

## Tendering Challenges Continue

At the last Symposium, I spoke about the increase in complaints and issues surrounding the bidding and tendering process. I even went so far as to suggest that we had a feeling that we were at “war”. Perhaps strong language for some, but I would suggest that anyone who sits in the OGCA chair and receives the almost overwhelming number of issues that have come in since last December, they might understand why we feel that way. Calls from both members and architects requesting help have continued to grow and show no sign of slowing.

What has helped to fuel these problems is the Federal stimulus program which requires the March 2011 completion date. Major feedback from across the country convinced the Minister to modify the government’s position and they acknowledged they would not claw back monies already spent, they would just not provide any further funding.

The result has been an increase in complaints to the OGCA concerning the quality of documents being issued, the tendering rules, and mistakes being made by some owners who, in their haste to issue these projects, are putting people, including themselves, at risk - all to meet a time frame most have acknowledged can’t be met. What is also clear is that the Government did not understand the term “shovel ready”. As has been very clearly shown here in Ontario, this supposed massive amount of ready-to-go work does not actually exist! Projects exist but few have gone through the necessary stages that would truly constitute them as “shovel ready”.

So why are we allowing this to happen and what might be the outcome in 2011? The why is simple - we build and we believe that we can handle any risk and in the end, we will continue and somehow, we will work this out. That is who we as contractors are and I doubt that will ever change. The outcome is perhaps not so easy to predict. Questions abound - what if we have a bad winter? What if there are labour delays as we enter a year of negotiation? What about normal delays that may be caused due to the poor planning members indicate is going on? Who pays if we do not finish on time?

In trying to manage the risk, we are receiving reports from members about owners using what can only be described as “inventive ways” to issue projects. While we cannot blame these owners for trying to take advantage of the stimulus monies, it appears the answer to their fears is, not surprisingly, to bend the rules and place even more responsibility (risk) on not just the contractor but the architects and engineers who in turn are looking to protect themselves.

Unfortunately, the horse is out of the barn. We at the OGCA can do little to protect our members if they decided to participate, except to advise that they understand any penalty clauses fully and that they include monies to ensure they are protected in case of unforeseen problems. We cannot just assume that normal delay procedures and claim rules will apply to these projects.

We must continue to try and convince owners not to panic and to maintain the use of good practices for tendering. In what can only be described as good timing, the RCCAO recently released a paper prepared by former OGCA Vice President Stephen Bauld; it is posted on the OGCA website. It is an excellent summary and report on the state of Capital Expenditures and procurement in the GTHA. The information provided and the risks and repercussions for not using good practices which he has reported, are relevant not just to the GTHA but across the Province.

The document covers One-sided Contracts, a problem OGCA has been trying to address for many years, especially the terms and conditions being included. The report offers insight into Risk, Specifications, and Integrity, with facts and figures. This is written in language the procurement profession can understand and we are pleased to see reference to several OGCA publications and our policies. This is essential reading for all procurement people. It will hopefully help them to say no the next time some consultant says they need to rewrite their contracts and procedures and perhaps talk to the real professionals in the industry like OGCA, OAA and CEO.



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