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Ontario public-contract language limits bids, hikes prices: Report

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As Ontario attempts to tackle its growing municipal infrastructure deficit, contracting practices need to be addressed to result in an equitable return on project investments, says a procurement expert.

“We need to take care of anything that is discouraging competition. The only way to get prices down is to have people bid more aggressively,” said Kevin McGuinness, procurement expert and co-author of *The Price Implications of Government Contracting Practices in the GTHA (Greater Toronto-Hamilton Area)*. “With the infrastructure deficit, we have to stretch our spending much more thinly headed into the future. We need to start looking at contracting practices if they are justifiable on a cost-benefit basis.”

McGuinness and Stephen Bauld recently were commissioned by the **Residential and Civil Construction Alliance of Ontario** to generate the price implications report. It explored how government and public-sector procurement practices can lead to reduced competition and higher prices, with some telling feedback from contractors themselves. McGuinness shared some of the report’s findings recently at a Canadian Urban Institute event that looked at how to balance private and public-sector economic needs in building a sustainable economy.

The report includes a survey of Ontario contractors active in government construction. An overwhelming majority agreed that one-sided contracts influence their bid prices and reduce their willingness to bid.

Almost 78 per cent of survey respondents agreed that government contract documents, such as tenders and request for proposals, are “more likely to contain a significant number of one-sided contract terms than corresponding documents relating to private owners.” Also, 96 per cent of survey respondents agreed that the inclusion of one-sided terms is a factor in deciding on a bid price. These findings are a concern, concluded the report, because all but one of the 27 contractors indicated that they were doing less government work than they were five years ago.

“How do we compare for major government construction contracts? We are below the international average (for bids on a project) which is up around 20 — in Ontario we get between five and six,” noted McGuinness. “We are bidding into a highly constrained market, which means you are paying significantly above what would be the normal price.”

The effect of specifications in limiting a municipality’s ability to attract competitive bids was starkly illustrated in the report.

The wide-ranging bids received by one city in 2008, for three different contracts, highlighted what happens when understanding project work and the risk associated with it is unclear, said McGuinness.

For one contract, the six bids received ranged from just over \$57,000 to \$272,500, a second contract had a low bid of \$3,460 and topped out at \$277,250 with the third contract ranging from \$3,210 to \$176,650.

“It is a very good bet because of the poorly drafted specifications people were not really sure what they were

bidding to,” said McGuinness. “Sure, you got a lot lower price at \$57,000 but imagine those people underbid the work and can’t do it properly and default — that has consequences.”

Almost 70 per cent of contractors surveyed found that the risks and delays associated with government contracting are best provided for by way of an adjustment to price. Public sector construction projects are generally considered by the construction industry to be more susceptible to delay than private-sector projects, the report found.