

Manitoba no-go zone for reprisal or local preference clauses in public tenders: Friesen

Manitoba Finance Minister Cameron Friesen has notified the province has a 0 tolerance policy for obstructionist trade practices, including the use of local preference provisions and reprisal clauses in tender, bidding and contract language.

"Manitoba Finance will be making it clear to public -sector tendering bodies that the use of arbitrary clauses for punitive or spurious reasons in tender invitations is not an accepted practice and should not be used as a bid disqualification rationale in public tendering opportunities," Friesen stated in a letter to MHCA President Chris Lorenc, dated October 12.

The MHCA has worked doggedly to urge the elimination of both pernicious practices within the province and across provincial borders. Recently the Department of Growth, Enterprise and Trade --on MHCA's urging -- intervened to push Saskatchewan to ensure that Manitoba contractors and suppliers were recognized as eligible bidders for contracts tendered by SaskPower. Initial tender documents omitted Manitoba because it believed this province was not yet a signatory to the New West Partnership. That has been corrected, a letter from GET confirmed this summer.

Closer to home, a school division had issued a tender the language of which included a reprisal clause. Reprisal clauses disqualify from bidding any company that is or has recently been involved in legal action against the owner of the project.

Friesen effectively has lowered the boom on such practices, declaring: "We will also clarify that public sector tendering bodies are not to reject any solicitation response (Bid, Proposal) on the basis of the Bidder/Proponent initiating a bid dispute process in accordance with the provisions of the trade agreements that Manitoba is a party to."

The letter was copied to Infrastructure Minister Ron Schuler and Education Minister Ian Wishart.

Lorenc said the association is grateful for the work of the Pallister government on the issue of obstructionist trade practices. Local preference practices have been used in other jurisdictions to give domestic bidders the leg up in bidding for contracts. Typically, local preference assigns points to those bids from companies that can demonstrate having worked with project owners, community groups and suppliers in the jurisdiction, or having experience and knowledge of local conditions, such as the climate and geological features.

"The MHCA has always stood for the principle of open, unfettered and competitive tender and bid processes. It is ultimately in the best interests of the taxpayers who get maximum value from the tender in terms of price and quality," Lorenc added.

He noted that tenders and public project owners always reserve the justified right to exclude bids from companies that have a demonstrated poor work record, or have a history of vexatious litigation.