



OFFICE OF THE
City Auditor

South Edmonton Sanitary Sewer Installation Tender Review

November 14, 2014

The Office of the City Auditor conducted
this project in accordance with the
*International Standards for the
Professional Practice of Internal Auditing*

South Edmonton Sanitary Sewer Installation Tender Review

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South Edmonton Sanitary Sewer Installation Tender Review

1. Introduction

The Office of the City Auditor (OCA) conducted a review of Tender 924545 South Edmonton Sanitary Sewer SA1A *Installation of an Underground Sanitary Sewer* (hereafter referred to as SA1A). The purpose of this review was to examine and evaluate the tender process for this project. This review focussed on whether the successful proponent met all mandatory bid requirements and tender specifications and whether the process used to award the tender was consistent with City procurement processes. A re-evaluation of submitted bids was outside of the scope of this review.

This tender for project SA1A was a public tender to install a sanitary sewer pipe in south Edmonton.

2. Objectives

This review had two objectives:

1. To determine if the successful bidder's tender submission complied with all mandatory bid requirements and tender specifications.
2. To review the process used to award the tender.

3. Observations

3.1. Public Tender Process

The City's public tender process consists of the following eight steps:

1. Identify procurement go-to-market approach
2. Prepare specifications
3. Prepare evaluation criteria
4. Advertise opportunity
5. Evaluate bid submissions and check references
6. Confirm evaluation scoring
7. Award tender and notify proponents
8. Provide debriefs to bidders upon request

3.2. Tender Compliance

This tender award complied with all mandatory bid requirements, tender specifications, and applicable trade agreements.

Public procurement practices require that valid tender submissions must meet all mandatory requirements and specifications identified in the tender documents.

This tender required that bidders comply with three mandatory requirements:

1. Submit a bid security
2. Submit a Workers' Compensation Board Letter of Account
3. Submit a Safety Program Certificate of Recognition (COR) for companies with 10 employees or more, a Small Employer Certificate of Recognition (SECOR) for companies with less than 10 employees during peak times, or a Temporary Letter of Certification (TLC) for businesses at the final stage of receiving a COR or SECOR.

All bidders submitted the necessary documentation to comply with these requirements. However, one of the unsuccessful bidders challenged the compliance of the successful bidder who had submitted a TLC. This challenge referenced a section of the boilerplate tender document where a TLC was explicitly identified as not acceptable. The Additional Instructions to Bidders amended this section, which is a long-standing, legally-accepted practice. The successful bidder complied with the mandatory requirements.

Trade agreements are intended to reduce geographic trade barriers and encourage public tendering. This project was publicly tendered and incorporated two specific contract terms that reduced geographic barriers:

- The tender permitted either an Alberta Workers' Compensation Board (WCB) Report Card or equivalent documentation to be submitted.
- The tender allowed vendors who did not have a COR or SECOR certificate to submit a TLC.

As part of the tender specifications, the City's engineering design incorporated a construction methodology that combined tunnelling and trenching. For one section of the sewer line, tunnelling was mandatory. Bidders were allowed to submit alternative construction methodologies if they met the intent of the City's design and accepted responsibility for any additional design costs.

3.3. Compliance with Concrete Specifications

The City develops and maintains Design and Construction Standards for a variety of construction work, including drainage. These Standards document the specifications that must be met to achieve the quality of work required by the City. There are three specifications relevant to the manufacture and use of concrete pipe for this tender:

- 02535 *Sewers*;
- 02445 *Bored Under-crossings*; and
- 02426 *Pipe Jacking*.

All three specifications require that the concrete pipe used must either conform to, or be in accordance with, specific Canadian Standards Association (CSA) standards. Drainage Services informed us that the company awarded the tender hired an engineering expert to conduct testing to confirm CSA compliance. Conformance was also confirmed independently by a qualified employee of the City of Edmonton.

City design specification 02535 *Sewers* also states:

2.1.1.1 Manufacturers producing circular concrete pipe shall possess a current Prequalification Certificate, issued under the Plant Prequalification Program as outlined in the publication, *Prequalification Requirements for Precast Concrete Drainage Products*.

Industry stakeholders questioned the successful bidder's compliance with the tender specifications because the majority of the pipe to be used would be manufactured in a plant that did not have a Prequalification Certificate. The content of 02535 *Sewers* relates only to trenched construction, but this is not stated explicitly in the document. The construction methodology used by the successful bidder is primarily tunnelled. Therefore, the Plant Prequalification Certificate requirement did not apply to the majority of the pipe being used by the successful bidder.

The tender process provides an opportunity for bidders to seek clarification on any item in the tender. During the process, no bidders requested clarification related to the applicability of the Plant Prequalification requirement in 02535 *Sewers*.

3.4. Bid Evaluation

3.4.1. Criteria and Scoring

Because the lowest-cost bidder does not necessarily provide the best value to the City, the City usually requires that bidders demonstrate that they both meet specific technical requirements and provide a competitive price. As shown in Table 1, the successful bidder for SA1A did not provide the lowest bid price.

Table 1: Bid Prices (in millions)

Bid A	Bid B	Bid C *Winning Bid	Bid D	Bid E	Bid F	Bid G
\$ 9.8	\$ 10.2	\$ 11.3	\$ 11.5	\$ 14.7	\$ 16.5	\$ 22.6

The allocation of points between the overall technical evaluation and the bid price reflected the importance that Drainage Services placed on the two portions of the evaluation process. Tunnelling under the Anthony Henday highway was identified as being technically difficult, challenging due to the pipe size, and risky because of the potential of damage to a provincial roadway. This tender was awarded based on 40%

price and 60% technical evaluation. Drainage Services indicated that they weighted the technical components of the bid more highly than the price because of the complexity of the project. In four other drainage projects, two were weighted at 60% price and 40% technical and two were weighted at 70% price and 30% technical, giving more weight to price than to technical factors. Drainage Services indicated that it used 60% weight on technical components to ensure selection of an experienced contractor that would be able to deliver the project with minimal difficulty.

The technical evaluations were determined by scoring 12 criteria for each bidder. Table 2 shows the criteria with their respective score weights.

Table 2: Technical Evaluation Criteria

Technical Evaluation Criteria	Point value
Project team/key personnel, resumes, responsibilities	10
Project reference	5
Superintendent reference	5
Health and Safety Coordinator reference	2
Similar projects	5
Construction methodology	5
Settlement management	10
Trenchless methodology	5
Other project challenges or potential benefits	5
WCB Employer Report Card & safety performance	5
Quality and environmental management programs	1
Regulatory warnings, stop-work orders, or citations	2
Total	60

Source: Tender documents

The tender package contained the detailed requirements for each of the criteria identified in Table 2. For example, the Project Reference submission required:

The Bidder should demonstrate at least one successful project (from the owner's perspective) where the Bidder has, in the last 3 years, completed the installation of underground utilities of a similar size (2100 mm and larger) with trench and / or trenchless construction methods. Bidders are to include any relevant environmental permits and / or citations for failure to comply for this referenced project.

The City may consider a reference not completed within the last 3 years however the City will place higher value on projects completed within the last 3 years that are of a similar size, nature and complexity.

The Evaluation Committee assigned a score from 0-5 to each criterion identified in Table 2 based on comparing each bid against the description of the rating scale provided in Table 3.

Table 3: Rating Scale

Rating	Definition	Description
5	Excellent	Exceeds expectations; clearly understands the requirement; excellent probability of success.
4	Above Average	Somewhat exceeds expectations; high probability of success.
3	Average	Meets expectations; good understanding of requirement; good to fair probability of success.
2	Poor/Fair	Somewhat meets expectations; some weaknesses or deficiencies; fair to low probability of success.
1	Very Poor	Does not meet expectations or demonstrate understanding of the requirement, low probability of success.
0	Non Responsive	Lack of response or complete misunderstanding of requirement, no probability of success.

Source: Tender Documents

Corporate Procurement and Supply Services indicated that a rating of 3 (Average) is generally assigned when the bid submission meets the minimum requirements defined in the tender. Other than a 0 (Non Responsive), there was no documented rationale for assigning a rating above or below a 3. The evaluation process could be enhanced by formally establishing the criteria required to assign each score prior to bid evaluation.

3.4.2. Disclosure of Participants

The City prepared a Tender Evaluation Plan to guide the evaluation process. The Plan named five Evaluation Committee members. One additional individual who was not listed in the plan also participated on the Evaluation Committee increasing the Committee to six. There was no record in the tender file that identified all the Evaluation Committee members. Documenting all participants in an evaluation increases transparency.

3.4.3. Consistency of Evaluation Committee

For this tender, two Evaluation Committee members were not present for the scoring of the last three bids to be reviewed. Not having the entire Evaluation Committee present for all evaluations introduces the risk that bid responses may not be evaluated consistently.

When interviewing the Evaluation Committee participants, these two individuals indicated that they participated in an advisory role, not an evaluator role. An advisory role was not identified or defined for any Evaluation Committee member in the Tender Evaluation Plan.

3.4.4. Documenting Evaluations

In accordance with City policies and procedures related to the retention of temporary records, the Tender Evaluation Plan instructs Evaluation Committee members to destroy any individual notes once the tender process was complete. Individual notes by

Evaluation Committee members do not form part of the tender documentation, as they may not be an accurate record of the evaluation process or outcome.

The final record of this tender evaluation process consisted solely of the consensus scores assigned to each criterion with no other documentation in the tender file supporting the rationale for the scoring. We identified other organizations¹ that capture the group's decision rationale behind the consensus scores as part of the official record. Explicit, documented evaluation criteria and a documented rationale for final scoring would improve the transparency of the scoring process. This would need to be balanced against the legal risks associated with maintaining detailed documentation.

3.4.5. Reference Checks

The tender required that the bidders submit three references as components of the bid:

- Project reference
- Superintendent reference
- Health and Safety Coordinator reference

Twelve of the 60 possible technical points awarded through the bid evaluation process related to references (20 percent).

The Evaluation Committee assessed the reference information provided by the bidders. Subsequent to this meeting, the Evaluation Committee Team Lead contacted references. After references were contacted, the Evaluation Committee was allowed to adjust the preliminary reference score as appropriate. The Team Lead indicated that this occurred at a second evaluation meeting. However, not all of the Committee Members attended this second meeting.

The Team Lead captured notes about the reference checks. The notes did not provide enough information to confirm whether each reference was checked in a consistent manner. Key information, such as the date of the reference check and the name of the individual providing the reference, was not captured. The Team Lead's notes did not form part of the official tender record.

The following statement is included in the tender package provided to bidders.

The City may contact references provided by the Bidder. The City may also contact references known to the City, including City staff, but not provided by the Bidder. Any information obtained from references may be used by the City in the evaluation.

This statement reserves the City's right to use information obtained from references that were not provided by the bidder. One reference that was not provided by one bidder was contacted.

The City does not have any guidelines to support Evaluation Committees in applying this statement in order to ensure that the evaluation process treats all bidders fairly. Effective guidelines would indicate circumstances in which it is appropriate to contact references beyond those submitted in the bid and the degree of documentation required

¹ Treasury Board of Canada (2012), Shared Services BC Procurement (2010), Government of Canada Office of the Procurement Ombudsman (2010), US Aid (n.d.).

for answers to each question asked. Effective guidelines would reduce the risk that bidder references are checked inconsistently.

In this tender, the Evaluation Committee Team Lead conducted the reference checks. The Team Lead was also named as a reference in two bids. The existing documentation is not sufficient to determine if he provided information as a bidder reference.

Guidelines to ensure objective reference checking would reduce the risk that an evaluator would be placed in a position to assess and score information that they provided as a reference.

Recommendation 1 – Evaluation Documentation

The OCA recommends that Corporate Procurement and Supply Services strengthen documentation requirements specific to consensus bid scoring and reference checking.

Management Response and Action Plan

Administration agrees with the Office of the City Auditor that “this tender award complied with all mandatory bid requirements, tender specifications, and applicable trade agreements”. Further the tender evaluation process for the South Edmonton Sanitary Sewer Installation Tender was conducted in accordance with the City’s procurement standards and the resulting contract award was appropriate. The evaluation team was made up of experienced professionals, the evaluation process followed the process published in the tender documents and the internal tender evaluation plan that was in place to guide this process. Appropriate oversight and due diligence was conducted to ensure that the tender evaluation met expectations and that the resulting contract award was proper.

Administration accepts the Office of the City Auditor recommendation put forward in this tender review. It is acknowledged that evaluators need to retain additional documentation in the future to provide greater transparency regarding bid evaluations and reference checks. Administration has already taken steps (as outlined below) to ensure that this expectation is clear to everyone who participates in tender evaluations.

The City of Edmonton has an excellent track record for a progressive and rigorous procurement process. The principles of fairness, openness, transparency and the objective of achieving best value for money from all City spending are foundational to our tender planning, tender development and bid evaluations. This is demonstrated by the rare occurrences of bidder complaints related to the City’s tender process and the fact that the City has had few bid disputes in its history, especially considering the number of tender awards the City makes each year.

Public sector procurement is ever evolving. New Canadian case law continually informs competitive bidding process expectations. Corporate Procurement and Supply Services Branch works closely with the City's Law Branch to actively stay abreast of legal developments and make ongoing adjustments to its tendering and tender evaluation process as new practices and standards develop in the public procurement sphere.

In 2012, the Office of the City Auditor conducted a Contract Tendering Process Review. The objectives of this review were to determine if the City's contract tendering process met the principles of public sector procurement (fair, open, transparent and accountable). That review confirmed that the City's established contract tendering process did meet all of these principles. Four recommendations were made to strengthen the City's contract tendering process. Administration outlined 13 action plans to address the 4 recommendations that it would implement to enhance its processes. All action plans were implemented to the satisfaction of the Office of the City Auditor and all recommendations have been closed.

Edmonton is recognized as a leading practice public sector procurement organization. Administration continually seeks improvement and innovation in our procurement process. The City of Edmonton is viewed by our peers in the municipal and broader public sector as being a leading practice organization that is committed to sound procurement practices that ensure integrity of the process.

The City also enjoys an excellent relationship with local Industry Associations that represent the majority of our procurement marketplace. The Consulting Engineers of Alberta, the Alberta Roadbuilders and Heavy Construction Association and the Edmonton Construction Association have all expressed their gratitude at the openness and partnership that City Administration and City Council demonstrate toward being a customer of choice. Central to this is an acknowledgement that the City's procurement processes are fair and unbiased. Recently, the Edmonton Construction Association provided a letter to City Council expressing their appreciation to the City for our ongoing efforts to maintaining a strong partnership and to a spirit of dialogue and mutual interest.

Accepted

Administration accepts the recommendation. Administration is committed to the following actions that will address the concerns raised by the Office of the City Auditor in this tender review.

Action Plan

1. Communication to all Corporate Procurement Buyers and Senior Buyers to reinforce expectations and requirements related to consensus scoring notes and reference check notes.

Planned Implementation Date: November 21, 2014

2. Procurement Guidelines. As a result of the Contract Tendering Audit, Corporate Procurement and Supply Services is in the process of developing a set of procurement guidelines for City employees to provide guidance to all aspects of

the procurement process. The first module of this guidebook governing roles and responsibilities in bid evaluation processes will be released by the end of 2014.

Planned Implementation Date: December 31, 2014

Responsible Party: Branch Manager, Corporate Procurement and Supply Services

3.5. Conflicts of Interest

The Employee Code of Conduct is a principle-based Administrative Directive that is foundational for establishing an ethical culture at the City. The Code of Conduct indicates that “Conflict of interest arises whenever an Employee’s personal or professional activities negatively impact the best interests of the City.” When these situations occur, employees are required to disclose them.

The City also has three other documents that specifically address the risk that an individual may make decisions on behalf of the City that could result in a personal financial benefit.

- Bidders provide a disclosure in the Bid Form with their Tender submission. Bidders are required to disclose any direct and indirect financial interests they have with the Mayor, City Councillors, City employees, or their family members.
- City employees are required by Administrative Directive A1203 *City Employees-Contracts with the City* to notify their General Manager and remove themselves from tendering decisions when they or their immediate family members may benefit financially.
- External consultants working on behalf of the City are required to disclose any interests that a City employee or their family has with the consulting firm, and confirms that they will not offer services or bid on any projects arising from the work they are contracted to do.

For this tender, there were no bidders, employees, or consultants who disclosed any conflicting relationships.

3.6. Perceptions of Bias or Favouritism

Perceptions of bias or favouritism, even when unfounded, are a risk to the perceived fairness of the tendering process. City employees are subject to the Employee Code of Conduct. This resource is principle-based and provides employees with guidance for addressing the risk of perceived bias and favouritism as they perform their work. Employees are expected to “remove [themselves] from situations where there is a real or perceived risk of favouritism.” However, we recognize that anticipating potential perceptions is challenging.

Some stakeholders in this tender indicated that they believed that there was bias in the evaluation based on professional associations between the successful bidder and members of the Evaluation Committee. For this tender, each member of the Evaluation Committee had some type of professional association at some point in time with at least

one of the bidders. We found no evidence that these relationships biased the evaluation process.

It is not uncommon for City employees to have professional associations with companies and individuals who bid on City projects. It is preferable, whenever possible, to ensure that the evaluators disclose any relationships with bidders to the Evaluation Committee and seek a determination on whether the relationship requires special management or if it would be more appropriate to assign a replacement evaluation team member. Not disclosing these associations can result in perceptions of bias, even when individuals on a tender Evaluation Committee perform their work without bias and with complete integrity.

4. Conclusions and Recommendations

The first objective of this review was to determine if the tender submissions complied with all mandatory bid requirements and tender specifications. Based on our review, this tender submission complied with all mandatory bid requirements and tender specifications. This tender was also conducted in accordance with all applicable trade agreements.

The second objective was to review the process used to award the tender.

We have made one recommendation to increase the transparency of the evaluation process through improved documentation procedures.

We have chosen not to make any recommendations to address the risks associated with perceptions of bias and favouritism. Although there is a risk to the perceived fairness of the tender process, the scope of this review does not provide sufficient information to make a recommendation. A comprehensive review of the tendering evaluation process has been included in the OCA Annual Work Plan and will address this risk.