

## ***Construction Services for New Fire Station 124***

**PROJECT No.**  
**CLIENT / OWNER**

PRC004616  
City of Mississauga

**DATE SUBMITTED:** November 13, 2024  
**DATE OF HEARING:** November 20, 2024

**SUBJECT**

Formal Bid Dispute

**CONTRACT TYPE**

CCDC-2 – High Value Acquisition

VERLY Construction has been operating in Mississauga, ON since 1988, growing at a healthy rate, and creating jobs while serving its community. Within our organization, there are many departments that work both together, and separately.

VERLY Construction submitted a Bid for RFP 'PRC004616' on September 27<sup>th</sup>, 2024.

Within this bid, one of the Schedules (Schedule B3 – Contractor Qualification Information – Value of Construction Work), requested the bidder's annual value of construction work. On the bidding platform, this information was requested in this manor:

Schedule B3 - Contractor Qualification Information - Value of Construction Work

Description	Current Year *	2023 *	2022 *	2021 *	2020 *	2019 *
Annual value of construction work						

Within the tender documents, it was further requested and explained in this manor:

#### 4.0 MANDATORY TECHNICAL REQUIREMENTS

- a) The bidder must demonstrate it has a minimum average annual value of \$30,000,000 dollars in construction work, utilizing the last five (5) full calendar years and calculated as follows:

$$\text{average annual value of construction} = \frac{(\text{Yr 1 AV} + \text{Yr 2 AV} + \text{Yr 3 AV} + \text{Yr 4 AV} + \text{Yr 5 AV})}{5}$$

AV = annual construction value

The bidder is to include their annual value of construction work where indicated in the City's e-bidding system.

On October 3<sup>rd</sup>, at 1:51 pm, four (4) business days later, VERLY received this email:

**PRC004616**

**Construction Services for New Fire Station**

**124**

**Verly Construction Group**

**Inc**

Thank you for submitting a bid in response to the above-noted procurement request. All Bids have been reviewed in accordance with City policy, which requires that non-compliant Bids be disqualified.

The Bid received from your company is non-compliant as described below:

Mandatory Requirement	Non-Compliance
<p><b>4.0 MANDATORY TECHNICAL REQUIREMENTS</b></p> <p>a) The bidder must demonstrate it has a minimum average annual value of \$30,000,000 dollars in construction work, utilizing the last five (5) full calendar years and calculated as follows:</p> <p>average annual value of construction = (Yr 1 AV + Yr 2 AV + Yr 3 AV + Yr 4 AV + Yr 5 AV) 5</p> <p>AV = annual construction value</p> <p>The bidder is to include their annual value of construction work where indicated in the City's e-bidding system.</p>	<p>Verly Construction Group failed to meet this Mandatory Technical Requirement, their minimum average annual value over five (5) full calendar years is \$27,560,000.00.</p>

The City's policy for Bid Review and Evaluation - High Value Acquisitions #03-06-02 can be found by following this [link](#).

Should you have questions or concerns with this decision, you must contact me no later than 4:00 p.m. on October 8, 2024, and advise me of specific issues and requests, in writing. If I do not hear from you by then, the City will consider the disqualification final.

Thank you,

On October 3<sup>rd</sup>, at 3:18pm, less than two (2) hours later, we (VERLY) responded with the following:

**From:** Verly Estimating Department  
**Sent:** October 3, 2024 3:18 PM  
**To:** [REDACTED]@mississauga.ca  
**Cc:** [REDACTED]  
**Subject:** RE: Notice of Bid Disqualification for PRC004616 - Construction Services for New Fire Station 124

Hi Victoria, thank you for reaching out for clarification.

After review of section B3, it has come to our attention that the information submitted was not accurate.

We have confirmed the following values with our accounting department:

2019 – \$ 33,645,992.00  
 2020 – \$ 21,634,956.00  
 2021 – \$ 36,902,632.00  
 2022 – \$ 37,228,709.00  
 2023 – \$ 20,717,569.00

Total average over 5 years: \$ 30,025,971.60

Thank you for the opportunity to bid on this Tender. We request that the correct annual sales volume information listed above be replaced into section B3.

We will take steps to ensure this does not happen in the future.

As mentioned, VERLY has many departments responsible for different aspects of our business. Throughout the year, we are constantly applying for new tenders and submitting new prequalification's in order to build our company and stay within our competitive market. Within these pre-qualifications we are often asked similar questions such as "estimated value of construction", along with other historical data.

This information is carried throughout certain documents, and lingers on templates, to expedite future processes.

In the case of this RFP, a clerical error was made, and section B3 was not properly assigned or reviewed. This Section was filled out without considering the necessity for exact numbers and approximate figures were used, vs actual dollar figures. This section does not have any effect on our final bid price.

VERLY, in receiving this email, jumped to action to rectify the error and provide accurate and audited information.

It was after this email that The City of Mississauga emailed their decision to disqualify VERLY from this Tender.

With the following information, we aim to overturn this decision, to have our bid proceed through the remainder of the tender process.

Within the City's Corporate Policy and Procedure (Policy Title: Bid Review and Evaluation – High Value Acquisitions), we find the following information and verbiage:

### **Major Irregularities**

Failure to meet any of the following requirements constitutes a Major Irregularity:

1. The Bid must be received through the Website
2. A Bid bond must be submitted with the Bid when the Bid Request (or addenda) stated that a Bid bond is required
3. The amount of the Bid bond must be equal to or greater than the amount indicated in the Bid Request
4. The bonding company that issued the Bid bond, and the "Agreement to Bond" if requested, must be licensed to conduct business in Canada and in the province of Ontario
5. Bidder declarations and statements in the Bidder Declaration form must be true and correct
6. Prices must be complete and specified in accordance with the Bid Request
7. Bids must conform to the essential requirements stated in the specifications or statement of work in a Bid Request. Essential requirements are those that are necessary to perform the intended operation and/or achieve the objectives of the procurement
8. Bids must conform to any item denoted as "mandatory" in the Bid Request **(subject to the process for Minor Irregularities where the item is deemed to be a Minor Irregularity)**
9. Failure to rectify Minor Irregularities if requested to do so, and/or
10. Other Bid issues fitting the definition of Major Irregularity, as determined by the Manager, in consultation with the procuring division and Legal Services

Bids containing a Major Irregularity are automatically disqualified. Where a Bid containing a Major Irregularity is identified, the Manager will:

- Disqualify the Bid without further consideration, regardless of Bid price, and
- Notify the Bidder of the disqualified Bid prior to the Bid Award

### **Minor Irregularities**

Failure to meet any of the following requirements constitutes a Minor Irregularity:

1. An Agreement to Bond must be submitted with the Bid, if specified
2. The Bid Bond and Agreement to Bond, if specified, must be properly authorized by both the Bidder and the bonding company
3. Technical specifications documents must be completed and submitted with the Bid when specified in the Bid Request
4. "Proof" documents such as certificates and licences must be submitted with the Bid when specified in the Bid Request
5. Other Bid issues fitting the definition of Minor Irregularity, as determined by the Manager, in consultation with the procuring division

Where a Bid containing a Minor Irregularity is identified, the Manager, in consultation with the procuring division and depending on the nature of the Minor Irregularity, will either accept the Irregularity or require the Bidder to correct the Irregularity within a specified time. If the Bidder does not correct a Minor Irregularity to the satisfaction of the Manager within the established timeframe, the Irregularity will be deemed to be a Major Irregularity and the Bid will be disqualified.

As highlighted, note (8.) within Major Irregularities, has a provision for errors on mandatory items, such as Schedule B3 – Annual Value... These errors can be deemed as a Minor Irregularity and reviewed by the Procurement Division.

It is important to now review the definitions of both major and minor irregularities:

***“Major Irregularity” means a deviation from an HVA Bid Request that, as determined by the Manager, is substantial and material to the Award and which, if permitted, could give the Bidder an unfair advantage over other Bidders.***

***“Minor Irregularity” 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.***

In reviewing the tender documents and the evaluation of pricing, we do not feel that the alleged error we have made should be categorized as a **major irregularity** that would result in disqualification. Instead, we see this error as an unfortunate human error, as a result of a lack of checks and balances. We would instead classify this error as a **minor irregularity**, giving us no advantage in the tender process over other bidders. As mentioned in our emails with the City of Mississauga Procurement team, we would expect our competitors to be shown the same grace and opportunity to correct minor irregularities in opportunities to obtain work.

At the very least, we request that the committee and the City see this matter from our perspective, and allow our bid to stand.