

OGCA President's Report – May 15 2023

Critique of the Ottawa Hospital

Public procurements must be held to a higher standard since they involve monies provided by the public. This means that the procuring entity must act, and be seen to act, with integrity and professionalism. All procurements must be conducted in an open, fair and transparent fashion.

When the industry and/or the public start to question a public procurement, for whatever reason, then that buyer of construction needs to review and re-evaluate what may have occurred to erode the trust of the public.

This is the current situation with the Ottawa Hospital.

This buyer of construction has created a situation wherein the public and the construction industry are questioning their procurement actions and asking questions regarding value for money, as well as alienating half the construction industry.

By way of background, the Ottawa Hospital signed a Project Labour Agreement (PLA) in November 2022 that binds future project teams to the terms of the collective agreements the Eastern Ontario Building Trades had negotiated.

The current Ottawa Hospital project is in the procurement phase with a Request for Proposal (RFP) issued by Infrastructure Ontario (IO), and is expected to close in the fall of 2023.

Was this absolutely necessary to ensure that the hospital was built? It may not have been and for the following reasons.

With the advent and passing of *Bill 66, Restoring Ontario's Competitiveness Act, 2019*, it's amendment to the Labour Relations Act indicated that municipalities and certain other entities (Hospitals) were deemed to be non-construction employers. Therefore, the Ottawa Hospital could have issued an open tender for this project and accepted bids from both open shop and unionized labour for this project, instead of opting to limit the qualified pool of experienced contractors.

The perception of being open, fair and transparent, has been compromised since there was no obligation to force the Ottawa Hospital into this situation.

As a disclaimer, the Ontario General Contractors Association (OGCA) equally represents both unionized and open shop contractors and therefore, is well placed to provide our position on how the Ottawa Hospital has handled this procurement thus far.

From a purely procurement position, the OGCA would like to note some aspects for the Ottawa Hospital to consider as it proceeds with this procurement.

Firstly, the Ottawa Hospital falls under the auspicious of the "Broader Public Sector" (BPS) which by definition, refers to organizations that receive funding from the Government of Ontario, but are not a part of the government itself. Since the Ottawa Hospital qualifies under this definition, they are then also held to the accountability requirements for BPS Procurements.

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One such requirement is the adherence to the Ontario Broader Public Sector (BPS) Supply Chain Code of Ethics. This code notes the following:

- I. **Personal Integrity and Professionalism** Individuals involved with Supply Chain Activities must act, and be seen to act, with integrity and professionalism. Honesty, care and due diligence must be integral to all Supply Chain Activities within and between BPS organizations, suppliers and other stakeholders. Respect must be demonstrated for each other and for the environment. Confidential information must be safeguarded. Participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as accepting gifts or favours, providing preferential treatment, or publicly endorsing suppliers or products.
- II. **Accountability and Transparency** Supply Chain Activities must be open and accountable. In particular, contracting and purchasing activities must be fair, transparent and conducted with a view to obtaining the best value for public money. All participants must ensure that public sector resources are used in a responsible, efficient and effective manner.

In reviewing the noted requirement, in the context of the Ottawa Hospital procurement, it is clear that the Ottawa hospital may be viewed as not satisfying all of the listed necessities.

Firstly, with regard to the language, "*The Individuals involved with Supply Chain Activities must act, and be seen to act, with integrity and professionalism,*" this may be questioned by the general public since the Ottawa Hospital engaged and signed a PLA in November 2022 with the Eastern Ontario Building Trades on all future projects, where such an agreement was not mandated.

Secondly, the directive also denotes that, "*Participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as ... providing preferential treatment, or publicly endorsing suppliers or products.*" In the eyes of the general public and the construction industry, the actions of the Ottawa Hospital definitely appear to have created a conflict of interest, since they are solely endorsing one group of potential contractors over all others.

This is not to say that the group the Hospital is seeking is less than qualified from those that may have been excluded. Instead, what the OGCA is suggesting is that the Ottawa Hospital could have issued an open tender, obtained competitive pricing and awarded the project without a PLA to obtain the same results.

Lastly, the directive states, "*...contracting and purchasing activities must be fair, transparent and conducted with a view to obtaining the best value for public money. All participants must ensure that public sector resources are used in a responsible, efficient and effective manner.*" As with the previous segment, the Ottawa Hospital could have

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issued an open tender to obtain competitive pricing, which would have been the most responsible, efficient and effective tactic. Instead by going the route of the PLA, they have eliminated 50% of the potential contractors that could have bid the project.

Would this 50% have provided more competitive pricing than the PLA? Unfortunately, the public will never know since the Ottawa Hospital opted to move in a singular direction instead of one that welcomed the entire industry.

The OGCA is a 197-member organization drawing membership from across Ontario. OGCA members account for over \$14 billion of construction each year in Ontario, focusing on supplying the infrastructure needed to support our growing communities; including the Ottawa Hospital.

The OGCA provides the industry with a number of services including the review of tender documents and the entire tendering process. This is done in the belief that a clear, concise and equitable set of bidding documents, combined with a fair, open and transparent tendering process, will benefit all the parties involved: the design professional, the contractor, the public, and most importantly, the owner.

The OGCA is not certain that the current process the Ottawa Hospital has embarked upon was its only option. One aspect that is true is, due to the sizable pushback from multiple construction industry stakeholders, the industry does not see this procuring entity as acting, and to be seen to be acting, with integrity and professionalism.

Remember, all public procurements must be conducted in an open, fair and transparent fashion. Anything short of this diminishes the procuring entity and casts aspersions on them throughout the industry and the public at large.

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