Tendering and RFP
Pitfalls to Avoid

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18th National Composting Conference
September 17-19, 2008
Château Mont-Sainte-Anne, Québec
Agenda

• Context of comments
• Overview of procurement models
• RFP law and policy
• Design Build RFPs
Context of comments

- Most of procurement framework is new:
  - Major court decision in 1990s
  - Trade agreements in mid-1990s *
  - Result = law is well ahead of those who work in procurement
- RFP is the right approach for organic waste/solid waste collection projects
- RFP is right for DB projects
- RFP framework is not well understood*
Overview of models (1)

- Procurement Models:
  - Sole Source/Negotiation
  - Request for Proposals (Choosing a Negotiating Partner)
  - Request for Proposals (Term Sheet Attached)
  - Request for Proposals (Contract Attached-Objections Permitted)
  - Request for Proposals (Contract Attached-Objections Not Permitted)
  - Tender
Overview of models (2)

- Sole Source
- RFP (Negotiating Partner)
- RFP (Term Sheet)
- RFP (Contract, Objections Permitted)
- RFP (Contract Attached)
- Tender
RFP Law & Policy (1)

• Contract A:
  • Bidding contract between owner and all compliant bidders
  • Contract applies as of the closing date of the RFP
  • Most Contract A obligations are not mentioned in the RFP
RFP Law & Policy (2)

• Duty of full disclosure in RFP and continuing until closing date:
  • No hidden evaluation criteria*
  • No undisclosed material information
  • No new evaluation criteria after release of RFP
  • Duty to disclose weight of each evaluation criterion set out in RFP
Duty to treat all bidders fairly:

- No potential bidder told of pending RFP
- No separate conversation with one potential bidder*
- No changing scope of work described in RFP after release
- No repairing a bidder’s bid after the closing the submission date*
Design Build RFPs

• Added complexity due to the dynamic nature of the approach
• Incremental risks:
  • Depth of the specifications
  • Failure of transparency
  • Scope change
  • Bid repair
Best Practices

- Understand and control the process and avoid unintended business and legal consequences
- Robust process will help bidders understand the process and will generate greater value
- Will help to avoid disputes
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