) Submission of a digitally verifiable bid bond in the amount of 10% of total bid price.
- (6) Submission of a digitally verifiable agreement to bond in the amount of 50% performance bond and 50% labour & material bond.

Royal Crown Construction failed to meet item (3) and did not provide proof of certification with an OHSMS. Furthermore, Royal Crown Construction indicated “yes” when responding to the mandatory question in their bid submission related to certification with an OHSMS, when in fact they did not have certification.

The City rejected Royal Crown Construction’s bid in accordance with City Policy No. 03-06-02 Bid Review and Evaluation – High Value Acquisitions and the RFT terms and conditions.

The procurement process is currently on hold, pending resolution of Royal Crown Construction’s bid protest.

## Comments

Royal Crown Construction claims that because their bid price is under \$5M that they are not required to provide certification with an OHSMS, contrary to the mandatory requirements outlined in the RFT document.

Staff provided Royal Crown Construction with an explanation as to its decision, referring to City policy and the bid document. City staff also advised Royal Crown Construction that the City conducts its procurement processes in an open, fair, and transparent manner and that the requirements included in a bid request document are based on the best knowledge of staff at time of bidding to ensure a fair landscape for all bidders. Accepting a bid without certification now based on their bid price and not the estimated project value at time of bid posting would mean the City is acting in an unfair manner as not all bidders were given the same opportunity to submit based on their bid price.

The bid submitted by Royal Crown Construction is non-compliant and is unacceptable to the City. In a Contract A process, the City is legally bound to reject non-compliant bidders. Failure to do so puts the integrity of the procurement process in question. Staff followed proper Policy and Procedure when handling the disqualification and there is no basis for not proceeding to award to the lowest, compliant bidder.

## Financial Impact

There is no financial impact resulting from the recommendation of this report.

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## Conclusion

Royal Crown Construction's bid is non-compliant and in being non-compliant, Staff recommends following the Policy and the public tendering laws and disqualify the bid accordingly.

## Attachments

Not Applicable.



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Raj Sheth, P. Eng., Commissioner of Corporate Services

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