



General Contractors Association of Ottawa Newsletter

Building a Greater Ottawa

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FEEDBACK





President's Note Yves Beaudoin, GCAO President

I have had the great pleasure of serving on the Board of Directors for the GCAO for the past 4 years and I look forward to leading this team to another successful year in 2019. I must thank Russel Grass for all his hard work and guidance during his tenure as President.

I also wanted to thank all the Board Members of the GCAO who have donated countless hours of their time for the benefit of the construction sector.

This year, the attendance to Our Cocktail party was once again highly successful. We appreciated all our members involvement in this event. We honored David Burley from DND with the GCAO Integrity and Ethics Award.

Looking forward to the coming year, the industry will face new challenges, such as the **New Lien Act** and his "prompt payment clause", the new **Carbon Tax** as well as other recurrent issues with certain client.

Please be diligent about addressing onerous SGC's that download too much risk onto the GC. Don't hesitate to contact the GCAO with your issues, the board has a wide variety of resources to help you.

We started the year with a meeting with Carleton University concerning their tendering practices. We are confident that this meeting will bring some positive changes in the University practices.

I look forward to serving as your 2019 President and building a better future for all of us.

UPCOMING GCAO EVENTS

2019 GCAO Golf Tournament & SAGM

Where: Kanata Golf and Country Club, 7000 Campeau Dr, Kanata, On K2T 0A3

When: Friday, June 21st, 2019 at 8:00 am

Cost: \$185 + HST per person (includes 18 holes, Cart and lunch)

Tournament schedule:

7:30 am: Arrival/Registration
8:00 am: Tournament Shotgun Start
2:00 pm: BBQ Buffet Lunch & SAGM
2:30 pm: Reception



LOOKING FORWARD TO HAVING YOU JOIN US

GCAO BOARD - OPERATION MANUAL

The board is presently putting together an operation manual which will layout the duties, actions and items which need to be dealt with by board members on a monthly basis. This quality control tool should facilitate the organisation of our operations and help new members in understanding the tasks at hand.

Tendering Practices Update

The GCAO Tendering Practices Committee continues to promote the adherence to approved industry and fair and equitable practices in competitive tendering and contract administration.

Please remember that if you have any complaints please bring them to your board's attention. Bruce Norman oversees our tendering practices portfolio and would be happy to discuss any issues that may arise. You can contact Bruce Norman via e-mail at bnorman@gcaottawa.com

Egyptian Residence - GCAO Members stand together in the face of unreasonable SGCs by Joshua Laginski

Earlier this year the GCAO received several member complaints regarding the Egyptian Residence tender and questionable Supplementary General Conditions (SGCs) including unreasonable markups, and deletions of references to the Lien Act.

A letter was issued by the GCAO to the owner group and was followed up with phone discussions on the matter. Although the owner did not adjust their SGCs, members took it upon themselves to qualify their bids to reference an "unmodified CCDC-2 contract".

As a result, the owner group was forced to accept and negotiate with the low bidder on this basis. GCAO is proud of its members for speaking up and acting in the face of unacceptable tendering practices.



Carleton U – Post tender addendum – April 9th meeting

by Yves Beaudoin

Your association was able to setup a meeting with Mr. Gary Nower (**Assistant Vice-President Facility Management and Planning**) from Carleton University.

We met him along with the OCA Standard practice committee on April 9th to address our members concerns about some of their tendering practices.

The first subject was the “public opening of tenders” to which Mr. Nower agreed to reinstate this process in the near future.

We also addressed the 2% holdback requirement in their contract documents. Where 1% is released after deficiencies are completed and 1% is released after the one-year warranty review. We voiced that they were one of the only clients in the Ottawa area with this type of financial obligation.



And finally, we discuss the recent situation where a General contractor had issued a “post tender addendum” to all Ottawa area subcontractors, after he was awarded a contract by Carleton University, even if there was a requirement on the tender form to name all the subcontractors included in the original proposal. Mr. Nower promised to investigate this issue and to take appropriate action.

The Ottawa Hospital – Delay Claim

by Bruce Norman

Following multiple complaints from our membership with regards to a clause in The Ottawa Hospital procurement documents, specifically a contract clause noting “any claim by the Contractor for delay shall apply only to the extent that the delay exceeds two calendar months.....” led to the Board producing a letter to the TOH procurement voicing our memberships concerns with such unfair and unreasonable language. At the time of this newsletter, we are still awaiting a response. The letter is attached for your information.

Tender results by Gaétan Lacroix

Recent discussions between members at this year's AGM and concerns towards the owners not releasing bid results or taking a lot of time to publish the results, led to the idea that General Contractor's could share post-tender results, via the GCAO website, for an "unofficial bid result".

Understanding this delicate situation, the board sought legal advice on the feasibility of this tendering process.

On April 3rd, Norton Rose Fulbright drafted a memorandum to the board on the disclosure and publication of tender prices. Following is some key elements of this 6 pages report (full report is attached to your newsletter).

Conditions in the Tender Call

Prior to looking at specific areas of law that relate to the tendering process, it is important to note that, from the point of view of procurement law, the tender documents themselves will in general govern the confidentiality conditions that apply to the tendering process.¹ A particular tender may specify that all bids are to be treated as confidential until the time a contract is awarded and may not be disclosed by the owner or the tenderer. In such a case, irrespective of the general legal issues described below, it would be a breach of the tender conditions for one of GCAO's members to disclose its bid price to the GCAO, which could lead to its disqualification from the bidding process. It is therefore important that GCAO members approach this issue on a "tender by tender" basis, to avoid any risk of inadvertently breaching their tender conditions.²

Competition Act Concerns

a) Publication of bids before contract award – bid-rigging

With respect to publication of the bid prices before a final award decision has been made, there are also relevant competition law concerns to consider.

Generally speaking, the Competition Act is concerned with the conduct of competitors. In this case, the GCAO does not compete for sale of goods and services with any of its members. That being said, the Competition Bureau has warned trade associations that they should not act as a conduit for information exchanges between members that would otherwise be illegal under the Competition Act. In such a case, the trade association will be prosecuted as if it was a co-conspirator.³

Bid-rigging is essentially a form of cartel activity which targets a given tender process with the intention of affecting normal competition in relation to that tender.

¹ See generally

² See, e.g. [Re St. Joseph's Health Care London and London Health Sciences Centre](#), 2013 CarswellOnt 19482 where pricing was held to be confidential based on the tender documentation; cf. [Re Hamilton](#), 2002 CarswellOnt 10214 in which the opposite conclusion was reached, relying on the fact that all bidders were informed of the city's policy of disclosing all bid amounts to unsuccessful bidders.

³ See Competition Bureau [publication](#) "Trade Associations and the Competition Act"

Tender results (continued)

Procurement Law Issues

...more importantly, in the event that the tender was cancelled, and its members lost a subsequent re-tender, GCAO members could prejudice their own competitiveness on any subsequent re-tender as other bidders would have the advantage of knowing their prices before bidding. The GCAO might thereby open itself up to a complaint by one of its members that the publication of earlier bid pricing prevented that member from being competitive in the subsequent re-tender. To avoid this risk, care would need to be taken to draw members' attention to the risk of prejudice for any subsequent re-tender that early disclosure of pricing would involve, and to collect members' informed consent to the disclosure before publishing.

Summary of Conclusions

Based on our analysis of procurement, privacy and competition law, this practice would expose GCAO to significant legal risk. The publication of prices **before** the owner has made a contract award decision leads to significant risk that the conduct might qualify as bid-rigging under the Competition Act and would negatively affect GCAO members' ability to bid successfully in any subsequent re-tender should that particular tender process be cancelled. Even if the GCAO only collects and publishes price information **after** a contract has been awarded in a given tender process, the publication by an association of any confidential bidding information collected from its members would still expose the GCAO and its members of potential criminal liability under the *Competition Act* if it could be shown that the publication acted as a type of price signalling in relation to future solicitation processes of the same type.

In order to avoid legal risk, GCAO should press the owner/sponsor to make public information quicker. Depending on what type of owner/sponsor is involved, there may be provincial legislation available to help push for speedier publication

GCAO position

Following Norton Rose Fullbright's preliminary expertise the board is now sourcing it's members for opinions and advice with regards to publishing post tender results and if we should continue exploring different options considering the hurdles that were placed in our path.

2019 COCKTAIL PARTY – INTEGRITY AND ETHICS AWARD WINNER

This year's annual cocktail party was attended by over 150 guests, members, and our 2019 Integrity and Ethics award winner Dave Burley of Defense Construction Canada.

This year the event took place at the historic Rideau Club. This location provided for a unique experience which we were able to utilize with the assistance from our life time member Don Chutter.

We had an excellent turnout and extend our thanks to all those that were present for a great evening of camaraderie and networking.



1st VP Bruce Norman, Dave Burley accepting the award and President Yves Beaudoin



Presidential Address



Our distinguished Guests

GCAO BOARD MEMBERS & MANDATE REPORTS



(L to R) Russell Grass, Gaétan Lacroix, Yves Beaudoin, Bruce Norman, Shawn Berube, Alessandro Guarna, (Joshua Laginski and Stephanie Brunet not in the picture)

President

Yves Beaudoin

- Integrity & Ethics Award

1st Vice-President

Bruce Norman

- Tendering Practices
- OCA Standard Practices
- OGCA Liaison

2nd Vice-

President/Secretary

Shawn Berube

- Secretary

Past-President

Russell Grass

- Membership/Nominating Committee

Director

Joshua Laginski

- GCAC Liaison
- Entertainment

Treasurer

Alessandro Guarna

- Treasurer

Director

Gaétan Lacroix

- Communications
- Newsletter

Director

Stéphanie Brunet

- Web Site

Board of Directors New members

The GCAO is pleased to welcome its new directors Stephanie Brunet and Gaétan Lacroix to the board.

Stephanie is one of the proud owners of Michanie construction as well as director of Human Resources. She has worked in the family business for over 15 years and counting. She also manages their very busy service department from job showings to invoicing.

She started as a labour working for her father, the founder and president of Michanie, and slowly worked her way up the ladder to now being one of the owners of the company along side her two sisters.

She mentions “I have joined the board in order to further develop my knowledge on different topics as well as challenges and opportunities we face in the construction industry here in Ottawa. I am anxious and ready to listen from other board members of the GCAO on their quest and problems they face and try to get them addressed and resolved.”

Gaétan graduated from college La Cité in civil engineering 1993. He worked for a few Ottawa-Gatineau general contractors over the years naming PCL, Kanata Research Park, RGauvreau Construction (Qc) doing superintendent duties, estimating and project management. Gold Seal Certified in project management in 2008, he is now chief estimator with FTrottier Construction and teaches estimating, project management and Autodesk Revit at La Cité.

In his letter of presentation, he mentioned “I am a hard-working team person and have defended the General contractor’s position on many occasions. I will be pulling in the same direction as our members. Sharing my expertise with my peers from the industry is something I cherish and will look forward to when meeting”.

www.gcaottawa.com

Our new website is up and running. Send us your project pics to help populate the site with local content or better yet, send along suggestions and ideas of what you want to see on the site. Your GCAO wants to know!