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May 26, 2015

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City of Toronto
Purchasing and Materials Management Division
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Att: M. Pacholok

VIA EMAIL: rblake3@toronto.ca
City of Toronto
Legal Services
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Toronto, Ont.
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Att: Rod Blake

Dear Sir/Madam:

Re: Our Client: Bevcon Construction & Paving Ltd. ("Bevcon")
Owner: City of Toronto (the "City")
Issues: RFQs 6032-15-0096/6032-15-0095

Further to correspondence of last week, below is a summary of our concerns/submissions which Bevcon intends to raise at the Committee Meeting:

1. The RFQ sets out Bid terms which are mandatory and/or discretionary. In particular, the mandatory items are set out in paragraph 6.4 of the RFQ whereas paragraph 12 of Appendix "A" to the RFQ identifies areas of discretion while paragraph 14 of Appendix "A" allows the City to investigate and assess the Bids. Bevcon has submitted the mandatory items; namely the required Bonds, the acknowledgement of addenda, statutory declarations, bid forms, etc... All were duly completed. The Bevcon Bid is compliant and a declaration to the contrary is in contravention of the RFQ and in breach of the implied obligation to award the Contract to the lowest compliant bidder;
2. The taxpayers of the City stand to lose over \$1 million dollars, over the life of the contract, not including the contract escalation clause, which is calculated on a year over year basis, by not awarding this contract to Bevcon and awarding the Contract to the next bidder and will also be liable on a damages action as we intend to seek a declaration from the Court that the Bevcon Bid was compliant, that the City is in breach and that Bevcon sustained damages estimated to be \$1 million dollars over the 7 year term;
3. Bevcon is more that qualified to complete this work as they previously held the same contract for the last 7 years , receiving ratings from good to excellent from the City. In fact, we are aware that the City has confirmed with the proper persons that the performance of Bevcon has been good yet the City has determined that is not enough. The City's alleged reliance for the disqualification that they received insufficient references, when Bevcon has been the party performing the very work in question for the last 7 years, is puzzling to say the least. Bevcon has completed millions of dollars of work per year for many years for the City and, even if, Bevcon's Bid should not have relied upon 4 Purchase Orders as separate references, which is not conceded, we would suggest the omission is at most a discretionary item and not and items which mandates or even permits disqualification of the Bids. As the City is fully aware, Bevcon has full capabilities of completing this contract as tendered;
4. There is no conflict or collusion between Bevcon and Aquagran Landscaping. They operate separately. Paragraph 8 of Appendix "A" sets

out the anti-collusion rules as they apply to “affiliated” corporations. We have established that Bevcon and Aquagran, although related, are not affiliated and therefore not in breach of the anti-collusion rules. There is no conflict as defined in paragraph 10 of Appendix “A” and we have invited you to analyze the Bids to satisfy yourself. To suggest that related parties cannot submit competing bids is to distort the defined term in the RFQ of being “affiliated” and is in breach of your rules;

5. We are equally troubled as we are aware, and we know the City is aware, that other successful Bidders are also related. In fact, we see that the City has awarded Contract(s) to 614128 Ontario Limited c.o/b. as Trisan Construction (“Trisan”) notwithstanding the fact that Trisan is a related entity to another Bidder and Trisan has been barred from even submitting Bids pursuant to a **Temporary Suspension of Trisan Construction whereby** City Council on June 10, 11, 12 and 13, 2014, adopted the Ban (PW31.18); and

6. Bevcon has been declared non-conformant on all 15 bids submitted. It is important to note that the declaration of disqualification be reversed on all 15 Bids submitted.

Yours very truly,

DRUDI ALEXIOU KUCHAR LLP

Per:

Marco Drudi

MD/em