

WHAT'S NEW AND CHALLENGING

# ACROSS THE CONSTRUCTION SECTOR

Experts offer their insights in GVCA workshop

By Paul Knowles



A full house of construction industry insiders gathered in October to get the latest scoop on a lengthy menu of hot topics impacting on the business. The event was the PACE Workshop sponsored by the Grand Valley Construction Association. Over 110 representatives from every sector of construction turned up to garner the latest insights into Procurement, Accountability, Contracts and Expectations (thus, PACE).

The workshop featured experts in all of those fields, including Ted Dreyer, a partner in Madorin, Snyder LLP and a GVCA Director, who threw some light on the new sections of the Construction Act, including prompt payment; a panel devoted to answering all the questions about the bid process; Geza Banfai, a partner in McMillan

LLP, who highlighted the best bits in the document CCDC 23, the guide to calling bids and awarding contracts; and architect Andrew Bousfield, with ABA Architects, who called the group to move toward more collaboration on projects.

Dreyer led his audience through the pitfalls on prompt payment – dwelling at length on the fixed timeline schedules – and discussing the as-yet-untested adjudication process.

The timelines for prompt payment are clearly laid out in the legislation, but according to Dreyer, not every element of the process is as clear. For example, “The act is silent on how a proper invoice is to be delivered,” even though it is the delivery of a proper invoice that kick-starts the timeline.

He told his audience that there are a number of critical issues in the new process – the presentation of a “proper invoice” is “really critical,” and it is “wise” to deliver invoices both to the owner and to the consultant, “unless the contract says otherwise.”



Ted Dreyer presenting at PACE

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Not surprisingly, many of those in attendance are less than sanguine about the possible pitfalls, and equally nervous about the untested adjudication process.

And they paid attention when Dreyer noted that during the present time of transition into the new legislative

regime, “This is a good time, if you have in-house legal counsel, or to call a lawyer” to determine if former or new legislation applies to a project.

**THE BIDDING PROCESS**

The panel focusing on the bid process featured Leslie Williamson, Manager,

Purchasing and Risk Management for the Town of Milton; Ryan Scott, Manager of Procurement, Corporate Services Department for the City of Cambridge, and Jeff Shantz, Vice President, Project Development, of Melloul-Blamey Construction Inc. The three brought useful, practical



insights about the bidding process.

Williamson kicked off the three-part presentation with a checklist of best practices regarding responding to RFPs. Some seemed obvious – until she pointed out that all were arising from real-life snafus.

Scott followed Williamson, agreeing with her suggestions, and augmenting some of the points. He explained that when an owner – and he speaks from a municipal perspective – issues a request for tenders, “We’re looking for a strong bid response – five plus bids.”

He told the audience, as well, that, “we are looking for contractors who have the expertise and the experience” that the project requires.

He added, “Contractors don’t seem to ask a lot of questions,” but argued that questions can improve the entire bidding process “while the bid is still on the street.”

Scott also suggested that municipal owners would appreciate being told

if contractors are aware of other projects that might be competing for contractors’ time and attention. “Make us aware of competing projects,” he said.

As a member of the general contracting industry, Jeff Shantz brought a different perspective to the panel. He took the opportunity to suggest improvements that could be adopted by owners, including the municipal sector, when calling for bids. He suggested that the timelines of RFPs are often very tight. Often the deadline is 15 days; on larger projects, he said, “We would appreciate at least 21 days.”

He also underlined a problematic time frame – the 90 to 120 days before a project is awarded. That leaves a three-month period while the contractor “has resources you don’t know what you’re doing with,” he said. “As contractors, we don’t like that... What are we supposed to do with people we have on the shelf?”

Shantz noted situations when contrac-

tors probably should not put the time and resources into a bid. For instance:

- When too many contractors are allowed to bid. There should be a pre-qualification process.
- “When there are too many restrictive clauses and too many penalty clauses.”
- “When there are significant supplementary conditions.”
- “When there are unrealistic scheduling requests.”
- Electronic bids “can become a problem, because the bid may not be compliant,” simply due to digital glitches.
- “When the customer has a history of being difficult to work with.”
- When the project is too complicated.
- “If the project was tendered previously and was over budget, people lose interest in the job.”
- When the owner has a reputation of being hard to work with.

Responding to Scott’s comment that a good process should produce five or more bids, Shantz noted that there may be reasons for limited bids not specifically related to the project. “This area is very busy,” he said, “And we all know there are not enough skilled workers.”

### CCDC 23

Geza Banfai, who as Counsel to McMillan, focuses exclusively on construction and infrastructure matters, is also the ex officio legal representative on the Canadian Construction Documents Committee.

Banfai highlighted what he termed the best “tidbits” in the newest iteration of CCDC23—the guide to calling bids and awarding contracts—including a clear definition of “what duty of fairness means in practice”; and



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Geza Banfai and GVCA president Martha George



Panel members Leslie Williamson, Jeff Shantz and Ryan Scott discussed various aspects of the bidding process, and what can be done to improve it.

eleven things that an invitation to bid document should contain – “if you just follow the recipe in 23, you should be okay”.

Banfai said that one underlying principle of the new document is “avoid unnecessary complexity... just keep it simple.”

Banfai highlighted a few parts of CCDC23 that offer answers to difficult questions. For instance, if a call for bids results in a single bid, the answer should be “accept it, if it is compliant and within budget.”

If two bids are tied, the answer, he said, is “a coin toss.”

If all bids come in over budget, he

suggested, the answer lies in the expectations of the owner. “The owner needs to realize that if everyone is over budget, you have to buy the Chevy and not the Mercedes.”

### COLLABORATE

Andrew Bousfield had the challenging assignment of summing up the admittedly intense and information-packed sessions of the morning. He chose to focus on the need for collaboration across the sectors of the industry.

He asked, “Do we actually share a common ground?” and concluded, “Each of us may have very different goals, but that doesn’t mean we can’t collaborate.”

However, he offered the opinion that while “CCDC is moving toward opportunities for more collaboration,” the Construction Act “is creating more complexities and driving more distance between the parties involved... Prompt Payment creates the antithesis of collaboration.”

But Bousfield suggested that the answer to this challenge is, in fact, that “the Construction Act means we will have to be more collaborative” in order to avoid the new adjudication process. “It’s going to be more and more important for us to be more proactive,” he said – positive final words in a jam-packed and successful workshop session. ■