



**Bondfield**  
CONSTRUCTION COMPANY LIMITED  
www.bondfield.com

PW 27.3.1

December 13, 2013

Delivered via email: mtoft@toronto.ca  
and Fax: 416-392-2980

Toronto City Council  
City of Toronto, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Marilyn Toft - City Clerk's Office**

RECEIVED  
CITY CLERK'S OFFICE  
SECRETARIAT 12 W  
2013 DEC 13 PM 4 16

Dear Sirs/Madams,

**Re: Further Submissions of Bondfield Construction Company regarding  
Request for Tender No. 209-2013, Contract No. 13FS-15WP (the "RFP")**

I am General Counsel for Bondfield Construction Company Limited ("Bondfield"), one of the bidders in the above-noted call. I attended the Public Works and Infrastructure Committee (the "Committee") November 20, 2013 meeting and participated in the deputation made by Bondfield before the Committee. This letter is a follow-up to issues raised and discussed at that meeting, prior to the Committee going in camera, and further submissions of Bondfield to be considered by City Council.

As Bondfield submitted, Addendum No. 2 of the RFP, released August 16, 2013, mandated that bidders possess a minimum level of experience and qualifications (the "Minimum Mandatory Requirements"). The bidder, Walsh Construction Canada Ltd. ("Walsh Canada"), did not meet the Minimum Mandatory Requirements, which are as follows:

To be considered for award, Bidders must satisfy the following mandatory requirements. Contractor must have completed (including testing and commissioning), and must have achieved Substantial Performance as defined in the Construction Lien Act or an applicable US legislation for at least two (2) projects in North America in the past 10 years as a General Contractor involving construction of new or upgraded facilities in the municipal wastewater or water treatment plants, each having a minimum dollar value of \$ 50,000,000.00 Canadian Dollars each.

Walsh Canada is an Ontario Corporation, incorporated on January 14, 2009. It is apparently a subsidiary or related entity of Walsh Construction Company, an Illinois corporation incorporated in 1949 ("Walsh USA"). The corporate profile for Walsh Canada indicates that its registered head office is in Chicago, Illinois, and the President and Secretary are both from Chicago, as is the Agent for the company. The actual number of Canadian employees from Walsh Canada who would work on the project if Walsh Canada is awarded the contract is unknown. And, while it is possible that a company related to Walsh USA has achieved the Minimum Mandatory Requirements, Walsh Canada, the actual Bidder, has not.

Bondfield submits that Walsh Canada should not be permitted to rely on another corporation under the global umbrella of Walsh companies to meet the Minimum Mandatory Requirements. To do so would be patently unfair to Ontario companies who meet the Minimum Mandatory Requirements and put these companies at a disadvantage.

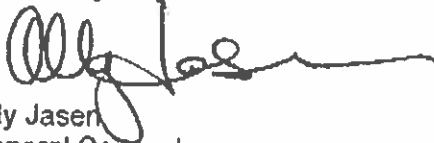
If, in order to meet the Minimum Mandatory Requirements, a practice of cherry picking experience from companies related to the actual bidder is permitted, or continued to be promoted, then in order to level the playing field it would only be fair to permit any bidder who does not fall under an umbrella of global companies to engage third parties it requires to help the bidder meet the Minimum Mandatory Requirements. However, in such a case would the actual bidder meet the Minimum Mandatory Requirements? Bondfield submits that the actual bidder would not. Therefore, in reality, who would the City actually be awarding the contract to?

The call to tender clearly specifies a minimum level of expertise and experience on the part of the bidder. Canadian courts have long recognized and implied a term in tendering contracts that only compliant bids will be accepted. Accordingly, Walsh Canada's bid is non compliant and should be disqualified.

Rather than permit Walsh Canada to rely upon the experience of foreign related entities, the contract should be awarded to a company, like Bondfield, that itself meets the Minimum Mandatory Requirements. If Walsh Canada's bid is not rejected and the contract is awarded to Walsh Canada, Bondfield, the next lowest and compliant bidder, will be forced to seriously consider its legal options, including a mandatory injunction and damages.

We trust that in making its decision the City Council will take into consideration the need to promote the integrity of the tendering process.

Yours very truly,



Olly Jasen  
General Counsel

c. John Aquino