

City of Mississauga
Corporate Report



<p>Date: September 6, 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: September 18, 2024</p>

Subject

Formal Bid Dispute by 39 Seven Inc. RE: PRC004372 - Multi-Site Spray Pad and Park Improvements Construction Services

Recommendation

1. That procurement no. PRC004372 proceed with award to the lowest, compliant bidder, and;
2. That the report dated September 6, 2024, from the Commissioner of Corporate Services titled "Formal Bid Dispute 39 Seven Inc. RE: PRC004372 - Multi-Site Spray Pad and Park Improvements Construction Services", be approved.

Executive Summary

- A Request for Tender (RFT) was issued for construction services for Multi-Site Spray Pad and Park Improvement for five (5) parks, involving works related to spray pad lifecycle replacement, supply and install of shade structure, accessible seating, bicycle parking, tree planting, utility connections/updates, playground replacement with EWF (engineer wood fibre) and sand play.
- The City included mandatory requirements related to experience, health & safety, and financial stability.
- A bid was received by 39 Seven Inc. that did not meet the mandatory requirement of "experience undertaking projects of scope and size of the City or larger, including work related to spray pads, playgrounds, shade structures, large site grading improvements, site servicing, regional and municipal permits coordination, paving, site furnishings and planting on multi-sites projects." and "the references submitted by the bidder are deemed unacceptable by the City." and was disqualified in accordance with City Policy No. 03-06-12 Bid Review and Evaluation – High Value Acquisitions.
- Staff do not recommend accepting the bid submitted by 39 Seven Inc. as the RFT document was clear regarding the City's requirement and the consequence of not meeting that requirement.

- The RFT process included a question period that permitted 39 Seven Inc. to submit any concerns regarding the City's requirements or to seek clarity on the experience being requested. No questions were received by 39 Seven Inc. to that affect.
- The 2nd lowest bidder is compliant with the City's mandatory requirement.

Background

The City issued an RFT for construction services for Multi-Site Spray Pad and Park Improvement for five (5) parks, involving spray pad lifecycle replacement, supply and install of shade structure, accessible seating, bicycle parking, tree planting, utility connections/updates, playground replacement with EWF and sand play. The RFT was posted on June 25, 2024, and closed on August 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 August 2, 2024, and there were thirty-three questions related to the work. At no time during the tendering period was a concern or question posed regarding the City's mandatory requirement for project experience included in the RFT document brought forward.

There were five (5) bids received and subsequently checked for compliance to the City's RFT mandatory requirements, which included:

- (1) The bidder must demonstrate it has a minimum average annual value of \$2,000,000 dollars in construction work, within the last four (4) full calendar years.
- (2) The bidder must demonstrate it has undertaken, as a general contractor or as a subcontractor, within the last five (5) calendar years and/or current year, similar park projects of scope and size of the City or larger, including work related to spray pads, playgrounds, shade structures, large site grading improvements, site servicing, regional and municipal permits coordination, paving, site furnishings and planting on multi-sites projects.
- (3) The bidder must acknowledge they have not been charged with a violation of the Electrical Safety Authority (ESA) or Occupational Health & Safety Act (OHSA), have not been in default of contract requiring surety involvement, and are not in bankruptcy proceedings.
- (4) Key personnel (such as the contractor's, and sub-contractors' principal in charge, estimator, project manager/coordinator, superintendent, foreman and on-site supervisor) must have a minimum of five (5) year's experience in the last ten (10) years on park projects of similar scope and size.

39 Seven Inc. failed to meet item (2) and did not demonstrate their experience and ability to undertake the City's project. Furthermore, 39 Seven Inc. failed to provide acceptable references to the City.

Of the nine projects submitted by 39 Seven Inc., only three were in a similar price range to the City's project, but none of them involved spray pads. The City's project involves the construction of spray pads at 5 different sites, together with other park components, which will require the coordination of many subcontractors and complex services. 39 Seven Inc. was unable to demonstrate that it has experience on projects which are similar in both scope and size.

39 Seven Inc. demonstrated experience with construction of sports fields and paving projects, as well as some experience with playgrounds construction. However, they demonstrated limited experience with spray pad projects, with only two examples provided and no examples of a multi-site project.

The City's concerns were reinforced by the reference checks.

It is imperative that the City hire experienced, qualified suppliers to undertake City projects. As a result, demonstrated project experience and reference checks, provides the City with reassurance that we are engaging with suppliers capable of undertaking the work.

The City rejected 39 Seven'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 39 Seven's bid protest.

Comments

The bid submitted by 39 Seven Inc. 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.

Conclusion

39 Seven's bid is non-compliant and in being non-compliant, Staff have no choice but to follow Policy and the public tendering laws and disqualify the bid accordingly.

Staff do not recommend deviating from standard practice.

Attachments

Not Applicable.



Raj Sheth, P.Eng, Commissioner of Corporate Services

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