

Strategic Opportunities Committee

Communiqué 18

December 21, 2010

Removal of Post Tender Estimate Provision from ORC Consulting Contract

A key objective under Ontario Realty Corporation's (ORC) updated delivery model is to achieve better control over final construction costs of its projects. ORC is focusing on establishing more accurate initial budgets and more effective cost control measures through pre-design, design, construction documents and the bid phases of each project.

ORC is also emphasizing control of cost growth through the construction phase as a means of providing greater cost certainty to its clients and better value to taxpayers.

To help it achieve that objective, ORC implemented provisions in its consulting contract that required the Prime Consultant to prepare a Post Tender Estimate and also set out a penalty provision that might be applied should final construction cost significantly exceed the Post Tender Estimate because of circumstances within the reasonable control of the Prime Consultant. The industry objected to this provision. After continued discussion of the item with the industry through the Strategic Opportunities Committee, ORC has withdrawn the provisions. ORC has committed to the industry that, where this provision is in an existing contract, it will not be "triggered". ORC continues to believe that Prime Consultants can provide valuable support to it in improving cost management and is continuing the dialogue with the industry to determine how best to engage the expertise of the consulting sector in cost management.

Background

In 2009, ORC consulted extensively with the industry through the Strategic Opportunities Committee while developing standard ORC supplementary conditions for OAA Document 600. The industry had recommended that the standard ORC consulting contract be based on that document, just as the construction contract is based on CCDC 2.

ORC determined during those discussions that it would make only one change to the current provisions in GC 3 of Document 600 relating to Construction Budget and Construction Costs. *[The only change made was to extend from three months to six months the period after which the budget is reviewed if the construction procurement phase has not been commenced. This more realistically reflects internal operational procedures at ORC and it is expected that Prime Consultants would take this change into consideration when preparing the estimate of construction cost contemplated in paragraph 3.2.]*

As Document 600 is silent on cost management after the price for the construction contract is decided, ORC added a provision that the Prime Consultant prepare a Post Tender Estimate (defined as its estimate of final construction cost).

ORC believed it would benefit from the experience and expertise of the Prime Consultant and its team, including its knowledge of the building and development of the project, in arriving at a realistic estimate of final construction cost. To emphasize the importance of this Post Tender Estimate, ORC included a provision that could be applied to reduce the Prime Consultant's fee should the final cost exceed 105% of the Prime Consultant's Post Tender Estimate *"except where increases in construction cost were beyond the reasonable control of the Prime Consultant"*, e.g. where cost increases were due to client changes and unforeseeable circumstances.

The three associations representing consultants objected to this provision. A key operating principle of the SOC is that discussion continues on contentious items. Numerous meetings were held related to the Post Tender Estimate provision in the contract.

In May ORC offered to withdraw the Post Tender Estimate provision entirely, pending discussion at a meeting specifically on this issue which was scheduled in late June.

After the meeting, ORC reviewed the matter internally and decided to put the provision back in the ORC supplementary conditions for Document 600.

However, internal discussions continued at ORC and in September, ORC decided not to reinstate the clause. In fact, the clause was never reinstated by ORC after its removal in May, even though a letter had been sent to the OAA saying it would be.

Current Status

ORC has committed to the associations at the SOC that where the penalty clause is in a contract that predates the removal of the clause, the provision will not be 'triggered' by ORC or its Project Management Service Providers (PMSPs).

At present both the requirement for the Prime Consultant to prepare a Post Tender Estimate and the 'penalty' provision attached to it are not part of the ORC consulting contract.

Going Forward

ORC continues to believe that Prime Consultants can deliver value to ORC by supporting it in improving control over construction costs, including during the post-tender construction period.

Discussions are being scheduled with the industry through the SOC with the intention of identifying ways in which the industry can support ORC's objective of achieving better control over construction costs.

END

Ontario Realty Corporation is a crown corporation providing customer-focused real estate services to the Ontario government. ORC manages one of the largest real estate portfolios in Canada.

The Strategic Opportunities Committee (SOC) was originally initiated in 2003 and was re-energized in 2007 at the invitation of ORC President and CEO David Glass to facilitate constructive consultation between ORC and the design and construction industry. Participants in this standing liaison committee now include:

Association of Registered Interior Designers of Ontario
Consulting Engineers of Ontario
Ontario Association of Architects
Ontario General Contractors Association
Representatives of ORC's 3 Project Management Service Providers
 CB Richard Ellis Global Corporate Services
 MHPM Project Managers Inc.
 SNC-Lavalin Operations & Maintenance Inc.
Ontario Realty Corporation

Additional background on the SOC is available by reviewing all previous SOC Communiqués on the ORC website www.ontariorealty.ca - click on "What's New" and "News Archives".

For further information on this Communiqué contact:

Brian Watkinson, Principal
Strategies 4 Impact! Inc.
brian@strategies4impact.com
416.409.7393