

# Procurement: What we Really Want to Say

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## Agenda

- I. Procurement 101 (John)
- II. The Procuring Agency's view (Sue and Brett)
- III. The Proponent's View (Heather)
- IV. Questions/Discussion



















### **Procurement 101**

- A process for awarding contracts for the supply of goods and services based on an established set of criteria.
- Can be a "tender" or a "Request for Proposal"
- Scope: Public (incl. government agencies), For-Profit, Non-Profit.
  - Each entity will have different steps in the process i.e. Some might qualify bidders first.

### Procurement 101: A Possible Procedure

- Procuring Agency Sets its Strategy (Note: This is actually the hardest part)
  - Identify Needs to be addressed by the Procurement
  - Determine the Methodology of Procurement
  - Determine evaluation criteria (is the lowest price the law?)
- Draft/Issue Tender Call or RFP
- Submission of Responses
- Evaluation of Responses
- Selection of Winners Execution of Agreement
- Performance of Contract

## **Procurement 101: Hard Question #1**

- Competitive Procurement replaces negotiation of contracts with a competition.
- Policy Underpinning:
  - The Holy Trinity of Public Procurement: Accountability, Transparency, Value-for-Money.
- Is Competitive Procurement always the best way?
  - What if the market is limited?
  - What if different bidders value the subject of the procurement differently?

### **Procurement 101: Sources of Law**

- I. Ron Engi-who?
  - The basic rule of procurement is based in the common law doctrine of fairness. The law stems from a Supreme Court Decision: Ron Engineering.
- Dual Contracts:
  - Contract A: Formed between a bidder and the purchaser when the bidder submits a qualifying bid.
  - Contract B: Formal contract created with the winning bid.
- II. Municipal and Provincial Policies
  - Broader Public Service Procurement Directive
- III. Trade Contracts

# **Procurement 101: Contract A: Duty of Fairness**

- Overarching obligation imposed on the purchaser of goods/services as part of Contract A
- Many subsidiary obligations:
  - Duty to disclose all information material to performance of the final contract;
  - No undisclosed criteria
  - Duty to only accept compliant tenders
    - i.e. the winning bid must meet criteria set out in rules
    - Tender calls should set out the standard for evaluating submissions (i.e. strict or substantial – default is substantial)
  - Duty to conduct fair competition
    - Avoid preferential or unfavourable treatment of competing bidders (i.e. conflicts of interest)
    - Conduct evaluation process in the same manner as set out in the instructions.
      - Ensure proper records are kept
      - Must review bid as against the evaluation criteria
      - Duty to diligently review a submitted bid.
  - Duty to award to the winning bidder (subject to a privilege clause)



# Procurement 101: Contract B: Final Service Contract

• The terms of the final service contract must be the same as those contained in a submitted bid.



## **Procurement 101: More Hard Questions**

- Can you negotiate in the context of an RFP? A Tender?
- In a land sale, should the seller keep environmental risk? What is the danger of using the usual buyer beware method?
- Should you include Contract B in the bid documents? If so, how do you deal with amendments if the bid documents can't be changed?
- Do you tell proponents the weighting of different criteria? How do you weight price?
- As a proponent what do you do if you think you have a better way to achieve the procurement goals?
- What happens if you don't like any of the bids? Or you don't like the one that has scored the highest?



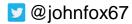


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# The Procuring Agency's View

Sue Ritchie Brett Barnes



### 2017 ONPHA Conference

Session # 406

Procurement: What we really want to say

### Presenters:

Sue Ritchie, Manager, Human Services Brett Barnes, Advisor, Human Services



# PROCUREMENT AND THE MUNICIPAL SERVICE MANAGER

- Provincial Long Term Affordable Housing Strategy and Service Manager 10 year Housing & Homelessness Plans (2014 to 2024)
- Key priority: Maintaining and Creating Affordable Housing Stock
- Some key challenges:
  - ❖ Development Land; Project state of readiness
  - Funding
    - Availability to meet capital project needs
    - Getting money allocated within required timelines for provincial/federal programs
  - Approvals
    - Council approvals
    - Ministerial approvals/consent



# WHAT IS THE REGION OF PEEL LOOKING FOR IN RFP RESPONSES?

#### **Requirements:**

- Seeking proposals from both non-profit and for profit to create new affordable housing in the Region
- The average rent of all Funded Units must be 80 percent of Average Market Rent or lower
- Up to 40 percent of al Funded Units rented at 60 percent of Average Market Rent or below (tenants chosen by the Region from its waiting list)
- Proponent must rent the remaining Funded Units to tenants meeting the income criteria as per RFP
- All submissions to RFP will be evaluated by a Regional Evaluation Committee set up by the Region



#### WHAT IS THE RFP PROCESS?

- 1. RFP released
- 2. Respondent briefing
- 3. Issuances of Addenda to questions raised by respondents
- 4. RFP proposal completeness and compliance check
- 5. RFP proposal evaluation of mandatory eligibility requirements
- 6. RFP proposal scoring of evaluated criteria



#### WHAT IS THE RFP PROCESS?

- 7. Ranking of proposals and notification of selected respondents
- 8. Resubmission of the selected respondents proposal (final amended proposal)
- 9. Evaluation and ranking of the final amended proposal
- 10. Council approval
- 11. Execution of the conditional memorandum of understanding
- 12. Execution of the contribution agreement



#### WHAT IS THE EVALUATION PROCESS?

Completeness and compliance
 Mandatory eligibility requirements
 Environmental site condition
 Scoring of evaluated criteria
 Ranking of proposals and notification of selected respondents
 Negotiation
 Resubmission
 Evaluation of final amended proposals



# ADVICE MOVING FORWARD

- Please read the RFP documents carefully and attend the information session provided
- Answer the question posed
- Be specific if the question asks for 3 examples please provide
- If you are considering an affordable development project seek advice from your Service Manager
  - □ Ask about support opportunities
  - □Share your vision to ensure aligned with local plans and priorities
  - □ Review local Housing & Homelessness Plans along with Strategic Plans



#### THANK YOU AND QUESTIONS

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# The Proponent's View

Heather Tremain

### Heather Tremain, CEO Options for Homes



Heather Tremain is the CEO of Options for Homes, an organization that uses an innovative financial model to help low and moderate income families become home owners. Under Heather's leadership, Options, Canada's largest developer of affordable ownership housing, has grown to have over \$650 million in its development pipeline. As an advocate for affordable ownership housing, she has been central in the formation of a national network of providers, who have come together for the first time to make a shared submission to the federal government for the much-anticipated National Housing Strategy.

### 4 ANNOYING ISSUES WITH RFPs

- 1. TOO MUCH TOO SOON
- 2. "FISHING" EXPEDITIONS
- 3. LACK OF CLARITY AROUND PRIORITIES
- 4. TIMING



# Questions/Discussion