

SEPTEMBER 23 – 24, 2008 • FOUR SEASONS HOTEL • TORONTO, ONTARIO

The Canadian Institute's Conference on

MANAGING RISK AT THE PRE-TENDER STAGES OF YOUR CONSTRUCTION PROJECT

Practical Tools and Solutions for Overcoming Challenges and Avoiding Liability

CONFERENCE CO-CHAIRS:



Glenn Acklerley

Partner
WeirFoulds LLP



L. Brian Swartz

Senior Vice President,
Legal and Commercial
Aecon Group Inc.

Gain valuable, practical information from an outstanding faculty of construction industry professionals and experts on:

- **LEARNING** what bonding and insurance factors should be considered at the pre-tender stage
- **EXPLORING** how to use the pre-qualification process for your construction project to your advantage
- **COMPARING** traditional and electronic bid advertising methods during calls for tenders
- **STRATEGIES** for drafting a comprehensive scope of work
- **BEST PRACTICES** for successful communications between owners and bidders
- **And much more!**

PLUS! Gain additional value by attending the *post-conference workshop* on September 25, 2008:

Putting Together a Comprehensive and Winning Tender Package



See inside for details

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Do you have the right tools to successfully navigate the pre-tender stages of a construction project?

The construction industry is constantly growing and it is crucial to know how to overcome complications from the initial stages of a construction project. Everyone involved in a construction project needs to be aware of the difficulties that can arise at the pre-tender stages. If you are not aware of the steps to take to avoid issues that can arise, your company may become entangled in costly litigation, experience economic loss and/or suffer from project delays.

At The Canadian Institute's **Managing Risk at the Pre-Tender Stages of Your Construction Project** conference you will learn practical strategies to protect your company from litigation and avoid project delays and economic loss. Leading construction industry professionals and experts will share their wide-ranging knowledge on matters of importance to you, including:

- Examining **procurement** challenges that arise at the pre-tender stage

- Best practices for **managing risk** in the early stages of your construction project
- Demystifying **recent case law** concerning owners' obligations and subcontractor issues in the pre-tender stage
- Exploring how to secure projects through the process of **negotiated work**
- Top tips to ensure bidders and owners **communicate successfully** at the pre-tender stages

Plus! Add value to your attendance by participating in our post-conference workshop on "**Putting Together a Comprehensive and Winning Tender Package**".

Don't delay! Spaces are limited. You can register by calling The Canadian Institute toll-free at 1-877-927-7936, faxing the registration form to 1-877-927-1563, or registering online at www.CanadianInstitute.com

SPEAKER FACULTY

Co-Chairs:

Glenn Ackerley
Partner
WeirFoulds LLP

L. Brian Swartz
Senior Vice President, Legal and
Commercial, Aecon Group Inc.

Speakers:

Matthew R. Alter
Partner, Borden Ladner Gervais LLP

Chris Hudson
VP Operations, Aecon Utilities

Lisa Bate
Partner, Bregman + Hamann Architects

Jim Ilkay
President & CEO, Econstruction

Chris Campbell
Senior Buyer, Facility Property
Management & Community Services
City of Mississauga

Marlene Knight
Procurement Manager, City of Mississauga

Chris Davis
Manager, Contract Services
Defence Construction Canada

Darrell Lopushinsky
Senior Litigation Counsel, City of Edmonton

Barbara Ellard
Manager, Generation Procurement
Ontario Power Authority

Kevin McGuinness
Counsel, Ontario Ministry
of the Attorney General

Paul Emanuelli
Counsel, Ontario Ministry
of the Attorney General

Kim McKinney
Executive Vice-President
Toronto Construction Association

Matthew Gazzola
Development Director, Real Estate Division
Manulife Financial

John Mollenbauer
President & CEO
Toronto Construction Association

Sabrina Gherbaz
Partner, Torys LLP

Steven D. Ness
President, Surety Association of Canada

Roger Gillott
Partner, Osler, Hoskin & Harcourt LLP

Paul Sandori
Senior Consultant, Revay & Associates Ltd.

Carlo Greco
Partner, Osler, Hoskin & Harcourt LLP

Rocco M. Sebastiano
Partner, Osler, Hoskin & Harcourt LLP

Brian Hall
CEO, Jones DesLauriers Insurance
Management Inc.

James Trimm
National Director, Project Delivery
SNC-Lavalin ProFac

Judy Wilson
Partner, Blake, Cassels & Graydon LLP

Howard Wise
Partner, Goodmans LLP

WHO SHOULD ATTEND

From the Construction Industry:

Owners/Developers
Senior executives from construction companies
General contractors and subcontractors
Project managers/coordinators
Contract managers, administrators and officers
In-house counsel
Construction consultants

From the Federal, Provincial and Municipal Sectors:

Procurement and purchasing professionals
Project coordinators
Risk managers and officers
Government counsel

Others:

Architects and design consultants
Insurance/Surety bond company representatives
Vendors and in-house counsel for vendors
Construction, municipal and real estate lawyers
Engineers
ADR professionals

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Director Business Development Daniel Gellman at
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or by email at d.gellman@CanadianInstitute.com

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com

8:00 Registration Opens and Coffee Served ☕

9:00 Opening Remarks from the Co-Chairs

Glenn Ackerley

Partner, WeirFoulds LLP

L. Brian Swartz

Senior Vice President, Legal and Commercial
Aecon Group Inc.

9:15 Defining and Understanding Your Project:
Strategies for Scoping

Chris Campbell

Senior Buyer, Facility Property Management
& Community Services, City of Mississauga

Marlene Knight

Procurement Manager, City of Mississauga

The scoping, or initial, stage of a project is a crucial stage in construction. If you are unable to properly define, schedule and understand your construction project, you are setting yourself up for difficulties and potential risks at later stages, including a potential for receiving incomplete bids or bids that are too high or too low. This session will help you identify the issues that you should explore and understand at the initial stages of a construction project.

- Understanding how to properly define and set up a project: questions to ask and answer in the early stages
- Grasping the consequences of overestimating or underestimating your requirements
- What kind of information should tradespeople provide?
- What are the consequences of not fully scoping and defining your project?
- Should purchasing professionals be involved in the early stages of scoping a project?
- Recognizing the differences between new projects and renovations to existing structures
- Top tips for creating a scoping checklist

10:15 Utilizing the Pre-Qualification Process
at the Pre-Tender Stage

Howard Wise

Partner, Goodmans LLP

Jim Ilkay

President & CEO, Econstruction

- When should pre-qualification be used and why?
- Examining the benefits of pre-qualification: securing the right vendors and taking advantage of a shorter timeframe
- Avoiding the legal traps of pre-qualification
- Exploring the drawbacks of pre-qualification: eliminating competition
- What are owners looking for during the pre-qualification process?
 - what documents should be provided?
- How should the pre-qualification process be carried out: strategies for a fair and successful pre-qualification period
- Fairness of process: managing complaints
- Why is it important to establish criteria for pre-qualification?
 - tips for judging all contenders objectively
 - strategies for analyzing prior project experience of vendors: what is prior experience?

- Should references be considered at the pre-qualification stage: what is the benefit?
- Can municipalities and owners exclude a bidder from the pre-qualification process due to outstanding litigation?

11:15 Networking Refreshment Break

11:30 Calls for Tenders: Making the Most of
Traditional and Electronic Bid Advertisements

John Mollenbauer

President & CEO, Toronto Construction Association

Kim McKinney

Executive Vice-President, Toronto Construction Association

- How can owners ensure that they advertise to the correct marketplace?
 - why is it important to understand the marketplace for vendors and contractors?
- Strategies for creating clear advertisements for bidders
- Traditional versus electronic advertising: which method of marketing a project is more effective and efficient?
 - exploring traditional methods of advertising
 - examining electronic bid advertising sites: MERX and Electronic Plans Room
 - what are the drawbacks of electronic bid sites?
 - what does the future hold for electronic bid advertising?
- Overcoming challenges: what should be done when owners forget to advertise to incumbent bidders?
- Bidder databases: are they useful and when should they be utilized?
- Are reverse auctions the way of the future or a curse?

12:15 Networking Luncheon  for Delegates and Speakers

1:30 Exploring Challenges in Procurement
at the Pre-Tender Stage

Rocco M. Sebastiano

Partner, Osler, Hoskin & Harcourt LLP

Barbara Ellard

Manager, Generation Procurement, Ontario Power Authority

Kevin McGuinness

Counsel, Ontario Ministry of the Attorney General

- Avoiding the appearance of privileged access for some bidders
 - strategies for communicating with bidders at the pre-solicitation phase
- Examining lobby registration requirements
- Defining the mandatory requirements and specifications for tenders
 - ensuring the requirements are not too strict
 - tips for understanding and achieving your objectives
- How many rights can you reserve?
 - what is the impact of those rights on the formation of Contract A?
- Drafting front-end documentation: terms and conditions governing the tender
 - how to make the terms fair and/or realistic
- Hiring outside consultants at the pre-tender procurement stage



- will conflicts of interests arise in later stages if they are involved?
- Utilizing legal counsel at the pre-tender procurement stage
 - getting advice on process issues
- Exploring the advantages of involving fairness commissioners
 - what is the proper role for a fairness commissioner?
 - utilizing the commissioners as advisors in designing the requirements and the process of the tender
- Best practices for involving legal counsel, fairness commissioners and consultants in the procurement and purchasing stage

2:45 Networking Refreshment Break

3:00 **Case Study: Navigating Through the Procurement Minefield**

CASE STUDY

Judy Wilson

Partner, Blake, Cassels & Graydon LLP

Darrell Lopushinsky

Senior Litigation Counsel, City of Edmonton

The procurement process has become increasingly more complex, particularly with recent demands for more transparency, accountability and budget constraints. Mistakes made in the procurement process can lead to economic loss and/or litigation. Learn practical strategies to traverse the procurement process and avoid unnecessary costs.

4:00 Co-Chairs' Closing Remarks
Conference Adjourns

DAY 2 – WEDNESDAY, SEPTEMBER 24, 2008

8:30 Registration Opens and Coffee Served ☕

9:00 **Opening Remarks from the Co-Chairs**

9:15 **Effective Communications Between Owners and Bidders at the Pre-Tender Stage**

Moderator:

Matthew R. Alter

Partner, Borden Ladner Gervais LLP

Panelists:

James Trimm

National Director, Project Delivery, SNC-Lavalin ProFac

Chris Hudson

VP Operations, Aecon Utilities

- Top tips for successful communications between owners and bidders
- Examining the role of pre-bid conferences
 - what is the benefit of pre-bid conferences for owners and bidders?
 - what kinds of issues should be addressed at pre-bid conferences?
 - should consultants be present at pre-bid conferences: what are the benefits of their presence?

PANEL DISCUSSION

- Strategies for funneling and exchanging information: how will this improve communication?
- Utilizing Requests for Information (RFI): looking for expertise from the market
 - using RFIs as market searches: what are the advantages and disadvantages?
 - exploring the vendor's perspective: will RFIs create relationships that could lead to future projects?
- Attending trade shows: what is the benefit for owners and bidders?
- Analyzing the practice of bid shopping: is this practice useful or will it lead to problems?

10:15 **Identifying and Securing the Appropriate Bonding or Insurance Products**

Steven D. Ness

President, Surety Association of Canada

Brian Hall

CEO, Jones DesLauriers Insurance Management Inc.

Sabrina Gherbaz

Partner, Torys LLP

- Why should bonding and insurance issues be considered at the pre-tender stage?
- Why is bonding required?
- Insurance products versus bonds: which is better for your project?
- How should you structure your insurance program: owner-controlled insurance program versus contractor-maintained insurance
 - how will this decision impact the bids?
- What to look for when getting insurance: what does it cost and is it worth the cost?
- What issues should be considered at the pre-tender stage?
 - how will performance be secured?
 - choosing the amount of the bond
 - examining onerous contract conditions
 - avoiding conditions that won't get bonded
 - strategies to ensure that bidders are not scared away
 - creating balance in the contract: bond wording
- Bonds versus letters of credit: which should be used?
 - what are the benefits of letters of credits?
 - examining costs issues with letters of credits
- Will the sub-prime crisis have an impact on construction bonding?

PANEL DISCUSSION

11:15 Networking Refreshment Break

11:30 **Case Study: Managing Risk in all Aspects of the Pre-Tender Stage**

Paul Sandori

Senior Consultant, Revay & Associates Ltd.

Carlo Greco

Partner, Osler, Hoskin & Harcourt LLP

It is crucial for all parties involved in a construction project to know how to identify risks and take the necessary steps to minimize and manage risk from the initial stages of a project. Poor management of risk can lead to large economic losses and/or costly and lengthy litigation. This session will provide practical examples for coping with and overcoming risks that arise at the pre-tender stages of a project.

CASE STUDY

12:30 **Networking Luncheon
for Delegates and Speakers** 

1:45 **Lessons Learned: Case Law Update
on the Pre-Tender Stage**

Roger Gillott

Partner, Osler, Hoskin & Harcourt LLP

Many cases which end up in the courts stem from mistakes made in tendering the construction project. In many instances, these mistakes could have been addressed or overcome at the pre-tender stage, thereby avoiding liability in the future. This session will examine recent cases in Canada and provide practical tips for dealing with liability issues at the initial stages of a construction project.

- Tips for defining an owner's obligations in the calls for tender to avoid later liability: the impact of *Double N Earthmovers v. Edmonton (City)*
 - defining the duty to investigate bids to ensure compliance with tender specifications
 - is there a duty to insist that tender specifications be adhered to in the construction contract?
 - can the tender address allegations of "bid shopping"?
 - defining the duty of fairness to bidders.
- Revisiting *Double N Earthmovers* one year later: how have the courts applied the ruling and how can the tender documents respond?
 - *Cityscape Contracting Ltd. v. Edmonton (City)*: looking behind the bid
 - *Continental Steel Ltd. v. Mierau Contractors Ltd.*: litigation history and the duty to investigate
 - *Chandos Construction Ltd. v. Alberta (Minister of Infrastructure)*: examining the issue of bid repair
- What subcontractor issues should be addressed at the pre-tender stage to avoid complications later in the project? Exploring *Design Services Ltd. v. Canada*
- Demystifying the exclusion of liability clauses: how much protection do they offer for owners?
 - what is the effect *Tercon Contractors Ltd. v. B.C. (Min. of Transportation)*?

2:30 **Networking Refreshment Break**

2:45 **Best Practices for Securing Projects Through
Negotiated Work**

Chris Davis

Manager, Contract Services, Defence Construction Canada

Paul Emanuelli

Counsel, Ontario Ministry of the Attorney General

- Utilizing negotiations to eliminate the tender process: what are the benefits and disadvantages?
- Addressing the risks of contract law: does negotiated work eliminate tendering law constraints?
- Exploring the importance of marketing your firm and connecting with owners: building relationships that could lead to future projects
- Understanding the importance of verifying prices
 - setting up independent panels of experts and other methods of comparing prices in the marketplace

- Tips for ensuring a fair rotation among vendors
- Best practices for successful negotiations between owners and vendors
 - what terms can be negotiated?

3:45 **Co-Chairs' Closing Remarks
Conference Concludes**

**POST-CONFERENCE WORKSHOP
THURSDAY, SEPTEMBER 25, 2008
9:00 A.M. – 12:00 P.M.**

**Putting Together a Comprehensive
and Winning Tender Package**

Lisa Bate

Partner, Bregman + Hamann Architects

Matthew Gazzola

Development Director, Real Estate Division
Manulife Financial

This comprehensive hands-on workshop has been designed to provide you with the tools and knowledge to put together a comprehensive and winning tender package.

Topics that will be covered at this must-attend workshop include:

- Top tips for drafting tender documents
 - what should be included and what should be left out?
 - how important is the level of detail?
- Strategies for successful coordination and collaboration between everyone involved in preparing the tender package
- Avoiding legal traps in preparing tenders
- Exploring the importance of obtaining current estimates for tender packages
- What is the significance of documentation control?
 - how can documentation control be achieved?
- Identifying different requirements for tender packages among regions in Ontario
- Comparing the requirements among tender packages for federal, municipal and private owners
- Understanding the benefits and drawbacks of electronic tendering
 - what are the legal ramifications?
 - what are the security concerns?
 - is electronic tendering more efficient and cost-effective?
 - is this process beneficial to out-of-town bidders?



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Conference: Construction Law 10 hours
Post-Conference Workshop: Municipal Law 3 hours

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The Canadian Institute's Conference on

MANAGING RISK AT THE PRE-TENDER STAGES OF YOUR CONSTRUCTION PROJECT

Practical Tools and Solutions for Overcoming Challenges and Avoiding Liability

Top Reasons to Attend

- ✓ Hear directly from the leading experts how to successfully navigate the pre-qualification process and other pre-tender stages
- ✓ Examine bonding and insurance issues that should be considered at the pre-tender stage
- ✓ Learn practical tips from case studies on procurement and risk management
- ✓ Network with industry professionals

REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

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STEP 1

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YES! Please register the following delegate for
MANAGING RISK AT THE PRE-TENDER STAGES OF YOUR CONSTRUCTION PROJECT

For group discounts please call 1-877-927-7936

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<input type="checkbox"/> Conference Only	\$1895 + 5% GST = \$1989.75	\$2095 + 5% GST = \$2199.75
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I am attending, please add the conference materials CD-ROM to my order \$195 + \$15.95 (S & H) (+ applicable taxes)

STEP 2

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STEP 3

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Hotel Reservations

For information on hotel room availability and reservations, please contact the Four Seasons Hotel at 416-964-0411. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

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Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy

Substitution of participants is permissible without prior notification. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other **Canadian Institute** conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

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