



Cayman Islands

**SPECIAL REPORT OF
*THE AUDITOR GENERAL***

ON

***THE SCRAP METAL TENDER AND
CONTRACT
WITH MATRIX INTERNATIONAL INC.***

Cayman Islands Audit Office

August 2008

**REPORT ON SCRAP METAL TENDER AND
CONTRACT WITH MATRIX INTERNATIONAL INC.
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SCRAP METAL TENDER AND CONTRACT WITH MATRIX INTERNATIONAL INC.

Executive Summary

1.01 In the aftermath of hurricane Ivan, which occurred in September 2004, Grand Cayman was inundated with a large amount of waste including scrap metal. As the increase in waste was threatening to fill the Georgetown landfill site, government decided to get rid of the scrap metal as soon as possible.

1.02 The first attempt to deal with the accumulating scrap metal was to enter into negotiations with a Cuban company who had taken scrap metal off the Island in the past. In prior years the government gave away this scrap metal and received no funds on its removal. Negotiations with this Cuban company were started but broke down in the middle of 2005.

1.03 In July, 2006 the government received an unsolicited proposal from Matrix International Inc. This proposal suggested that the government could get paid for the metal that it had on island.

1.04 In November 2006, government put out an Invitation to Tender for the removal of scrap metal. Although there was significant interest, only three companies submitted a formal response. In December 2006, the bid from Matrix International Inc. was accepted subject to certain conditions. A contract was signed with Matrix International Inc. in March 2007.

1.05 There has been significant public interest in the awarding of this contract. Some have questioned why an international firm was selected over a local bidder whose offer was only slightly less than the Matrix bid. Others have expressed the concern that Matrix International Inc. has not paid many of its local contractors.

1.06 In February 2008, Public Accounts Committee requested that the Office of the Auditor General review this contract. At that time, the contract was still active so it was agreed that the review would be limited to the process leading up to awarding the contract to Matrix International Inc. As a result we reviewed the tender preparation process, the evaluation of submissions and the steps followed in awarding the contract. We have not reviewed the actual performance of the contract or the actions of Matrix International Inc. in meeting its obligations under the contract. This may be the focus of a subsequent audit.

Audit Findings

1.07 Our review looked at the following areas

- Tender preparation
- Tender advertisement
- Tender evaluation and
- Due diligence review



1.08 Our review indicated that the tender preparation was done well except that the evaluation criteria and weightings to be used in selecting the successful bidder were not included in the tender document. This is a requirement under the Financial Regulations.

1.09 As for advertising the tender, we noted that the minimum requirement is two advertisements over a two week period, with at least one in a local paper. In this particular case, while the minimum requirements were met, we believed that advertising internationally and providing a longer time frame for bids to be submitted could have resulted in more bids being received.

1.10 Our review questioned some of the decisions made during the tender evaluation process. Our most serious concern related to the financial viability requirement of the invitation to tender. The invitation required that all submissions were to provide proof of financial viability. During the evaluation process, the tendering committee decided that none of the bidders had met this criterion. We were of the opinion that when none of the bidders satisfied this mandatory requirement the process should have stopped.

1.11 It was decided however that the contract would be awarded to Matrix International Inc. subject to three new conditions being met. Our review of subsequent events indicated that the contract was awarded even though none of the three conditions were met.

1.12 Furthermore, the Office feels that there was not enough due diligence done on the individuals connected with Matrix International Inc. If more diligence had been done, it may have been more apparent that the principals involved with Matrix had little significant experience with the procurement, transportation and sale of scrap metal in international markets.

Recommendations

1.13 As a result of our work we have made a number of recommendations through out the report which, if implemented, will strengthen and improve the steps taken by government when making decisions on large procurement contracts such as this one.

Cost and Use of Consultant

1.14 The request from the Public Accounts Committee for a review of the awarding of the Matrix International Inc. contract came at a time that there was no appropriate staff available to do the audit. After discussions with the Public Accounts Committee, I was able to outsource this audit to an auditor who had substantial experience in both value for money audits generally and more specifically procurement audits. I believe that this was a positive experience and hope to make use of this flexibility if a similar situation presents itself.



1.15 The total cost of the audit to the beginning of August 2008 was \$ 43,200. This was the amount charged to the Public Accounts Committee to the date of writing of this report. Although there will be additional costs associated with the delivery and subsequent release of this report, I believe it is a good summary of the “cost” of this report.

Report Clearance

1.16 This report was more difficult to clear due to the numerous parties involved. Clearance meetings were held with officials of the Ministry, representatives of the Central Tenders Committee as well as a representative of the Solicitor General’s Office. Management comments have been included where requested by those individuals.

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August 19, 2008



2. Background Information on the George Town Landfill Site

2.01 All garbage for Grand Cayman is deposited at the George Town Landfill site. The 58 acre site is estimated to be at least 27 years old.

2.02 In the late 1990's and up to 2004 the landfill site was receiving approximately 55,000 tons of waste per year. In the year 2000, the only year there were actual waste weigh-ins, 57,500 tons of waste was delivered for disposal. There was very little recycling during this period.

2.03 It was estimated that in the year following hurricane Ivan 220,000 tons of waste was received and it is estimated that quantities in the 160,000 ton range have been received in the years since then.

2.04 As a result of increased tonnage being delivered to the landfill site and limited recycling programs, there was a growing concern over the life of the site. In particular, quantities of scrap metal, including appliances, fixtures and automobiles had significantly increased after hurricane Ivan in September 2004. The Ministry of Communications, Works and Infrastructure wanted these items removed before the start of the 2007 hurricane season since they could become dangerous missiles in the event of another hurricane. A bailer was purchased and arrived on island in January 2007 to bundle the scrap metal and the Department of Environmental Health (DEH) embarked on a strategy to internally manage the increased volume of waste. This was found not to be effective and the conclusion was reached that a company should be contracted to come in and deal with the backlog of waste.

2.05 Following hurricane Ivan, the DEH was in negotiations with representatives from a company in Cuba to remove the accumulated scrap metals. All scrap metals were to have been removed for free by the Cuban company had the contract negotiations not failed.

3. Call for Tenders and Selection of Matrix International Inc.

3.01 In November 2006, the DEH issued an Invitation to Tender, “for the purchase of all scrap metals (inclusive of derelict vehicles) at the George Town landfill site.” The proposal indicated that the Department “is expectant that the loose metals will be processed and removed from the Island before the next hurricane season, which starts in June 2007.”

3.02 The Invitation to Tender anticipated selling the scrap metals because staff of DEH realized that there was potential value in the large quantities that had been accumulated. This was confirmed when Matrix International Inc. a company based in New Brunswick, Canada made a proposal in late July of 2006 to buy the scrap for \$750,000.

3.03 After receiving this proposal, staff of the DEH undertook an examination of the potential market value of the materials, along with various costing scenarios to process and ship the materials off the Island. The result was four possibilities ranging from a net cost to Government of \$1.2 million (minimum market value for scrap and maximum cost of removal), to a net profit to Government of \$4.5 million (maximum market value for the scrap and minimum cost of removal.)

3.04 In early September 2006, Matrix International Inc. made a second proposal for \$1,250,000. We were informed that there were other companies, both local and international that expressed an interest in removing the scrap metal.

3.05 The first advertisement for the Invitation to Tender appeared on November 8, 2006, and announced a closing date of November 24, 2006 for the submission of tenders.

3.06 Although a number of companies obtained information relating to the bidding process, only five companies formally responded to the bid. Of these five companies, two companies indicated that they would not be submitting a bid. Three tenders were received by the Central Tenders Committee (CTC) and they were evaluated by a Departmental Tender Evaluation Committee of the DEH (DTC). The DTC decided that the tender from Matrix International Inc. for \$1,250,000 should be accepted subject to the submission and satisfactory evaluation of three conditions. The three conditions, which will be discussed in detail later, included the submission of audited financial statements, confirmation of a line of credit and a demonstration of the ability to secure insurance coverage.

3.07 The DTC presented this position to the CTC on December 15, 2006. The CTC accepted the recommendation from the DTC including the three conditions. A letter to this effect, dated December 18, 2006, was sent to Matrix International Inc. from the Chairman of the CTC.



3.08 A contract between The Ministry of Communications, Works and Infrastructure, on behalf of the Government of the Cayman Islands, and Matrix International Inc. (operating as Matrix International Ltd.) was signed on March 19, 2007. The three month delay was related to the process of trying to have the three conditions placed on the tender fulfilled by Matrix International Inc.

3.09 Subsequent to the signing we understand that Matrix removed approximately 6500 tons of the scrap metal from the landfill and shipped it off the Island. The Government has received \$310,000 for the scrap metal removed and it is alleged that contractors used by Matrix are still owed money for their services. On September 19, 2007, Matrix was declared in default of its contracted obligations. On November 1, 2007 the Ministry of Communications, Works and Infrastructure suspended all operations by Matrix International Inc. at the Landfill while demanding full payment of all outstanding fees to the government.

3.10 The resolution to the default of the contract is on going.



4. Audit Objective and Criteria

4.01 The issue of the review of the contract with Matrix was discussed at a Public Accounts Committee meeting in January 2008. At that time the Audit Office was requested to review the tendering of this contract.

4.02 The Audit Office decided there would be value in reviewing the process followed by government from the calling of tenders for the sale of scrap metal, to the signing of a contract with Matrix International Inc. The office may undertake a follow-up review upon final resolution of the defaulted contract.

4.03 In undertaking the current review, the Office had the following objective:

To review and provide an assessment on the key processes used in the tendering and vetting of large procurement contracts for the Cayman Islands Government, and in particular the contract entered into with Matrix International Inc.

4.04 *In addition, recommendations may be made on how to improve the tendering and vetting process of large procurement contracts for the Cayman Islands Government, if shortcomings are identified.*

4.05 *A large contract is one with a value greater than \$250,000*

4.06 We focused our attention on the contract entered into with Matrix International Inc. and interviewed a number of key employees involved in the process:

- The Chairman of the Central Tenders Committee,
- The Chief Officer, Ministry of Communications, Works and Infrastructure,
- The Director of the DEH,
- The Assistant Director, Solid Waste (DEH),
- The Chief Financial Officer, Ministry C,W&I (who was employed at the time) and
- The Assistant Solicitor General

4.07 We reviewed the Financial Regulations of The Public Management and Finance Law that relate to the tendering process and the role of the Central Tenders Committee.

4.08 We familiarized ourselves with the Open Tender Process Document (“the tender manual”) prepared by the Central Tenders Committee (CTC). The tender manual sets out the tendering processes to be followed when a contract value will exceed \$250,000. The tender manual came into effect in November 2007. Prior to that time the CTC and the various departmental tender evaluation committees only had the guidance of The Financial Regulations which provided limited direction regarding procurement. During that period we understand that the CTC and the departmental evaluation committees also followed various past practices and procedures.



4.09 We found that the procedures set out in the tender manual to be comprehensive and covered the key aspects of the tendering process. In conducting a review such as this, we select criteria that represents best practices and we concluded that the contents of the tender manual presented criteria that would be appropriate for this review. Although the tender manual was not in effect until November 2007 it does set out practices and procedures that would be considered reasonable and appropriate to be following prior to that time.

4.10 We also reviewed a number of files and documents relevant to the various key tendering and vetting processes that took place between the summer of 2006 and March 2007.

4.11 In our opinion the key tendering and vetting processes in the review of the Matrix contract were as follows:

- Tender Preparation
- Public Advertisement of Tender
- Evaluation of Tenders
- CTC Decision Making Process
- Disposition of Tender Conditions, and
- Contract Signing

4.12 From our work we make a number of observations and related recommendations that we believe, if implemented, will be beneficial to the Cayman Islands Government.



5. Tender Preparation

5.01 The tender manual states that the preparation of tenders is the most important phase of the tender process. It requires the scope of work to be performed and the form of tender to be followed to be set out in the tender documents. It also requires that the eligibility criteria to be met by the potential bidders be included and the type of evidence bidders must supply to prove they met the eligibility criteria. Also, any mandatory requirements for bid submissions to be deemed responsive must be included.

5.02 Tender documents must include two statements, one that states “ineligible bids will be rejected prior to evaluation” and the other “that bids that are not deemed substantially responsive (to the mandatory requirements) will be rejected prior to evaluation.”

5.03 The tender manual also requires the evaluation criteria and weightings that will be used to assess bids to be included in the tender documents.

5.04 We found the requirements set out in the tender manual to be consistent with Section 39 of the Financial Regulations, which came into effect on April 11, 2006. This section requires that “the prescribed tendering process” shall be used in respect of any contract to be offered for public tender. And the “prescribed tendering process” is defined to include the following:

- a. the offer shall specify details of the criteria that will be used to evaluate tenders and to select the successful bidder;
- b. the tenders shall be evaluated and the successful bidder shall be selected, in accordance with the specified criteria;

5.05 Our review of the tender documents for the Purchase of Scrap Metals indicated that, except for the absence of evaluation criteria and weightings, the information in the tender document was consistent with the requirements set out in the tender manual. We were informed that prior to the implementation of the tender manual, evaluation criteria and weightings were prepared prior to tender openings, but it was not a requirement to include them in the tender documents.

5.06 This is not consistent with the Financial Regulations which, as stated above, required all tenders since April 11, 2006 to “specify details of the criteria that will be used to evaluate tenders and to select the successful bidder.”

Recommendation

5.07 *All staff with procurement responsibilities be familiar with all requirements set out in legislation and that legislative requirements be consistently followed.*



5.08 The Purchase of Scrap Metal tender did explain the work that was to be performed, namely the purchase of all scrap metals, inclusive of derelict vehicles, at the George Town Landfill Site and their removal from the island. Information was provided on the specific services to be provided, an explanation of quantities and expected completion dates.

5.09 As for eligibility criteria, bidders had to demonstrate that they were responsible and capable of performing the services required by the contract and that they had the necessary expertise, equipment, labor and financial resources to perform the services in a proper and satisfactory manner. The bidders also had to demonstrate “that they have the ability to process, transport and market scrap metal accumulated by the Department of Environmental Health.”

5.10 The tender documents also set out three mandatory requirements.

1) Each bidder was required to include a “Qualification Statement” containing information such as;

Past and current contracts that would illustrate the bidder’s ability to perform and deliver the services required.

A description of one experience directly or indirectly related to the receiving, processing and marketing of scrap metals.

Ownership and title, or a lease or purchase agreement guaranteeing the availability of all necessary equipment.

A financial profile, which should include copies of audited financial statements for at least the most recent year end.

2) A Bid Form, to be included with the tender documents, had to be completed in full, by stating the lump sum price, the proposed payment plan and the estimated completion date.

3) A copy of valid insurance covering the period of the contract.

5.11 We noted that the requirement for insurance coverage did not specify the risks to be covered nor did it provide the coverage limits which Government would require.

Recommendation

5.12 *Whenever requests are made for “valid insurance”, such requests should include the risks to be covered and desired coverage limits.*



6. Tender Advertisement

6.01 The tender manual articulates the importance of value for money by promoting competition through clearly worded advertisements and a realistic deadline for bid submissions that provides sufficient time for an accurate bid to be produced. The minimum advertising requirement is two advertisements over two weeks, with at least one in a local newspaper.

6.02 The Financial Regulations of the *Public Management and Finance Law* also provides guidance about advertising where it states; “the offer of a contract for tender shall be advertised nationally (and internationally, if appropriate) in a newspaper or other medium.”

6.03 The Scrap Metal Tender, which had a closing date of November 24, 2006, was advertised four times, as follows:

Cayman Net News
November 8 and 10
Caymanian Compass
November 15 and 17

We also understand that the tender documents were placed on the Government’s web site.

6.04 We realize that it is a matter of judgment, as to the length of time that should be given for accurate bids to be produced and as to where the advertisements should appear. However based on the principal of promoting competition and the importance of delivering value for money, we would have expected to see this tender advertised internationally and a longer time frame given for bids to be prepared.

Ministry Comment

Although two weeks may appear short, it meets the minimum CTC requirements. Many of the companies had local affiliates working here in Grand Cayman providing the necessary information. Company representatives also made enquires about the nature of the project. Much public information about the scrap metals were in the press and also released in government press briefings about the need to tender for the scrap metals.

6.05 We were told that there was some discussion within the Ministry at the time as to whether advertisements could be placed internationally. One suggestion was that if the local advertisements had not attracted a favorable response, then international advertising would be a logical next step.



6.06 However we believe that the Financial Regulations clearly provided for international advertising. It has already been noted that the tender documents were on the government website from November 8th to November 24th, 2006. However, we believe that it may have been possible to have solicited additional bids from overseas if the requirements of the Cayman Islands government were made more visible to organizations involved in the scrap metal industry. The regulations also referred to other medium, which in this situation could have included Internet Sites where tenders such as this could be posted.

6.07 Because of the many variables in the works that was contemplated in this tender including finding a market for the scrap metals, coming to the Island to see the situation, arranging processing on site, and arrangement for transportation on both land and sea, a longer period to submit bids could have been beneficial.

Ministry Comment

The Ministry and the DEH made a professional opinion that given the circumstances of much publicity about the scrap metals and the high number of persons interested locally or affiliated with local partners, that it was sufficient to advertise locally, at the time.



7. Evaluation of Tenders

7.01 The tender manual provides a significant amount of guidance on the evaluation of tenders that exceed \$250,000. However there is one provision that has caused us concern.

7.02 The introduction to the Bid Evaluation section of the tender manual states that, the “Departmental Tender Committee is responsible and held accountable for ensuring that the process of bid evaluation is carried out in an ethical, fair, consistent and transparent manner and that the tender award recommendation provides value for money...”

7.03 We find this to be at odds with the Financial Regulations which provides for the following:

- a. Section 40 (1) of the regulations requires tenders submitted for any contract with value less than \$250,000 to be evaluated by a tenders committee established by the chief officer of the purchasing entity.
- b. Section 40(2) of the regulations requires tenders submitted for any contract in excess of \$250,000 to be evaluated by a Central Tenders Committee.

7.04 Our concern lies with the fact that the regulations places the responsibility for evaluating “tenders submitted for contract in excess of \$250,000”, on the Central Tenders Committee, not on the DTC as suggested in the tender manual.

7.05 Our concern here is two fold. The first is that the CTC is ultimately responsible for any decision concerning “tenders submitted for contract in excess of \$250,000”. While they may delegate the work to be done to another party, in this case a DTC, they cannot delegate their responsibility. The second concern is that when the CTC makes a decision it must be satisfied that its wishes have been fulfilled. If for instance when a tender is awarded with conditions, it must make reasonable attempts to ensure that the conditions have been met. This responsibility cannot be delegated.

7.06 The Financial Regulations, which were amended in April 2006, provided for a “pre-qualifying tender process.” In that situation the direction is very specific as to the role of a purchasing entity when conditions have been set by the CTC. Section 38A (7) of the Regulations states that the purchasing entity “shall not conduct a pre-qualifying tender process otherwise than in accordance with those conditions.” This provision clearly establishes the principle that purchasing entities can only act on the authority granted to them by the CTC.

Recommendation

7.07 *The tender manual be amended to reflect the responsibility that the CTC has with respect to “tenders submitted for contract in excess of \$250,000”, and that the CTC ensures it is in compliance with the regulations.*



CTC Management Comments

We agree with the observation above concerning discrepancies between the Law and the Manual. The necessary changes will be made so that the Law and the CTC Manual are compatible.

7.08 The tender manual requires that all bids are given to the DTC after tender opening to ensure, among other things, the following:

- i. That each bid is in conformance with the eligibility criteria, stated in the tender documents. Any bids that are deemed not to meet the eligibility criteria are not to be considered further.
- ii. That each bid has responded to the mandatory bid submission requirements specified in the tender documents. Any bids that are deemed not to be substantially responsive shall not be considered further
- iii. That each bid that meets the eligibility and mandatory requirements are “evaluated objectively, consistently, and fairly against the evaluation criteria stated in the tender documents.”

7.09 The end result of the DTC’s evaluation work is a recommendation to the CTC. The CTC makes the final decision and informs the successful bidder that they have been awarded the tender. The CTC is also responsible for communicating with the unsuccessful bidders.

7.10 From our work we learned that the Ministry of C,W&I set up a four member DTC to review the tenders received for the Scrap Metal Tender Contract. This four member committee worked together in evaluating the proposals and in making a recommendation. The evaluation of each bid was established by examining the content of the bid proposals to the tender evaluation criteria and weightings. There were six such evaluation criteria with predetermined weightings. These had been set by the DTC prior to the Tender Opening:

- i. Financial Viability to conduct the work and make the necessary payments to Government for the purchase of scrap metal – Yes (Pass)
No (Fail).
- ii. For this criterion the DTC had determined that Financial Viability was a necessity. If it could not be favorably established the bidder would “Fail.”
- iii. Experience with Similar Projects – Maximum 25 points
- iv. Price Offered – Maximum 35 points
- v. Time Frame to Complete the removal of Scrap Metal – Maximum 20 points
- vi. Payment Terms (maximum 10 points), and
- vii. Availability of Equipment Maximum 10 points



7.11 As for Financial Viability, the DTC concluded that all three bidders had failed to meet this criterion. Since the eligibility criterion for this tender required that bidders demonstrate that they had the necessary “financial resources to perform the services in a proper and satisfactory manner”, we would have expected the process to have stopped at this point.

7.12 This did not happen and the DTC continued the evaluation by assigning points to the other five criteria. Matrix International Inc. received 95 points, another bidder received 55 points and the third bidder received 45 points.

7.13 It should be noted that the local company that took part in the tendering process submitted a one page document with the tender price stated. None of the other required information relating to past experience, workload, availability of equipment, technical qualifications or financial profile was submitted. This company was not successful and later complained that it was not awarded the contract. The third bid (a foreign company) offered a much lower value to the government.

7.14 Although no bidder met the eligibility criterion the Committee prepared a report to the Chairman of the Central Tenders Committee recommending that Matrix International Inc. “be offered the contract, subject to submission (and satisfactory evaluation) of the following:

- i. Provision of the most recent set of audited financial statements of Matrix International Inc.
- ii. Because of the huge capital outlay and turnaround time, confirmation of a line of credit or bridging financing for the project from the Bankers throughout the duration of the project.
- iii. Demonstration of the ability to secure insurance coverage for the Cayman based portion of operations (Workmen’s Compensation and Public Liability coverage).”

7.15 The report prepared by the DTC, included the Evaluation Results indicating that none of the bidders had met the Financial Viability requirement.



8. Our Analysis of the Evaluation Process by the DTC

8.01 Based on our review of the tender proposals, there is no question that Matrix International Inc. presented the best proposal. However we are of the opinion that none of the proposals met the eligibility criterion and none of the proposals fulfilled all the mandatory requirements set out in the tender documents.

8.02 As for the eligibility criterion, a requirement in the tender document was for each bidder to demonstrate they had the necessary “expertise, equipment, labor and financial resources to perform the services in a proper and satisfactory manner”. Before the tender opening the DTC decided that for a bidder to be eligible for consideration they must establish their financial viability to do the work and make the necessary payments to Government.

8.03 The DTC indicated that all three tenders submitted failed to meet this mandatory criterion.

8.04 The importance of establishing financial viability to conduct the work was a fundamental first step in the evaluation process. The request in the tender documents for a “financial profile, which would include copies of audited financial statements for at least the most recent year end” was made so a decision could be made on financial viability. When none of the bidders satisfied the DTC that they were financially capable of doing the work, we believe that the process should have stopped at that stage.

8.05 While we believe the process should have stopped, staff were of the opinion that two provisions in the tender documents enabled them to continue, in their words, to “pursue the bid that was most advantageous to the Government.”

8.06 The first provision referenced by staff is related to the Central Tenders Committee, or its agent reserving the right “to request any information inadvertently omitted from a Bidder’s Qualification Statement or to request clarification or supplemental information relating to the information submitted. The items requested must be received by the Central Tenders Committee within 48 hours of the request.”

8.07 We disagree with this interpretation. We are of the opinion that a bidder’s failure to substantiate financial viability is not an inadvertent omission. In our view it was a fundamental and essential requirement set out in the tender document.



8.08 Staff also made reference to the provision in the tender document, which stated that, “subsequent to the submission of bids, interviews and negotiations may be conducted with any of the proponents”. While negotiations may be necessary to finalize arrangements with a bidder, we do not believe that it is appropriate to enter into negotiations concerning eligibility. The regulations are clear on this point, “tenders shall be evaluated and the successful bidder shall be selected, in accordance with the specified criteria.” If the specified criteria are not met, there can be no successful bidder.

8.09 Therefore, we believe that the proper course of action would have been for the DTC to re-tender the process. We recognize that this would have involved additional delay but feel that it was the proper thing to do in the circumstances.

8.10 In addition to the financial viability criterion, the tender document also required that bidders provide:

- a. A Qualification Statement, which was to include important information concerning the proposal, and
- b. A copy of valid insurance covering the period of the contract.

8.11 One of the bidders did not provide a Qualification Statement and none of them provided a copy of valid insurance coverage.

8.12 Notwithstanding the regulations and the eligibility and mandatory requirements of the tender document the DTC decided to continue the tendering process by initiating discussions with Matrix International Inc. One of the reasons given was that staff felt that by giving the company more time, they would be able to satisfy the shortcomings of their tender. Staff was also prepared to spend more time with Matrix because the company still presented an opportunity to government to have the scrap metal removed from the Island and receive \$1,250,000.



9. Need to Complete Due Diligence

9.01 In the original invitation to bid, all bidders were requested to prepare a qualification statement. This technical qualification required information on past experience, past and current contracts, information on equipment and a financial profile.

9.02 As previously mentioned, only Matrix provided a qualification statement as part of its bid. In its qualification statement, Matrix provided information relating to experience and contracts with government and other companies in New Brunswick. From the documents provided, it appeared that the principals of Matrix had experience in a local market. However, there was no evidence presented that they had expertise relating to transportation of materials overseas or experience in dealing with processors in the United States.

9.03 Therefore, the Office feels that there should have been more due diligence done on the principals of Matrix to determine their ability to fulfill the contract. It is not just the view of the Office of the Auditor General that more work should have been done to perform due diligence on the people involved in the Matrix contract. In a memo on January 19, 2007, the Assistant Solicitor General stated:

“ I would suggest that the C.T. Committee needs to do some due diligence on these people. The Minister needs to be satisfied as to the financial viability of (1) the principals (2) the company that is actually entering into the contract. Subject to what you may have learned at this morning’s meeting, and basing my opinion on the tangle of names and documents submitted, I don’t think the Minister can yet say that he has reached the necessary level of assurance.”

9.04 Despite this warning, the DTC did no direct due diligence on the principals involved. However, the DTC did decide to ask for three additional pieces of information from Matrix as mentioned previously. These conditions were:

- Confirmation of a line of credit
- Demonstration of an ability to secure insurance coverage for the Cayman based portion of the contract
- Most recent audited financial statements for Matrix International Inc.

9.05 As for the three conditions we were informed of the following:

The rationale in asking for audited financial statements was to be able to assess the financial strength and recent financial results of Matrix International Inc. This assessment would assist in determining their financial capability, their capacity to undertake the scrap metal project and to pay the \$1,250,000 to Government.

9.06 The rationale in asking for the banker to confirm a line of credit or bridge financing for the duration of the project was to obtain assurance that a financial institution had assessed the credit worthiness and capacity of Matrix International Inc. and was prepared to loan sufficient funds to fulfill the obligations under the tender.



9.07 The rationale behind asking Matrix International Inc. to demonstrate their ability to secure insurance coverage was to ensure that any injuries to workers on the project or any injuries to the public by transported scrap metal or derelict vehicles would be covered.



10. CTC Decision Making Process

10.01 The tender manual requires that the Procurement Officer of the DTC, “presents the recommendation to the CTC in order to demonstrate that the tender process was carried out fairly, consistently, ethically and transparently, in adherence to Cayman Islands Legislation and public sector guidelines, and that the bid being recommended for the tender award will provide value for money over the full procurement life-cycle. The CTC will vote to decide whether to support or reject the recommendation.”

10.02 The report from the DTC to the CTC which recommended offering the contract to Matrix International Inc. explained the process followed in tendering the project and in evaluating the proposals. The report made reference to the fact that one bidder only submitted the bid form and not the full documentation as required, and that none of the bidders provided proof of insurance. The evaluation criteria and weightings were attached as an appendix, as was the Evaluation results for the three bidders. The evaluation results reported that none of the bidders met the proof of financing requirement. The report was very specific on the shortcomings of the financial information provided by Matrix International Inc.

10.03 The report from the DTC was discussed at the December 15, 2006 meeting of the CTC. Two members of the DTC were in attendance to answer questions. The CTC voted to award the bid to Matrix International Inc. subject to the three conditions mentioned previously.

10.04 In reviewing and supporting the DTC report, the Chairman of the CTC indicated that the CTC took into consideration the large volume of scrap metal at the landfill site and the need to have the materials removed from the island as soon as possible.

10.05 The Chairman of the CTC informed Matrix International Inc. by letter dated December 18, 2006 that their bid had been accepted, subject to the three conditions noted above.

10.06 In light of our view that the CTC is ultimately responsible for decisions involving tenders in excess of \$250,000, and not the DTC, we provide the following recommendation.

Recommendation

10.07 *Any report from a DTC in support of a recommendation to award a tender should make specific reference to:*

- *compliance with legislation*
- *compliance with the tender manual*
- *specifically address the issue of eligibility and mandatory requirements, and*
- *include the evaluation analysis and recommendation.*



10.08 We make this recommendation because it is important that each DTC specifically address these key issues and reach a conclusion on each one of them, which they then would communicate to the CTC.



11. Disposition of Tender Conditions

11.01 Matrix International Inc. was informed on December 18, 2006 that their bid was accepted by the Central Tenders Committee subject to the three conditions. The contract was signed on March 19, 2007, without any of the three conditions being met.

11.02 No audited financial statements were received, there was no confirmation of a line of credit or bridge financing for the duration of the project and there was no demonstration that Matrix had the ability to secure insurance coverage.

11.03 While the condition to demonstrate the ability to secure insurance coverage was not met, we did note that this requirement was moved into the signed contract. The signed contract indicated that no work was to commence by Matrix, until they produced a copy of their liability insurance policy for inspection and approval.

11.04 When the three conditions could not be met we believe the discussions with Matrix International Inc. should have been terminated and the Central Tenders Committee so advised. The only authority the Ministry of C,W&I had was to enter into a contract with Matrix International Inc., provided the conditions had been met.

11.05 During the three month period between the tender award and the signing of the contract we were told a lot of time was spent trying to obtain the necessary documentation to fulfill the conditions. Other issues arose concerning the role and ownership of Matrix International Ltd., work permits, Trade and Business Licenses, a request to waive duty on imported equipment and the rental of Government equipment at the Landfill Site.

11.06 We saw evidence, that in February 2007, the DTC considered two substitutes for the three conditions that could not be met.

- a. A confirmation from the Royal Bank of Canada, in Grand Cayman that upon the receipt of a signed contract between the Government and Matrix International Ltd, Matrix would have US\$400,000 available to start the project.
- b. A confirmation from the Royal Bank of Canada in Grand Cayman that Matrix had arranged for an irrevocable standby letter of credit in the low seven figure range to secure the sale of the scrap metal with their supplier.

11.07 We point out that a letter of credit is not the same as a line of credit. In this particular situation, the letter of credit was actually for \$1,700,000, and in essence what it was saying is that if the purchaser of the first shipment of scrap metal (9,000 tons at \$190 US dollars per ton), did not pay for the shipment, draws could be made by Matrix against the financial institution that issued the letter of credit.

11.08 The Bank provided the requested certification on February 12, 2007.



11.09 It was still over a month before the contract was signed as there were discussions around ancillary issues such as a request from Matrix for a waiver of work permits and the waving of duty on the importation of equipment to be used on the project.

11.10 By the time the contract was signed the letter of credit was of no value because one of the conditions was that the first shipment of scrap metal was to have been delivered to Mobile Alabama on or before February 28, 2007

11.11 The decision to move forward with the contract was made by the Chief Officer of C,W & I where in a covering letter dated March 16, 2007 to the Directors of Matrix International Inc. (Operating as Matrix International Ltd.) he said that the Ministry was now able to sign the contract. The contract was signed three days later. This decision was made after discussions with the Solicitor General's Office.

11.12 As mentioned previously there was no reporting back to CTC on the DTC's inability to have the conditions met.

11.13 The rationale provided by staff to enter into the contract at this stage was as follows:

- a. Another hurricane season was only a few months away and there was an urgency to get a company engaged to remove the scrap metal.
- b. The potential still existed that Matrix could do the work and government get paid.
- c. An opinion from the Solicitor General's Office on February 8, 2007 that said the contract can be signed when the Bank provided the confirmation on the authenticity of the letter of credit.

11.14 As for mitigating the risks associated with another hurricane season, bailing the loose scrap could have been an option. We say this only to point out that there could have been alternative solutions to the problem, than entering into the contract with Matrix International Inc.

11.15 We noted during our discussions with staff frequent references to matters being referred for legal opinions. In fact we saw evidence that a draft contract was referred to the Solicitor General's Office for "legal advice and comments" on December 28th, 2006, and further requests were made whenever amendments to the contract were being considered. We also saw legal advice on the issue of corporate identities, and the importance of identifying the company that would actually be entering into the contract. And a request was made for "review and comments" on the letter of credit referred to above.

11.16 The Assistant Solicitor General explained to us that the role of the Solicitor General's Office was to provide advice on specific questions. When we pointed out that the Contract was signed without the three conditions being fulfilled, we were informed the details of the three conditions were never communicated to the Solicitor General's Office and that they were never asked to give an opinion on this matter.



11.17 We raise these issues because we sense there is a misunderstanding as to the role played by the Solicitor General's Office. It is important that respective roles be understood to ensure that reliance is not placed on legal opinions on specific matters to mean that everything has been vetted by legal and that a contract should be signed.

Recommendation

11.18 *The Ministry of C,W & I, and the Solicitor General's Office come to a clear understanding as to the role of the Office when advice is provided and that this be communicated to senior staff of the Ministry. There may be value in communicating this understanding to other Ministries.*



12. Contract Signing

12.01 The final step in our review was to make certain the contract signed on March 19, 2007 was consistent with the expectations set out in the Invitation to Bid and properly incorporated any relevant undertakings of Matrix International Inc.

12.02 From our review we concluded the contract was consistent with the Invitation to Bid and the contents of the bidder's proposal except in one material respect. The contract gave Matrix until August 1, 2007 to remove the loose scrap metals from the Cayman Islands. In their proposal they indicated that all loose metals would be removed by May 31, 2007. In our opinion, it is not fair to the tendering process to permit a bidder to change their proposal. This is especially true since the tender documents indicated that it would be desirable for the contract to be completed by May 31, 2007 and all bidders were requested to provide a date that the contract would be completed.

12.03 The Invitation to Bid and Matrix's response were both included as appendices to the contract, and section 1.1 said "the following two appendices attached to this agreement, shall be treated as forming part of this agreement." An inconsistency between the contract and the bidder's proposal is one area where we would have expected a concern to be raised as to whether the results of this process were fair to all interested parties.

12.04 Another observation we make is the contract entered into was between the Ministry of Communications Works and Infrastructure and the Department of Environmental Health on behalf of Government of the one part and Matrix International Inc., operating as Matrix International Ltd. of the other part.

12.05 We had noted that Matrix International Inc. submitted the proposal and that Matrix International Ltd. had been incorporated as an Ordinary Company in the Cayman Islands on December 6, 2007. It is our understanding that Matrix International Inc., as a foreign company could have contracted for the removal of scrap metals as a stand alone company. It appears that the motive in forming Matrix International Ltd. was to have a company that could do other things in the Cayman Islands and the Caribbean in general. While there was no evidence of financial substance to either company, we feel it was a wise decision to include both as parties to the contract.

13. Status of the Tender Manual and the Role of the Central Tenders Committee

13.01 In April 2006 the Financial Regulations were amended to provide for a “pre-qualifying tender process. At that time reference was made to procedures being followed in accordance with “a practice manual published by the Central Tenders Committee.” This is the only reference to the tender manual in the regulations. It is not recognized in connection with the “prescribed tendering process.”

13.02 As mentioned earlier in our report we found the procedures set out in the tender manual to be comprehensive and covered the key aspects of the tendering process. We were satisfied that the procedures required for each component of the tender process provided us with appropriate criteria to conduct this review.

13.03 Without referencing the tender manual as the guidance to be followed for the “prescribed tendering process” in The Financial Regulations, the tender manual does not have any legal status. We believe that the regulations should be amended so that it is clear that the tender manual has authority in the regulations and that it should be used as the definitive document when fulfilling the tendering process.

13.04 We also noted that the regulations provide very little direction and guidance to the Central Tender Committee. Section 40(2) states that “A contract with a value of two hundred and fifty thousand or more shall be evaluated by a Central Tenders Committee...” We suggest that it be clearly understood what is meant by “evaluated by a Central Tenders Committee”, and that the regulations be amended to clearly reflect this understanding.

Recommendations

13.05 *The Financial Regulations be amended to make appropriate reference to the tender manual in connection with the procedures to be followed in connection with the tendering process.*

13.06 *The role of the Central Tender Committee in the evaluation of tenders in excess of two hundred and fifty thousand dollars be clearly established and that the regulations be amended to properly reflect this understanding.*

