



AROUND THE INDUSTRY

BRIAN MARTIN

Elsewhere in this issue, you will find a feature story on "BOB," a program to train and provide jobs for residents of the inner city. The jobs are being provided by MetroCan Construction and ITC Construction on the 2010 Athletes' Village that is being developed by Millennium Development.

A large number of construction firms are a part of this project, which is proving to be very successful.

Both Hilti Canada and

PCL Constructors Westcoast Inc. have contributed equipment for the students to use.

Many other firms have been involved by hiring graduates. They include: Allan Windows, Centura Building Systems, Design Roofing, Dominion Masonry Ltd., H.P. Construction, Jeda Mechanical, Lower Mainland Steel, Pitt Meadows Plumbing & Mechanical Systems, Universal Concrete Accessories Ltd., William Kelly & Sons Plumbing and Wolf Masonry.

Training is given to the students by an instructor supplied under contract with the Vancouver Regional Construction Association.

VRCA wins award

On the subject of the Vancouver Regional Construction Association, its president, Keith Sashaw, has been recognized by the Canadian Society of Association Executives/B.C. Chapter.

Sashaw has won an ACE Award of Excellence in the

category that recognizes achievement in the area of new programs. He has been very active in helping establish a series of training programs aimed at creating skilled trades people. These include the "BOB" program I have just mentioned, but also programs to provide six weeks of basic training so people can move into entry level jobs in the industry. It is called a CORE program.

The association has worked in partnership with Kwantlen Polytechnic University and Pacific Community Resources. It also delivered a CORE program for Corrections Canada at the Matsqui Institution for eight female students.

In addition, Sashaw has been very active in bringing construction trades training

to the aboriginal communities in British Columbia.

BOMA convention

The Building Owners and Managers Association (BOMA) will be holding their national convention and exposition from September 30 to October 2 at the Vancouver Convention and Exhibition Centre.

The event will include an awards ceremony, workshops on environmental sustainability in the commercial real estate sector and a presentation by Dan Doyle, executive vice-president of construction with the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games.

European recruitment

The BC Construction Association (BCCA) has had considerable success in helping the provincial construction industry recruit skilled tradespeople from Europe. Under its EU-Step Program it has achieved some 150 placements and has facilitated about 250 more by organizing

job fairs and assisting member companies.

Germany's Central Employment Placement Office is hosting two more job fairs this winter. They are working in co-operation with the governments of British Columbia, Alberta, Manitoba and Yukon.

The first fair will be held November 12 in Essen, Germany, and the second November 14 in Magdeburg, Germany. Construction employers are welcome to attend. The cost is \$2,000 plus travel and accommodation. If they choose not to attend in person, they can ask the BCCA to find a journey person for them. It is possible to have a temporary foreign worker on site within four to eight weeks.

The person to contact at the BCCA offices in Victoria is Regina (pronounced ra-geena) Brodersen. She is the association's director of human resources. You can telephone her at 250-475-1077. The fax number is 250-475-1078, and her e-mail address is regina@bccassn.com. ♦



LEGAL SPECS STREU

HIRST



As a request for proposals (RFP) a solution to the legal pitfalls of the tendering process?

Some tendering authorities believe that it is, and are switching to RFPs in an attempt to avoid the legal risk involved in a call for tenders. Unfortunately, the distinction between a tender and an RFP is not always clear, and if a tendering authority is not careful, the use of an RFP can create its own legal pitfalls.

What is the difference between an RFP and a tender? In conceptual terms, an RFP is an invitation to the marketplace to bring its ideas for a particular project or scope of work. The requesting authority outlines the broad strokes of a project or scope of work and leaves a wide scope for the proponents to bring their suggestions on how to complete the required task. Since an RFP is only an invitation to bring ideas, in theory no legal obligations should arise.

A tender is conceptually quite different. With a tender, the project is clearly defined, and the tendering authority invites the marketplace to bid on a few remaining variables – usually price and time for completion. As you are likely aware, the tendering process gives rise to specific legal obligations for both tendering authorities and bidders.

How do you tell the difference between an RFP and a tender? It is not always easy. The case law makes it very clear that what the document is called is not determinative. What matters is whether the procurement documents, taken as a whole, indicate an intention to create legal relations. If the document demonstrates an intention to create legal relations, the courts will enforce some or all of the rules that apply to tenders. If the documents do not evidence such an intention, it is a "pure" RFP and the rules of tender do not apply.

Note that a specific set of procurement documents is not necessarily a "true" tender or a "true" RFP. It is easiest to think of it as a sliding scale between an RFP and a tender. To the extent that the document shows an intention to create legal relations, the courts will enforce that intention. A document may therefore be largely an RFP, but if there are aspects of the document that demonstrate an intention to create legal relations, the courts will enforce those intentions.

How do you know whether the document evidences an intention to create legal relations? Again, it is not always easy to tell. The courts have said that the following factors are relevant and, if answered in the affirmative, suggest an intention to create legal relations: Is the bid irrevocable? Was the submission process formal with set deadlines for submissions and performance

of the work? Was a security deposit required? Were there specific objective evaluation criteria? Does there appear to be a duty to make the award to the successful bidder with conditions that are not open to negotiations?

The important thing to take from all of this is that even if you are using a document called an RFP, you are not necessarily free from the legal obligations that relate to tenders. To the extent that your procurement documents evidence an intention to create legal relations, the courts will enforce those obligations between you and proponents on your projects. Therefore, even when using an RFP, it is always best to be cautious and assume that the essential tender rules will apply, including an obligation to act with fairness and good faith to the responding proponents. ♦

Norm Streu is the executive vice-president and general counsel of the LMS Reinforcing Steel Group Inc. and a former chair of the Vancouver Regional Construction Association. Chris Hirst is a partner at and the leader of the Construction & Engineering Group at the law firm Alexander Holburn Beaudin & Lang LLP. If you have any questions about this article, or any construction law-related issue, please feel free to call Chris at 604-484-1700.

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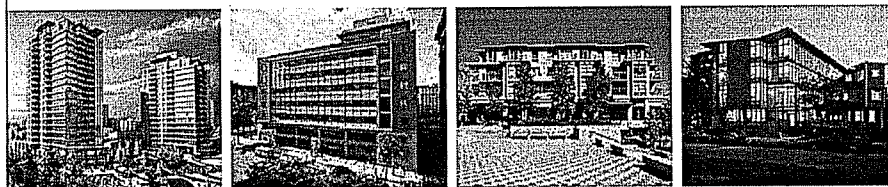
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