

P.O. Box 130, Witless Bay, NL AoA 4Ko townofwitlessbay@nl.rogers.com

(709) 334-3407 (709) 334-2377

Special Public Meeting of Council Town Hall – 7:00 pm

September 19, 2019

Attending:

Deputy Mayor Maureen Murphy, Councillors Fraser Paul, Lucy Carew, Vince

Swain

Mayor Rene Estrada attended via remote means

Reporting

Geraldine Caul and Barb Harrigan

- 1. Deputy Mayor Maureen Murphy called the Special Public Meeting to order at 7:00 p.m.
- 2019-244 Councillor Lucy Carew/Councillor Vince Swain
 Be it resolved that Council adopt the Agenda of September 19, 2019

Amendment: Councillor Fraser Paul/Councillor Lucy Carew Add to the agenda the Statement of Claim – Harbour Construction Ltd. & the Town of Witless Bay.

Amendment carried unanimously.

Motion to adopt the agenda as amended carried unanimously.

3. Quotes for siding for the Town Hall and Municipal Garage – Councillor Vince Swain declared a conflict of interest on this item because his son submitted a quote. Councillor Swain left the Chamber at 7:06 pm.

2019-245 Councillor Fraser Paul/Councillor Lucy Carew

Be it resolved that Council accept the quote for a total amount of \$21,960.00 from M & V Construction Ltd. for installing siding on the Town Hall and Municipal Garage.

For: Mayor Rene Estrada, Deputy Mayor Maureen Murphy, Councillors Fraser Paul and Lucy Carew.

Abstained: Councillor Vince Swain [declared a conflict of interest.] Motion carried.

Councillor Vince Swain returned to the Chamber at 7:07 pm.

Town of Witless Bay

Home of the NORTH ATLANTIC

4. Tender results for snow clearing 2019-2021

2019-246 Councillor Vince Swain/Councillor Fraser Paul
Be it resolved that Council accept the tender from O'Brien's Trucking Ltd. for snow clearing for 2019-2021.
Motion carried unanimously.

5. Manhole covers

2019-247 Councillor Fraser Paul/Councillor Vince Swain

Be it resolved that the Town award Mercer's Paving, in amount of \$1800 plus HST, to supply and install two (2) manhole extensions to the side of Southern Shore Highway leading to Gull Pond Road.

Discussion: Councillor Fraser Paul reported that Public Works met with the Dept. of Transportation and discussed the initial quote which was to cover it in, but they disagreed because Southern Shore Highway is their responsibility, and if the Town altered the site and they did not agree with the work and something goes wrong, then the Town would have to pay the full cost of repairing it. He suggested it would not be a problem to raise it and do the work the Town wanted to do, but it had to come back to Council to make a decision and to approve.

Motion carried unanimously.

6. Statement of Claim

2019-248 Councillor Fraser Paul/Councillor Vince Swain
Be it resolved that Council send the Statement of Claim between Harbour Construction
and the Town to the Town's lawyer for clarity and new information on how to proceed.
Motion carried unanimously. (Appendix A)

 2019-249 Councillor Vince Swain/Councillor Lucy Be it resolved that Council adjourn at 7:08 pm. Motion carried unanimously. 2019 01G 5584

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION

BETWEEN:

HARBOUR CONSTRUCTION

LIMITED

PLAINTIFF

AND:

TOWN OF WITLESS BAY

DEFENDANT

STATEMENT OF CLAIM

- 1. The Plaintiff, Harbour Construction Limited ("Harbour Construction"), is a corporation duly incorporated pursuant to the laws of the Province of Newfoundland and Labrador with a mailing address of . Witless Bay, NL, A0A 4KO and an address of service at c/o Benson Buffett PLC Inc., Suite 900, 215 Water Street, St. John's, NL, A1C 5N8.
- 2. The Defendant, the Town of Witless Bay ("the Town"), is a municipality duly incorporated pursuant to under the provisions of the *Municipalities Act*, 1999.
- 3. In or around October 2017, the Defendant issued a call for tenders for snow clearing services (hereinafter the "Tender") for the Town of Witless Bay for the period of 15th Day of October, 2017 to the 30th day of April 2019 pursuant to the terms and conditions laid out in the specification documents (hereinafter the "Tender Specifications"), the instruction documents (hereinafter the "Instruction to Bidders"), and the Tender Form.
- 4. The Instructions to Bidders dictated that, amongst other things, that alteration of the Tender Form, including making additions or conditions or other qualifications beyond what was provided on the Tender Form, is grounds for rejection.
- 5. Pursuant to provisions under the *Public Procurement* Act, *2016*, SNL 2016 c. P-41.001 and the *Public Procurement Regulations* thereunder, The Town was obligated to award the

tender to the preferred supplier who submitted the lowest price bid and/or highest ranking bid meeting all terms, conditions, and specifications of the invitation to Tender.

- 6. On or about the 10th day of October 2017, Harbour Construction submitted a Tender in full compliance with the Tender Specifications, the Instructions to Bidder and the Tender Form.
- 7. On or about the 10th day of October 2017, the Defendant did a tender opening and verbally disqualified two bids: Harbour Construction's bid was disqualified on the basis that there was no excavator quote included, and Southeast Construction was disqualified for including a price for a loader that was meant to be deleted, but also for non-compliance with COR requirements.
- 8. It is the understanding of Harbour Construction that Southeast Construction subsequently withdrew their bid due to a pricing error.
- The Defendant notified the bidders, including Harbour Construction on October 19th, 2018
 that the contract was awarded to O'Brien's Trucking Ltd.
- 10. Harbour Construction submits that the Defendant's determination of their bid as non-compliant was erroneous, and that Harbour Construction's bid was fully compliant with all material aspects of the tender.
- 11. Harbour Construction further submits that any errors made in their bid were based on the Town's own mistakes in providing unclear instruction on a non-material portion of the bid.
- 12. Harbour Construction further submits that, if properly deemed compliant, their bid should have been selected as the preferred supplier, pursuant to the *Public Procurement Act, 2016* and the *Public Procurement Regulations*, and thereby awarded the Tender.
- 13. Harbour Construction submits that the bid that was awarded contained hand-written quotations and the addition of such contravened the Instruction to Bidders, deeming the bid materially non-compliant.

- 14. Harbour Construction further submits that, in the alternative, even if the successful bid was compliant, the Harbour Construction's compliant bid would have been selected as the preferred supplier, and thereby awarded the Tender.
- 15. As a result of the Town's erroneous award, Harbour Construction has suffered loss of revenue of \$222,415.67 comprised of the profit built into the bid submitted by Harbour Construction.
- 14. The Plaintiff therefore claims:
 - (a) Special damages in the amount of \$222,415.67;
 - (b) General or pecuniary and general non-pecuniary damages;
 - (c) Pre-judgment and post-judgment interest;
 - (d) Costs of this action including discovery and H.S.T. costs; and
 - (e) Such further and other relief as this Court deems just.

DATED AT the City of St. John's, in the Province of Newfoundland and Labrador, this 29° day of August, 2019.

DANIELLE SOMERTON

BENSON BUFFETT PLC INC.

Solicitors for the Plaintiff

Whose address for service is:

Suite 900, 215 Water Street St. John's, NL A1C 5N8

TO: The Defendant

The Town of Witless Bay <u>Whose Address for Service is:</u> 219 Southern Shore Highway Witless Bay NL AOA 1KO ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador this day of August, 2019.

COURT

2019 01G 5384

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION

BETWEEN:

HARBOUR CONSTRUCTION

PLAINTIFF

AND:

TOWN OF WITLESS BAY

DEFENDANT

NOTICE TO DEFENDANT

You are hereby notified that the Plaintiff may enter judgement in accordance with the Statement of Claim or such Order as, according to the practice of the Court, the Plaintiff is entitled to, without further notice to you unless within ten (10) days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland at St. John's, a defence and unless within the same time a copy of your defence is served upon the Plaintiff or the Plaintiff's Solicitor at the Plaintiff's Solicitor's stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$ for costs to the Plaintiff or the Plaintiff's Solicitor, within days from the service of this notice upon you, then this proceeding will be stayed.

TO: The Defendant

The Town of Witless Bay
Whose Address for Service is:
219 Southern Shore Highway
Witless Bay NL AOA 1KO