

The Missing Link, Tendering and Administration of Remediation Contracts

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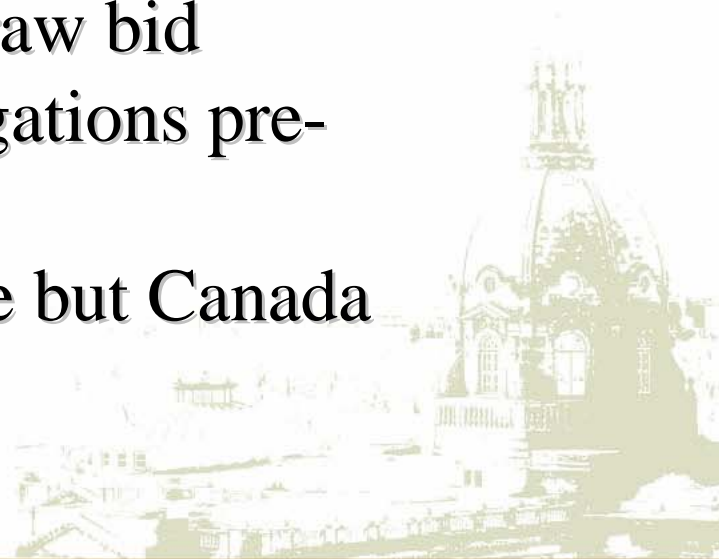
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Introduction

Pre: *Ron Engineering* (1981, SCC)

- Basic Contract Law applied
- Bidder could withdraw bid
- No contractual obligations pre-award
- Still law everywhere but Canada



*Ontario v.
Ron Engineering
and Construction*

Contract A/

Contract B Analysis



The Creation of Contract A and Contract B



What are the Implications?

Contractual relationship is created at submission of bid, even if no work contract awarded

THIS IS CONTRACT A



Duties and Obligations of Contract A

- Terms are the terms of the tender documents
- Submission of bid is acceptance of those terms



Implied Terms: *MJB v. Defence Construction*

Terms read into relationship

- Can the term be complied based on custom or usage?
- Is the term a “legal incident” of a particular class of contract?
- Can the term be implied on the intentions of the parties?
 - * e.g. acceptance of low bid often implied term unless expressly stated otherwise

Martel Building Ltd. v. Canada **(SCC, 2000)**

- ✓ Supreme Court read in duty of fairness and good faith in Contract A



What Does Good Faith and Fairness Entail?

Duty to –

1. provide proper disclosure
2. reject non-compliant tenders
3. Duty to conduct a fair
Competition
4. To award to the winning bidder
5. To award the contract as tendered

*** areas of dispute – what is compliant**

Privilege Clauses

Principles applied to privilege clauses

“lowest or any tender not necessarily accepted”

- (1) bidding process creates a legal relationship between owner and compliant bidders that gives rise to legal duties
- (2) implied duties such as the “low bid rule” can be overridden by specific language that gives owners discretion
- (3) privilege clauses do not give owners unfettered discretion; must be exercised fairly and in good faith

Obligations on Bidders

Bidder

- must not revoke a bid
- must keep bid open for acceptance
- must enter into Contract B as awarded



Introduction to National Specifications

- Format for the Specifications are be based on Construction Specifications Canada (CSC) Master Format.
- Master Format has 48 Divisions.
- Each Section of a Division is divided into three parts:
 - Part 1 - General
 - Part 2 - Materials
 - Part 3 - Execution



Master Tender Documents

- Master Tender Documents have Divisions 00, 01 and 02
- Master Tender Documents were prepared for common remedial approaches of Excavation & Landfill Disposal, or Excavation & Landfarm or Excavation & Aeration using Allu Bucket



Master Tender Documents, cont'd

The Master Tender Documents are structured such that:

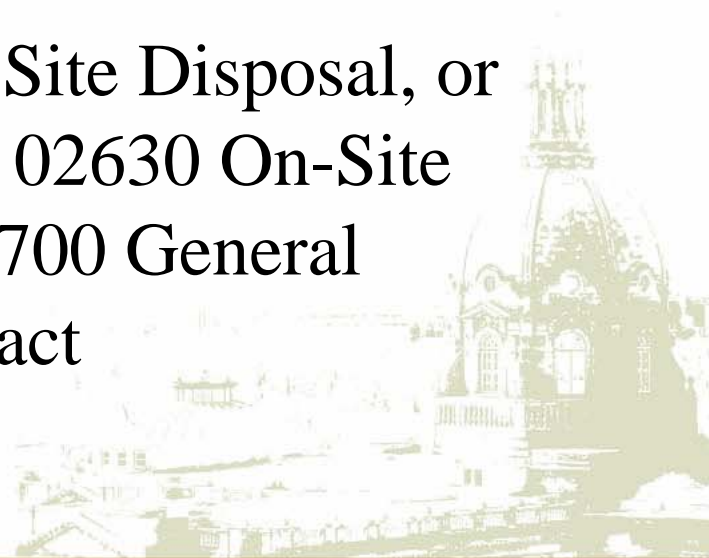
- The bidding process is clearly defined, fair and transparent.
- Are complete and unambiguous so that Contractors are bidding on the same basis.
- Contain clauses that establish how the contract will be administered
- Edited to ensure the specific scope of work is clearly spelt out.

Master Tender Document Sections

- Section 00100 Definitions
- Section 00200 Instructions to Bidder
- Section 00210 or 00220 Pre Bid Meeting or Mandatory Pre Bid Meeting
- Section 00400 Bid & Contract Form (Sections 00410 Off-Site Disposal, or 00420 LandFarm or 00430 On-Site Aeration by Allu Bucket)

Master Tender Document Sections cont'd

- Section 01000 General Requirements
- Section 01210 Contingencies
- Section 02500 Removal & Disposal of Storage Tanks
- Sections 02610 Off-Site Disposal, or 02620 LandFarm or 02630 On-Site Aeration
- Section 00700 General Conditions of Contract



Section 00200 Instructions to Bidders

- Bidder Qualifications
- Basis of Bid
- Sufficiency of Bid
- Bid Modification
- Bid Withdrawal or Acceptance
- Irregularities
- Examination of Bid Documents & Site
- Applicable Lien Legislation
- Contingencies
- Division of Work
- Interpretation & Modification of Bid Documents
- Addenda

Section 00700 General Conditions of Contract

- Role of the Consultant
- Assignment
- Termination
- Subcontracts
- Contractor's Responsibility for Control of the work
- Protection of Property & Cleaning
- Hold Harmless Agreement
- Insurance
- Worker's Compensation Act & Occupation Health & Safety Act

Section 00700 General Conditions of Contract, cont'd

- Regulatory Requirements
- Defective Work
- Contract Time
- Materials & Equipment
- Warranty Change in the work
- Valuation of Change in the Work
- Change in subsurface Conditions
- Payment
- Claims
- Disputes

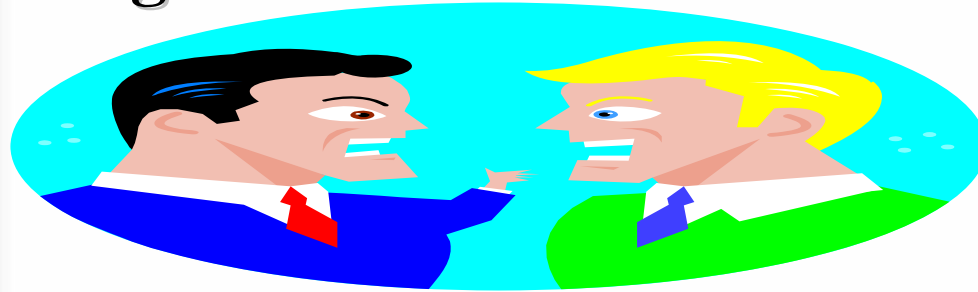


Section 01000 General Requirements

- Contractor's Use of the Premises
- Unit Prices – Measurement for Payment
- Work Site Safety – This Contractor is “Prime Contractor”
- Certificate of Recognition (COR)
- Submittals
- Safety Requirements
- Quality Control
- Temporary Facilities & Controls
- Overloading & Cleaning of Streets



Comprehensive Tender Documents Assist in the Prevention of Disputes & Litigation



Questions

