



General Contractors Association of Ottawa Newsletter

Building a Greater Ottawa

President's Message Jim Tsarouhas, President

As we settle back into weekly routines with our kids back at school, activities and sports ramping up, I must admit that I was pleasantly surprised with the volume of work that was issued for tender this past spring and summer. In speaking with member firms it looks like the majority are quite busy with their current work load; the sense of optimism and having fun again is in sharp contrast to what it was one year ago.

We held our annual Golf tournament and SAGM at Kanata Lakes in late June. The event was very well attended with 60 golfers enjoying camaraderie and a beautiful day on the golf course. A special thank you to GCAO Association Coordinator Alison Hogan and Entertainment Committee Chairs - David Pimentel and Tim Pruner for organizing.



President's Message Jim Tsarouhas, President (Continued)

A few tendering practices issues were brought to our attention regarding requests for simplification of tender forms and supplementary tender information and submittal timelines, increasing allowable O/H & P on changes and one case of a post qualification – 2 envelope tender rearing its ugly head again. We did convince purchasers to simplify their tender and supplementary forms and timelines and we did get an increase on allowable O/H & P with one Schoolboard. We failed, however, to convince a purchaser to eliminate their requirement for post qualification. We are currently in the process of arranging to meet with this group to discuss future procurement practices.

Recent Notable Meetings:

1. **City of Ottawa:** GCAO met with the City to discuss procurement procedures and the VPM implementation. We have circulated a “frequently asked questions guideline” to the membership.
2. **OCA Trade Scope Meeting:** GCAO met with the OCA and WACCA to discuss trade scope guidelines. Three of the major items that were left unaddressed and required additional discussions are as follows:
 - a. Seismic – WACCA wants this excluded from their scope.
 - b. Wood Blocking – WACCA wants this excluded from their scope.
 - c. Hoisting – WACCA wants all hoisting after 2 stories to be provide by the GC.
3. **NCC:** GCAO met with the NCC to discuss the procurement process for the National Holocaust project and the use of post-qualification. The NCC understand our position about post-qualification and stated that they would only use it in extreme circumstances.

As an updated to what we have been dealing with recently, the following is a brief summary of two large road blocks that we keep facing with owners and consultants.

1. **Post-Qualification** – This is becoming very common and owners are justifying it by telling us that they just don't have time to issue a pre-qualification. The GCAO is very much against this practice but have not been able to change owner's minds by letters and meetings alone. We may need to get the membership involved at the tender level to strike real change. The following are the pitfalls of post qualification:
 - a. Bidders spend time and money to put a bid together only to have their bid rejected.
 - b. Leads to bid transparency issues since bids could be rejected at the last minute for an assortment of reasons that the bidder does not have control of.
2. **Project Re-tenders** – Recently, owners have stated that the costs of construction have risen drastically and they are having a hard time understanding why. Due to pre-set budgets, many owners have decided to cancel projects or retender them in hopes to get better pricing. The GCAO has stood beside *CCDC 23 - A Guide to Calling Bids and Awarding Construction Contracts* which sets the guidelines for this process and has a clause that if the project is within 15% of the budget the owner is to try and negotiate with the low bidder. We have seen some owners embrace this guideline and others ignore it completely. We ask the membership to review this guideline if they have not already so that if an issue like this arises during a tender call they can inform the GCAO & the client of the process that is to be taken.

Annual General Meeting – OCA - January 20th, 2016



The 2015 Calendar AGM will be held on January 20th 2016 at 5:00 PM. The GCAO's Annual General Meeting will be held at the OCA Committee Room located at 196 Bronson Ave, Ottawa.

Since the Project Awards are only held every other year, this year we will be introducing a guest speaker. The topic and speaker details are in the works right now and will be finalized shortly. A formal notice will be circulated to the membership with the guest speaker's topics and background.

We hope to see you all out at this event!

GCAO Cocktail Party – Rideau Club – March 24th, 2016



Where: Rideau Club, 99 Bank Street, Ottawa – March 24, 2016 at 5:00 PM

Event Details: The GCAO's biggest event where you get to mingle, renew connections, make new ones and be part of the Association's most popular event featuring media and local leaders from Ottawa's business and municipal communities.

This event also hosts the presentation of the Integrity & Ethics award. **Please note that nominations are now being received by Alison Hogan. (a.hogan@gcaottawa.com)**

GCAO Website - www.gcaottawa.com



Our new website is up and running. Please send us your project pictures to help populate the site with local content. This will give your firm the chance to show case your projects.

On average, the GCAO site received 263 visits per month and 199 of those visits are from within Canada or the United States. This makes our site a fairly busy site and thus we are considering utilizing advertising for Professional Service firms. (Lawyers, Accountants, Insurance Companies and Bonding Agencies) This portion of the website should be online before Christmas.

Also, please send along suggestions and ideas of what you want to see on the site. We want to know!

Construction Lien Act Update

The Construction lien act is up for an overhaul and there are many issues in this update that will affect our membership. Bruce Reynolds is working on the review of the current process and for further information please check out the following website: <http://www.constructionlienactreview.com/>

The following is a quick summary from the website of some of the items that are up for review:



HIGHLIGHTS OF THE ISSUES TO BE CONSIDERED BY THE REVIEW

1. “Holdback and Substantial Performance

- Consider changing the amount of holdback (from the current 10%)
- Consider increasing the number of dates for the release/early release of holdback, for instance on phased projects.
- Consider making the release of holdback mandatory/automatic after expiration of lien rights, unless there has been early release of holdback.
- Consider eliminating the “holdback for finishing work”.
- Consider revising the minimum requirements for substantial performance;
- Consider whether or not to add further specifics to the requirements for a Certificate of Substantial Performance; and
- Consider introducing a new requirement for a mandatory Certificate of Intention to Release Holdback.

2. Preservation, Perfection and Expiry of Liens

- Consider whether the mechanics of preservation and perfection require any changes;;
- Consider clarifying the release of liens and consider if there are any alternatives to release and discharge; and
- Consider the effect of posting security and vacating liens on lien claimants (s. 44 of the Act).

3. Prompt Payment or Timely Payment for Construction Work

- Consider the causes of payment delays and how they can be addressed in the Act or other legislation, including the potential effect of prompt payment provisions on the principle of “freedom of contract”;
- Consider making the release of holdback mandatory/automatic after the expiration of lien rights;
- Consider the potential effects of prompt payment provisions and their alignment with the Act on industry lenders and sureties;
- Consider the applicability and/or adaptability of any prompt payment provisions to different types of contracts; and
- Consider whether “pay-when-paid” and/or “paid-if-paid” clauses should be made unenforceable.

4. Proof of Financing

- Consider introducing access to proof of financing rights for owners, contractors and subcontractors.

5. Trust Provisions

- Review and consider either eliminating or clarifying and strengthening the requirements of the trust provisions in the Act;
- Consider introducing a mandatory holdback trust account or a mandatory project bank account; and

- Consider the effectiveness of the trust provisions, the remedies and the actual chances of recovery they afford creditor contractors, subcontractors and suppliers, including in the context of bankruptcy of a debtor owner, contractor or subcontractor.

6. Interrelationship with Insolvency Legislation

- Consider conflicts between the Act and either the *Bankruptcy and Insolvency Act*, RSC, 1985 (“BIA”), c. B-3 or the CCAA;
- Consider any potential statutory mechanism to regulate stay proceedings in the face of registered liens; and
- Consider Canada Revenue Agency’s super priority

7. Priorities

- Consider whether or not any amendments are necessary to clarify the rights intended to be conferred upon lien claimants and/or mortgagees; and
- Consider whether or not a new obligation should be imposed on mortgagees to expressly identify, as a pre-condition to registration, whether the mortgage is intended to finance the acquisition of the property or construction on the property (or both)

8. Bidder Exclusion Provisions

- Consider regulating bidder exclusion provisions.

9. Alternative Dispute Resolution

- Consider the effectiveness of available procedures and remedies;
- Consider introducing an adjudication mechanism for construction disputes in Ontario;
- Consider providing for mandatory mediation of lien actions;
- Consider providing for an arbitration mechanism for construction disputes in Ontario; and
- Consider requiring Dispute Review Boards for certain types of projects.

10. Surety Bonds and Default Insurance

- Consider requiring labour and material payment bond sureties to promptly pay undisputed amounts;
- Consider the potential for requiring labour and material payment bond payees to complete their subcontracts if in the best interests of the project;
- Consider mandatory labour and material payment bonding of all public projects;
- Consider requirements in respect of the adjusting of bond claims;
- Consider providing for the electronic delivery of surety bonds;
- Consider whether bond claims should be subject to adjudication;
- Consider whether changes to the third party beneficiary rule are appropriate in order to enable payment by owners directly to subcontractors and suppliers; and
- Consider whether the Act requires any revisions in light of the existence of contractor and subcontractor default insurance.”

This information was retrieved from the Construction lien act review (2015) & retrieved on October 23, 2015 from <http://www.constructionlienactreview.com/> , documents-information package July 2015.

Tendering Practices Update

A few tendering practices issues were brought to our attention regarding requests for simplification of tender forms, submittal timelines for supplementary tender information as well as a request for increasing allowable O/H & P on changes.

We did convince purchasers to simplify their tender and supplementary forms and timelines and we did get an increase on allowable O/H & P with OCDSB.

Notable Discussions with regards to tendering practices:

1. Post-Qualification – Riverside South Elementary School

- a. A two part envelope tender reared its ugly head again for The Riverside South School project for CEPEO. After several attempts, we failed to evoke change. CEPEO decided to proceed with the post-qualification process in spite of our attempts to convince them to eliminate it. We are currently in the process of arranging a follow up meeting with this group to discuss future procurement practices.

The Following is the formal response from CEPEO with regards to this matter:

“We confirm receipt of your letter dated August 6th, 2015 regarding the project currently out for tender for the construction of *l’école élémentaire publique de Riverside Sud*.

As a rule, we too prefer to use the practice as promoted by the GCAO which is a pre-qualification process followed by a bid call. This method is efficient and quick, both for the owner and the potential general contractors. This is the approach that we have used exclusively in the past few years for similar projects.

However, as you can appreciate, this can only be done if there is sufficient time to carry this out.

In this particular case, in an effort to manage the project’s expected schedule, we opted to proceed with the two (2) envelope system which in itself is a prequalification and a tender call at the same time. We do understand that it entails more time for the bidding firms as they have to assemble a prequalification package as well as an actual bid submission.

Our expectations for the prequalification portion are clear and a passing grade is easily obtainable for sizeable general contractors. Subsequently, the second set of envelopes from the “passing” general contractors will be opened.

We feel that your comment regarding the serious lack of transparency in the CEPEO’s evaluation criteria is inappropriate. The prequalification criteria is clear, points are defined and are consistent with industry practice. We have not limited the number of potential successful proponents who can make it to phase 2. Also, Phase 2 will be carried out in the presence of successful generals.”

Comments issued by Jim Seguin – Procurement Manager - CEPEO



INFORMATION UPDATES

Seeking New Board Directors:

The GCAO would like to solicit individuals who might be interested in joining the GCAO board for the 2016 calendar year. There are two (2) vacancies available for 2016.

For the boards consideration, interested candidates are asked to email Alison Hogan, GCAO Association Coordinator, a.hogan@gcaottawa.com, a brief one page bio regarding your involvement in your respective firm, qualifications and ultimately your reasoning for wanting to join the board. Successful candidates will be announced at the 2016 AGM.

Director's duties are identified on our websites under the "Resource" tab.

The deadline for submissions will be **January 8th, 2016**.

Seeking Nominations for Integrity & Ethics Award:

The GCAO nomination process for the 2015 Integrity & Ethics Award is well underway. Please forward submittals to Jim Tsarouhas, GCAO President, at jimt@tofcon.com or Alison Hogan, Association Coordinator at a.hogan@gcaottawa.com.

The deadline for nominations has been set for **January 14th, 2016**.

The General Contractors Association of Ottawa created its Integrity and Ethics Award to honour an individual who has demonstrated a consistently high standard of integrity and ethics in dealing with local construction industry participants. There may be one such award presented each year.

Those nominated must be employed in a management capacity for at least 10 years. Nominees must be known to employ a high standard of integrity and ethics in dealings with owners, design consultants, contractors, sub-contractors, suppliers and fellow employees. Nominees may be considered for the Award who are not employed by member firms of the Association – e.g. a consultant, owner, subcontractor etc. Leadership positions in local, provincial or national construction associations will be considered as a positive factor. The Board of Directors may vary these criteria in special circumstances.

To view the nomination form or list of mandatory criteria. Please visit our website under the "Resource" tab.

New Member Notice:

Terrix Construction has joined the GCAO and we are pleased to welcome them. Gary Codogno is the President of Terrix and will be remaining on the Board of Directors as 1st Vice-President.

GCAO BOARD MEMBERS

President

Jim Tsarouhas

T: 613-224-3714

F: 613-224-3630

J.tsarouhas@gcaottawa.com

Past President

Joshua Laginski

T: 613-445-2944

F: 613-445-3652

J.laginski@gcaottawa.com

Director

Russell Grass Jr.

T: 613-723-9686

F: 613-723-8605

R.grass@gcaottawa.com

1st Vice President

Gary Codogno

T: 613-836-1183

F: 613-836-9136

G.codogno@gcaottawa.com

Secretary

Tim Pruner

T: 613-820-5248

F: 613-820-4109

T.pruner@gcaottawa.com

Director

Chris Fournier

T: 613-831-6223

F: 613-831-5528

C.fournier@gcaottawa.com



MANDATES

Tendering Practices

Gary Codogno

Integrity and Ethics Award

Jim Tsarouhas

Non-Refundable Deposits

Chris Fournier

Treasurer

Tim Pruner

Nominating Committee

Joshua Laginski

Newsletters/Communication

Jim Tsarouhas

Entertainment

David Pimentel

Tim Pruner

Membership

Joshua Laginski

BILDCO Ottawa Joint Committee

Jim Tsarouhas - Chair

Gary Codogno

Josh Laginski

Web Site

Russell Grass

Executive Director

Alison Hogan

Projects Awards Program

Jim Tsarouhas

OCA Standard Practices Committee Liaison

Jim Tsarouhas

Gary Codogno