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May 20, 2015

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Att: Rob 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

We have your letter dated May 14th, 2015 addressed to our client.

Needless to say, we are disappointed in the response and the apparent explanation in arriving at what appears to be the reasons for the decision.

Your first letter seemed to suggest that the bid of Bevcon (the "Bid") was under consideration due to a perception of a breach of the collusion provision in your tendering rules. We responded to your enquiry on the level of association between the two entities and I would suggest that we established that in order for collusion to apply, the two bidders would need to be "affiliated". We have established that Bevcon and Aquagran, although related, are not affiliated.

Your recent letter now justifies the disqualification based upon:

1. Lack of References; and
2. Alleged Conflict of Interest.

We will deal with each separately below:

The suggestion that the bid of Bevcon has been disqualified due to lack of references is, with respect, bordering upon being absurd. Bevcon has been performing the work in question, the very work which is the subject of the Bid, for the past seven years earning nothing but praise and commendations from the Transportation department of the City. Each year, the City would issue a separate Purchase Order for the work to be performed; hence the reference to your own departments for the last four years was provided. We assume that you did not speak to any of the managers or former managers that would have supervised and witnessed Bevcon's work ethic, competence or reliability. We would strongly recommend you speak with N. Moreno, B.Provo and P. Grande, all with the City. Quite frankly, there can be no better reference than the work performed by Bevcon for the City and the attempt to disqualify Bevcon by exercising the discretion afforded to the City, which discretion must be exercised in good faith and not simply to justify a decision already made, will render the City liable for damages.

Your suggested reliance upon the "conflict of interest" clause is unclear and appears to confuse and merge the collusion clause with the conflict of interest provisions both of which are aimed at ensuring the City is provided with competitive bids which are not a derivative of deceptive practices or "bid rigging" and both of which have as their objective the increase or prices paid by the City. You have quoted:

2) the definition of "Conflict of Interest" as set out in the RFQ includes "(iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFQ process and render that process non-compliant and unfair"and further section 10 of Appendix A, requires Bidders to disclose any potential conflict of interest and if such a conflict of interest exists the City may refuse to consider the Quotation. In this case, the related nature of your business with Aquagran, as only confirmed by your lawyer's response to the Clarification after the close of the call, would put you in a potential conflict to act as a reference for another bidder in a competitive procurement process.

The City RFQ's do not prohibit or restrict bids from related entities. There is no real of apparent conflict of interest whereby anyone from the City was involved or benefited from the Bid of Bevcon. To suggest that paragraph 23 of the RFQ will be stretched to such a length to cover a scenario where a bidder provides a reference for another bidder, where there is a relationship between them, and in most cases there would be, would be to render the interpretation of the term so broad so as to be unavoidable and bring your RFQ process into ridicule. Once again, the conflict of interest clause is included in the RFQ by the City to protect the City from unscrupulous bidders who surreptitiously deal with agents of the City so as to gain an unfair advantage over other bidders to the detriment of the City.

Your suggestion that "*The acknowledged relationship of the Bidders after the call closed (i.e. after Aquacon listed Bevcon for the purpose of an independent reference), also suggests previous communication between Bevcon and Aquagran about the contents of the Quotation*" is once again stated to justify a decision. It appears that you are now attempting to change the

definition of "affiliated" or attempting to replace the term "affiliated" with "related". This retroactive application to justify disqualification is not appropriate. We are confident that an independent analysis of the Bid of Bevcon will be viewed as competitive, fair and legitimate and free from collusion and/or conflict.

We reiterate that if Bevcon is denied the Contract based upon unfounded allegations which appear to have evolved, Bevcon will seek a declaration that the City has breached the RFQ, has acted in bad faith and is liable for damages which will exceed $1.5 Million dollars. Bevcon is the lowest compliant bidder and your apprehension of collusion is unfounded.

I understand there were 15 bidders within a lottery system. How could there be any unfairness in the Bid and the 2 bids were submitted by the 2 bidders? Why would the City disqualify the Bevcon bid which, as a result, would significantly increase the costs to the City? How can the City consider paying the next bidder approximately $1.5 million dollars over the next 7 years and exposing itself to a significant damages claim to Bevcon? As stated above, the City has justified the disqualification based upon an exercise of discretion; not as a result of actual non-compliance with the RFQ's. We would suggest that, pursuant to the legal principles regarding tendering, Contract A was formed once Bevcon submitted the lowest compliant Bid and the City cannot rely upon its discretion arbitrarily or without proper grounds.

As my earlier letter was not responded to by the City's legal department, this letter will be sent directly to same. We welcome a without prejudice meeting so that we may discuss this matter openly and quell any genuine concerns. We would prefer to have an independent mediator attend the meeting but are prepared to meet with the parties and their counsel without one. Given the deadline of May 28th, 2015, the meeting must obviously occur before then.

Yours very truly,

DRUDI ALEXIOU KUCHAR LLP

Per:

Marco Drudi

MD/em