

Date: June 29, 1995

SUBJECT: MCCLEERY GOLF COURSE CLUBHOUSE - AWARD OF TENDER

RECOMMENDATION

THAT the Board award a contract for the construction of the McCleery Golf Course Clubhouse to Pro-Can Construction Ltd. at a price of \$972,000 plus GST.

BOARD POLICY

The Board awards contracts over \$50,000 to the lowest qualified bidder.

BACKGROUND

At its meeting of May 11, 1992 the Board approved the master plans for the redevelopment of its three public golf courses.

At its meeting of June 20, 1994 the Board awarded the design of the clubhouse to Hemingway Nelson Architects Ltd.

At its meeting of May 15, 1995 the Board approved the schematic design of the clubhouse.

DISCUSSION

On June 22, 1995, after public advertisement, eight tenders were received for the construction of the McCleery Golf Course Clubhouse. All tenders were accompanied by a Bid Bond and by a Consent of Surety, indicating bondability of the bidder. The following are the bids received:

Bidder	Bid	Union/Open Shop
Pro-Can Construction Ltd.	\$ 972,000	Open Shop
Lessard Project Management	\$1,081,316	Open Shop
Zagreb Construction Ltd.	\$1,099,000	Open Shop
Reed Atwood Inc.	\$1,122,000	Open Shop
Dietlein Construction Inc.	\$1,180,000	Open Shop
Mierau Construction Ltd.	\$1,195,490	Open Shop
R.M.T. Contracting	\$1,199,999	Open Shop
Country West Construction Inc.	\$1,209,000	Open Shop

All bids are within the Board's budget for this project.

Separate Prices

Each tender included eight separate prices for work to be deleted, if the Board chose to do so. The amounts of the separate prices cannot change the order of the bids, and have no effect on the award of the tender.

Bid Bond

Each bid is accompanied by a Bid Bond in the amount of 10 percent of the bid, whereby, if the bidder does not enter into a contract within the required time once the bid is accepted by the Board, the Surety and the bidder agree to pay to the Board the difference between the bidder's bid and that accepted by the Board, up to the face value of the Bid Bond. The bidder may be liable to the Surety for any costs incurred by the Surety in honouring the bond. Review of Bids

The Architects, Hemingway Nelson Architects Ltd., have reviewed the bids and qualifications of the four lowest bidders. They found minor irregularities in three of the lowest four bids. The third lowest bidder, Zagreb Construction Ltd., did not attend a mandatory pre-bid site meeting. The irregularities by themselves are not considered sufficient grounds for disqualification.

The low bidder, Pro-Can Construction Ltd., has asked to be permitted to withdraw its bid, claiming to have made an error in compiling the bid. Although the Architect recommends permitting Pro-Can to withdraw their bid without penalty, the bid documents clearly state the bids are "irrevocable". Staff have advised Pro-Can that their bid could not be withdrawn without penalty as a result of an arithmetical error not evident on the face of the bid.

Should Pro-Can Construction Ltd. refuse to enter into a contract if requested to do so, the Board has the right to claim up to \$97,200 on Pro-Can's Bid Bond.

The Board could then award the contract to the next lowest qualified bidder, Lessard Project Management, at a price of \$1,081,316.

Legal Implications

The Board has dealt with a similar situation in the past, i.e. a request by the low bidder to withdraw a bid due to a computation error. In 1991 the lowest bidder on the West End Community Centre alterations asked to withdraw due to a claimed error. Despite the request, the Board awarded the contract to the lowest bidder.

Any of the bidders is liable to having its bid accepted, and has a legal obligation to enter into a contract with the Board if the Board accepts its bid.

In law the submittal of a sealed bid constitutes a contract between the bidder and the party soliciting the bid -- in this case, the Board. Withdrawal of the bid therefore represents the breaking of that contract. If a bidder claims to have made a mistake in presenting his bid, the recipient of the bid is required to recognize the mistake only if it is clearly evident on the face of the tender that a mistake was made. This is not the case here.

Whether or not to permit withdrawal of a bid is primarily a "business"

decision. A bidder who wishes to withdraw and is not permitted to do so, may either agree to sign a contract or refuse to do so, resulting in the Owner's claiming on the Bid Bond. Under the first alternative, the bidder may develop a poor attitude to the project, and may suffer a degree of financial hardship. On the other hand, the contractor may pay more attention to the job to do it as efficiently as possible. Under the second alternative, the bidder will doubtless bear costs either as a direct or indirect result of the payment of the Bid Bond.

On the other hand, the public tendering system is based on the assumption that bids will be honoured, except in very compelling cases. Withdrawal of a bid is considered a very weighty matter, and the Bid Bond has been instituted to protect the owner from such an eventuality.

JUSTIFICATION

In summary, it is recommended that the Board award a contract to the lowest bidder, Pro-Can Construction Ltd., at the tendered price of \$972,000.

Prepared by:

Planning & Development Division
Board of Parks & Recreation
City of Vancouver
RR:sp

-