

City of Mississauga Corporate Report



Date: October 16, 2024

To: Chair and Members of General Committee

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

Originator's files:

Meeting date:
November 20, 2024

Subject

Formal Bid Dispute by Verly Construction Group RE: PRC004616 Construction Services for New Fire Station 124

Recommendation

1. That procurement no. PRC004616 proceed with award to the highest ranked, compliant bidder, and;
2. That the report dated October 16, 2024, from the Commissioner of Corporate Services titled "Formal Bid Dispute by Verly Construction Group RE: PRC004616 Construction Services for New Fire Station 124", be approved.

Executive Summary

- A Request for Proposal (RFP) was issued for construction services related to the construction of a new fire station 124, including site development works located on a brown field redevelopment to serve Ward 7 and the surrounding neighborhoods.
- The City included mandatory requirements related to experience, health & safety and financial stability.
- The City underwent an audit in 2022 related to high value acquisitions. Audit recommendation 011 indicated a need for the City to address the financial capacity and positions of suppliers prior to contract award.
- A bid was received by Verly Construction Group that did not meet the mandatory requirement of "minimum average annual value of \$30M in construction work, utilizing the last five (5) full calendar years" and was disqualified in accordance with City Policy No. 03-06-02 Bid Review and Evaluation – High Value Acquisitions.
- Staff do not recommend accepting the bid submitted by Verly Construction Group as the RFP document was clear regarding the City's requirement and the consequence of not meeting that requirement.

Background

The City issued a RFP for construction services related to the construction of a new fire station 124, including site development works located on a brown field redevelopment to serve Ward 7 and the surrounding neighborhoods. The RFP was posted on August 30, 2024, and closed on September 27, 2024.

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

- (1) The bidder must demonstrate it has a minimum average annual value of \$30,000,000 dollars in construction work, within the last five (5) full calendar years.
- (2) The bidder must demonstrate it has successfully completed, as a General Contractor, within the last seven (7) calendar years and/or current year, three (3) projects of similar size and scope.
- (3) One (1) project must be LEED certified or Net-Zero or a Municipal Green Building Standard.
- (4) 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.

The annual value of sales is determined by the City based on a case-by-case basis. Allowing for the average annual value over a period of five (5) years allows bidders to still qualify even if they have a lower value one year, due to external factors, and a higher value the following year. The concept allows a fair approach to variation in the market from year to year.

Verly Construction Group ("Verly") failed to meet item (1) and did not demonstrate, within their bid, an annual value of \$30,000,000 in construction work within the last five (5) full calendar years.

Procurement Services, in accordance with City Policy No. 03-06-02 Bid Review and Evaluation – High Value Acquisitions, proceeded to disqualify Verly for not meeting item (1). Upon receipt of the disqualification notice, Verly indicated they had made an error in their bid and submitted incorrect sales values. Verly sought to repair the bid by providing new numbers that met the requirement in item (1), claiming the City could waive the irregularity as a "minor irregularity".

A "minor irregularity", as defined in Policy 03-02-02, means: a deviation from an HVA Bid Request which, as determined by the Manager, affects form rather than substance, with no material impact to the Award and which, if permitted, would not give the Bidder an unfair advantage over other Bidders.

Verly's error is not a minor irregularity as it is not an error in form, but rather in the substance of the bid. Allowing Verly to correct the irregularity after bid closing would constitute a bid repair and would contravene public procurement laws, exposing the City to legal risk. In addition, should Verly be the successful bidder after evaluation of the compliant bids received, they would have received an unfair advantage in correcting their bid.

The City rejected Verly's bid in accordance with City Policy No. 03-06-02 Bid Review and Evaluation – High Value Acquisitions and the RFP terms and conditions.

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

Comments

The bid submitted by Verly is non-compliant and not capable of acceptance by 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 highest ranked bidder.

Bidders meeting the RFP mandatory technical requirements should proceed to the evaluation stage of the RFP process

Financial Impact

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

Conclusion

Verly'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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