



**December 2, 2021**

**Infrastructure and Environment Committee**

**Re: Award of Negotiated Request for Proposals to Various Suppliers for the Provision of Winter Maintenance Services**

Dear Chair, Committee Members and Councillors,

Hello and thank you for your time today.

My name is Jim Hurst. I am the President of Steed and Evans Limited. I am also a past President of the Ontario Road Builders Association.

I am speaking here today to bring to your attention of our grave concerns over the proposed Non-Competitive Award of a Winter Maintenance Contract for Area TOA 2-5 of nRFP Ariba Doc No. Doc3136860258.

The recommendation to the City to award a 7 year-long, \$147 Million Dollar project to a contractor that did not tender for the work and with the lack of a competitive tender process is not the way the City should handle their procurement.

To demonstrate our concerns please review the timeline of events below:

1. On September 28, 2021, Steed and Evans Limited submitted a bid for this nRFP for Area TOA 2-5.

2. Steed and Evans successfully passed the Bid, the Financial and the Technical Proposal Submissions of the nRFP.
3. On November 5, 2021 , Steed and Evans received a City letter stating that our price was a significant variance from their budget of \$45 Million and that “there is no viable option” to negotiate an “acceptable financial outcome for the City”. – see letter attached marked Appendix 1.
4. Steed and Evans is the only compliant bidder for Area TOA 2-5.
5. On November 11, 2021, Steed and Evans wrote to the City to reconsider entering into the negotiation step of the nRFP. – see letter attached marked Appendix 2.
6. On November 15, 2021, the City denied Steed and Evans’ request to negotiate. – see letter attached marked Appendix 3.
7. On November 23, 2021, the City’s General Manager and Chief Procurement Officer wrote a recommendation to award the contract area to a contractor who did not submit a bid in this area for the sum of \$147 Million - \$102 Million over the City’s budget. This was carried out in a non-competitive format and finalized by November 10<sup>th</sup>.

Fair, open and transparent tendering practices should be the backbone of all public sector procurement. I ask that you, the Committee Members, consider the following points when reviewing the Recommendation at hand:

1. Steed and Evans is a compliant bidder and the submitted price is not grounds for not moving to the negotiation stage of the nRFP.
2. The proposed non-competitive award does not meet the requirements of the City's purchasing code for non-competitive solicitations.
3. Steed and Evans has been a trusted, quality supplier of winter maintenance services for the City, continuously for over 50 years. All of our contracts were won in a competitive , low bid format.
4. In Steed and Evans 68 years of business, we have never seen a non-competitive award of a Contract from the Public sector.
5. In our present Contract with the City of Toronto at Depot 5 in Etobicoke, if there is additional work to do in the yard, the City solicits 3 competitive quotes. The value of the work can as small as \$10,000. This is fair and open. Even this small amount is not granted to Steed and Evans in a non-competitive way.

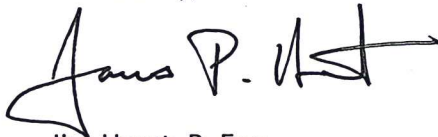
6. The City's recommended contractor had the benefit of previous negotiations with the City for other areas of this nRFP. This is unfair as Steed and Evans, the only compliant bidder, was not given this advantage to learn what could be negotiated.
7. The City's list of "Projected Benefits" in the Recommendation includes negotiated terms that affect the recommended contractor's price. These benefits were negotiated – a luxury that was never provided to Steed and Evans, the only compliant bidder.

There is more background information in your package, – marked as Appendix 4.

In conclusion, I would like to state that Steed and Evans would expect Canada's largest City to follow fair, open and transparent procurement. The City's proposal to offer a contract with a non-competitive solicitation when a compliant bid has been received is not fair. Negotiations should continue with the compliant bidder.

I look forward to answering your questions.

Yours truly,



Jim Hurst, P. Eng

President, Steed and Evans Limited



# APPENDIX I



Michael Pacholok,  
Chief Procurement Officer

Purchasing and Materials Management Division  
City Hall, 18<sup>th</sup> Floor, West Tower  
100 Queen Street West  
Toronto, Ontario M5H 2N2

Mohamed El Daour  
Manager  
Category Management and  
Strategic Sourcing

November 5, 2021

Sent Via Email (1 Page): rdavis@steedandevans.ca

Steed and Evans Limited  
3000 Ament Line  
St. Jacobs, ON. N0B 2N0

Re: **Ariba Doc. No. Doc3136860258, Negotiation Request for Proposals for Winter Maintenance Services  
Contract Area TOA2-5**

Dear Mr. Davis,

Thank you for your response to the above mentioned Negotiated Request for Proposal (nRFP).

As you are aware, there are six (6) contract areas (to be awarded and established separately) associated with this nRFP, of which Steed and Evans Ltd has submitted a proposal for Contract Area **TOA 2-5**. Upon review of your pricing submission for this contract area, the City has determined that your total bid cost of **\$26,448,690 is approximately \$20 Million above** the City's estimated budget. This significant variance has led to the conclusion that there is no viable option for Stage 6 - Negotiations that would lead to an acceptable financial outcome for the City.

Based on the above mentioned details; the City is formally cancelling **Contract Area TOA 2-5** of nRFP Doc3136860258 and instead will be seeking alternative sourcing options for the provision of these services.

## Debriefing Invitation

All firms are entitled to a debriefing (formal or informal), upon written request within sixty (60) calendar days following the date of the contract award notification, to obtain feedback on why their proposal was not successful.

## Pre or Post Bid Award Dispute

If you would like to seek a resolution of any pre or post bid award dispute, you can do so by contacting the Chief Purchasing Officer by email, [mike.pacholok@toronto.ca](mailto:mike.pacholok@toronto.ca). Pursuant to the Pre Award and Post Award Dispute Procedure; a Pre-Award Dispute email should be sent to the CPO as soon as possible from the time when the basis for the dispute is known to the Supplier. For more information on this process you can visit our website at: <https://www.toronto.ca/wp-content/uploads/2017/08/95c3-Pre-Award-and-Post-Award-Dispute-Procedures.pdf>

In closing, we again thank you for your interest in this nRFP, and invite you to submit Proposals for any future initiatives the City of Toronto may advertise.

Should you have any questions, please contact Nicole Di Petta by email at [nicole.dipetta@toronto.ca](mailto:nicole.dipetta@toronto.ca).

Yours truly,

*Mohamed El Daour*

Mohamed El Daour  
Manager, Category Management and Strategic Sourcing

**STEED AND EVANS**

November 11, 2021

City of Toronto  
Purchasing and Materials Management Division  
City Hall, 18<sup>th</sup> Floor, West Tower  
101 Queen Street West  
Toronto, Ontario  
M5H 2N2

Attention: Nicole Di Petta  
Sourcing Specialist

Re: Ariba Doc. No. Doc3136860258, Contract Area TOA2-5  
Request to Proceed to Stage 6

Dear Nicole;

Steed and Evans Limited is in receipt of your letter dated November 5, 2021 opting out of proceeding to Stage 6 of the nRFP.

Having worked on and submitted two nRFPs for the same scope of winter maintenance and same Contract Area since May of this year, we believe not entering into Stage 6 is a lost opportunity to explore contract options. As time is of essence to have winter maintenance services in place for October 2022 it seems that the previous 7 months of efforts by the City and Steed and Evans Limited should not go to waste.

We are available to meet in short order should the City wish to reconsider their decision.

Yours truly,  
STEED AND EVANS LIMITED

  
Randy Davis  
Manager, Estimating



Michael Pacholok,  
Chief Procurement Officer

Purchasing and Materials Management Division  
City Hall, 18<sup>th</sup> Floor, West Tower  
100 Queen Street West  
Toronto, Ontario M5H 2N2

Mohamed El Daour  
Manager  
Category Management and  
Strategic Sourcing

November 15, 2021

Sent Via Email (1 Page): rdavis@steedandevans.ca

Steed and Evans Limited  
3000 Ament Line  
St. Jacobs, ON. N0B 2N0

Re: Ariba Doc. No. Doc3136860258  
Negotiation Request for Proposals for Winter Maintenance  
Services (Contract Area TOA2-5)

Good Afternoon Mr. Davis,

We are in receipt of your letter dated November 11<sup>th</sup>, 2021 in regards to the decision to not move forward with to Stage 6 – Negotiations for Contract Area 2-5 of nRFP Doc3136860258.

The City appreciates the time and effort you have put forth in submitting a proposal for the above mentioned Negotiated Request for Proposal. We have thoroughly reviewed your proposal in detail and as mentioned your total bid cost of **\$26,448,690 is approximately \$20 Million above** the City's estimated budget. Although we understand there may be options to reduce the cost and explore contract options through negotiations, the significant variance between your total bid cost and the City's estimated budget has led to the conclusion that there is no viable option for Stage 6 - Negotiations that would lead to an acceptable financial outcome for the City.

At this time the City is seeking alternative sourcing options for the provision of these services.

In closing, we again thank you for your interest in this nRFP, and invite you to submit Proposals for any future initiatives the City of Toronto may advertise.

Should you have any questions, please contact Nicole Di Petta by email at nicole.dipetta@toronto.ca.

Yours truly,

*Mohamed El Daour*

Mohamed El Daour  
Manager, Category Management and Strategic Sourcing



## Steed and Evans Limited

December 2, 2021

### 3 Main Actions by City of Toronto that do not meet the provisions of nRFP Doc3136860258 or Toronto Municipal Code Chapter 195, Purchasing

1. **Contract Area TOA2-5 was cancelled instead of Steed and Evans proceeding to negotiations as top-ranked supplier as prescribed in nRFP documents:**
  - November 23 report to IE Committee: City of Toronto recommending award of 11 contract areas.
    - Report says Steed and Evans (SE) did not meet the requirements set out in nRFP for Stage 4 Pricing Proposal – this contradicts with letter SE received Nov 5. The letter SE received on November 5 indicates the City does not intend on negotiating because SE's price of approximately \$26 million /yr is \$20 million over the City's estimate. Nowhere in Stage 4 Pricing Proposal does it state that a Supplier's price must meet an undisclosed budget number. The price is to be scored against the lowest price in the Contract Area amongst all bids that passed the technical portion. In this Contract Area, as well as other contract areas that are recommended for award, our price was the only one that made it to stage 4 and therefore had no other prices to compare to. This would leave us as top ranked supplier for the Area and would proceed to negotiations as per nRFP. There are no provisions within the nRFP to dismiss a contractor at this stage – they must proceed to negotiations. All preceding stages up to this point had a pass/fail or minimum score required to continue.
  - Multiple contract Areas have been recommended for award in both nRFP's that only had 1 price to evaluate. In the case of Contract Area TOA 2-5, SE was the only Supplier to pass the Technical Proposal Evaluation and advance to Stage 4 Pricing Proposal Evaluation; yet did not receive a score. Based on the scoring formula outlined in the nRFP documents, if a Supplier were to have the only compliant bid to succeed into Stage 4 Pricing Proposal Evaluation, then that Supplier's proposal would receive the highest possible score



- The overall weighting of nRFP scoring is 70% Technical Proposal Evaluation and 30% Pricing Proposal Evaluation. There is a minimum score to attain to pass the technical – there is however, no minimum score required on pricing evaluation.
  - In many parts of the nRFP the City indicates that level of service and quality are the 2 biggest drivers in their selection of successful suppliers. This is clearly evident in the 70/30 weighting of scoring technical/price components.
  - How did SE (and many other reputable contractors) fail the technical report section in the 1st nRFP? We did very little to enhance technical submission for the 2nd nRFP and passed without any requests for clarification. The material that we provided to enhance our technical report could have been provided through the 3 day rectification period – post bid close (as per contract). There was no need to fail us based on the little amount that we did to pass the 2nd nRFP. Steed and Evans has never failed a technical proposal submission for winter maintenance services and have been completing them for various municipal and provincial agencies since 1998.
  - The contractors with the least winter maintenance experience all passed the technical portion on both nRFP's. The majority of the most experienced contractors that perform winter maintenance in all parts of Ontario with excellent track records failed???
  - The price on our first nRFP was approx. \$25 million. Price increased to \$26 million because of increase in price of trucks, equipment, materials, and fuel as well as widespread global supply chain shortages that amplified in the second half of 2021.
- 2. Steed and Evans received a letter from City of Toronto indicating the price submitted is \$20 million/yr over estimate and then City proceeds to recommend for award through non-competitive solicitation to 2868415 Ontario Inc at a price that is still markedly over the estimate disclosed to SE, and at a price that is comparable to the price submitted by SE.**
- Where does City come up with estimate of \$6.5 million/year for Contract Area 2-5? On page 5 of 18 of November 23 report, the City indicates that the annual cost of contracts recommended for award totaling \$142 million is a \$40 million savings vs their pre-solicitation estimate. If the

overall estimate was \$182 million, how did they conclude that Area TOA 2-5 is estimated at \$6.5 million/yr when it is the 3<sup>rd</sup> largest area in scope out of 11 contract areas?

- November 23 report recommends award of Area 2-1 and Area 2-5 through non-competitive procurement at an annual price of \$37.8 million. With Area 2-5 being approximately 20% larger than Area 2-1 – we have estimated that the annual price for Area 2-5 that is being recommended for award is approximately \$21 million/year (after negotiations that included as noted in report; adjustment of proposed equipment levels, reduction of risk, reduced cost to City). SE did not have the opportunity to negotiate these better terms and conditions of contract that would have effectively lowered the overall price.
- SE replied to the City's November 5 letter on November 11 indicating that we would appreciate the opportunity to negotiate given the amount of time spent preparing 2 competitive proposals and the fact that we have been performing winter maintenance contracts for the City of Toronto for 50 years. The City replied on November 15 indicating that they recognize negotiations could provide a lower price, but reiterated that our price of approx. \$26 million is still \$20 million over their estimate and the 2 sides are too far apart to commence negotiations.
- If our price was \$21 million/yr, would we have received the same letter of dismissal because our price would be \$15 million over estimate? Because \$21 million/yr is the approximate price that 2868415 Ontario Inc is being recommended for award after negotiations. (through non-competitive solicitation).
- What concessions were made with 2868415 Ontario during negotiations that differ from the terms and conditions in nRFP? Age of trucks, non-performance penalties, etc...? City applies huge financial penalties for non-performance. One single infraction could cost between \$150 - \$200k.

**3. Non-competitive procurement process to award 2 additional areas to 2868415 Ontario Inc:**

- After nRFP submission on Sept 28, SE received request for clarification to our Stage 2 Financial Viability Submission on October 27. A response was provided on October 29. On November 5, we were notified that our Area TOA 2-5 would be cancelled because annual price is \$20 million over City's estimate. The City solicited and received a proposal and negotiated and finalized a contract with 2868415 Ontario Inc over the course of Friday, November 5 and Wednesday, November 10. What took SE and other contractors weeks to prepare, with multiple requests for

extensions because of complexity, took 2868415 Ontario Inc a mere few days to prepare a proposal and negotiate a contract. It is not possible to prepare an accurate proposal of this nature and secure equipment in such a short period of time.

- The City says they solicited a proposal from 2868415 Ontario Inc because they recognized through the previous solicitations that they had the operational capacity to handle another \$37.8 million of annual winter contracts? It seems farfetched that the previous proposals would give any sort of indication of that nature. If they had the operational capacity and the appetite, then why not bid all 6 areas at the time of 2<sup>nd</sup> nRFP?
- The City's decision to use a non-competitive procurement process to solicit and recommend for award Contract Area TOA 2-5 does not meet the requirements for use of non-competitive procurement published in Article 7 of Toronto Municipal Code Chapter 195, Purchasing.
- Steed and Evans Limited has 50 years of experience performing winter maintenance contracts in the City of Toronto. After passing the Technical Proposal evaluation stage, we were notified that our annual price was \$20 million over the City's estimate for Area TOA 2-5. Within 5 calendar days of receiving this notice, the City solicited a proposal and negotiated a contract with 2868415 Ontario Inc at an annual price that is approximately \$15 million over the annual estimate that was disclosed to Steed and Evans. As per the nRFP, Steed and Evans was the top ranked Supplier for Area TOA 2-5 and should have advanced to the negotiation stage.