

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.

2. **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.

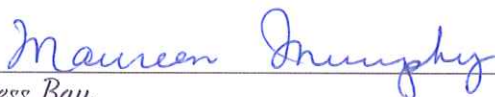
2019-245 Councillor Fraser Paul/Councillor Lucy Carew
Be it resolved that Council accept the quote for a total amount of \$21,960.00 from M & V Construction Ltd. for installing siding on the Town Hall and Municipal Garage.

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.



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)

7. **2019-249** Councillor Vince Swain/Councillor Lucy

Be it resolved that Council adjourn at 7:08 pm.

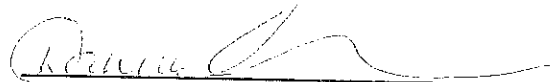
Motion carried unanimously.

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.
9. 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 29th 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
Whose Address for Service is:
219 Southern Shore Highway
Witless Bay NL A0A 1K0

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador this 20th day of August, 2019.

Kayla Roberts

COURT
OFFICER

