



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF ENGINEERING AND PUBLIC WORKS

MISSION STATEMENT: *Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.*

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To: Mayor and Members of Town Council

Subject: Ouellette Drain West Improvements - Tender Results

1. **RECOMMENDATION:**

It is recommended that:

1. An over-expenditure not to exceed \$81,756 **BE APPROVED** for the Repair and Improvement to the Ouellette Drain West project, for a total cost not to exceed \$325,756 including net HST to be funded by recoveries from benefitting property owners;
2. The Town's estimate of the over-expenditure not to exceed \$13,529 including net HST be funded from current taxation **BE APPROVED**, with any surplus/deficit resulting from taxation funded operations to be addressed through recommendations in the year end (Q4) variance report;
3. The Ouellette Drain West Tender **BE AWARDED** to Nevan Construction Inc. for an amount not to exceed \$245,200 plus H.S.T.; and,
4. The Mayor and Clerk **BE AUTHORIZED** to execute an agreement with Nevan Construction Inc. for completion of the Ouellette Drain West improvements.

2. **BACKGROUND:**

The Town advertised a Request for Tender (RFT) for the Ouellette Drain West on February 17, 2021 online via Bids and Tenders and on the Town's website. The RFT included the removal of an existing stacked limestone erosion protection wall near the outlet of the Ouellette Drain West and construct new gabion basket retaining walls at the

drain banks all according to the June 28, 2019 engineering report completed by RC Spencer Associates Inc. The By-law authorizing the work under said report was passed by Council on December 18, 2020.

3. **DISCUSSION:**

Tenders closed for this project at 11:00 a.m. on Wednesday March 3, 2021. Though there were thirteen (13) plan takers (picked up the RFT), the Town received two (2) tender submissions that were processed electronically via the Bids and Tenders system, possibly due to the nature and complexity of the required works.

The tenders were reviewed electronically to ensure there were no mathematical errors or omissions. The tender results are:

Bidder	Tender Amount (excluding HST)
1. Nevan Construction Inc.	\$ 245,200.00
2. South Shore Contracting of Essex County Inc.	\$ 347,700.00

The consulting engineer has completed the review of the submissions and has recommended that the tender be awarded to the lowest bidder, Nevan Construction Inc. Administration concurs with this recommendation.

The engineer's estimate for this project undervalued the cost of many of the required construction materials. These include the PVC coated, steel wire mesh gabion baskets, gabion stone, granular stone, and asphalt. While the material costs were notably higher than the engineering estimate, the estimate for labour related items were found to be much more in line with the tendered values received from Nevan Construction Inc. Administration has recently noted a trend in the increasing costs of materials and material delivery due to COVID-19 pandemic related supply challenges. The tendered material prices received under this project provide further evidence that supports this trend.

In addition, a \$10,000 contingency allowance was required per the RFT but was not included in the construction estimate provided in the Drainage Report. At the discretion of the drainage engineer, a contingency allowance was not included in the report due in part to the nature of the Schedule of Assessment. Despite the exclusion of the contingency within the engineering report, it was added to the RFT to ensure that additional expenditures, if needed, would be addressed without later consent from Council. This is in keeping with past practises when tendering larger drainage projects.

It should also be noted that due to Tribunal appeals beyond the control of the Municipality, the final passing of the By-law and subsequent tendering of this project was delayed by over a year. Pandemic related challenges pushed the Tribunal hearing from its original scheduled date in early May of 2020 to the end of November 2020. In consideration that the engineering report and estimate were completed in June of 2019, there was no way of forecasting the impacts that the pandemic would have on construction costs or the timing of any appeals hearings. Had there been no Tribunal appeals, tendering would have occurred in early 2020 and prior to the onset of these COVID-19 pandemic related cost increases.

4. **RISK ANALYSIS:**

The tender results exceed the engineering estimate provided under the Drainage Report by RC Spencer. In comparison with the engineering estimate, the bid submitted by Nevan Construction Inc., excluding the contingency allowance included in the Tender, is approximately 30.8% higher than the estimate. However, this amount does not exceed the 33% overage threshold stipulated under Section 59 of the Drainage Act, which would have required Council to call a meeting with affected landowners to discuss the construction costs. It should be noted that this information is provided to Council in order to draw attention to their obligations under the Act to meet with landowners to discuss construction costs. It should also be noted that the Act does not provide an overage threshold by which a construction Tender shall be rejected by Council.

The primary focus of this drainage project is to stabilize the banks of the Ouellette Drain West near its outlet at the Detroit River. The original drain bank protection in this area, which is comprised of stacked horizontal courses of limestone blocks, were installed in 1952. At the time, this was done to protect the adjacent residential lands and structures from the continuation of drain bank erosion. Since that time, these erosion protection measures have deteriorated, once again putting the adjoining properties at risk. The works proposed under the RC Spencer report and subsequent tender will address this risk and will safeguard against further property damage and loss.

Due to annual restrictions imposed throughout the spring months to protect fish spawning, construction cannot commence before the end of June. Bearing this in mind, scheduling provisions within the Tender have been drafted in such a way so as to provide the best opportunity to complete the works at the earliest opportunity possible. Any further delays to the commencement of this project and the remediation of the drain banks could lead to further destabilization and injury to adjoining property.

Should construction be delayed, appeal rights are afforded to affected landowners under Section 58(5) of the Drainage Act which states:

Appeal to Tribunal

58 (5) Where the council does not proceed with reasonable dispatch with the construction of the work after passage of the by-law, a petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 58 (5); 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (24).

The intention of this section of the Act is to ensure that a landowner's right to sufficient drainage as recommended by the engineer is protected. This section of the Act also helps to mitigate further damage suffered from a lack of drainage.

Under the Drainage Act, the municipality can be held responsible for damages if the improvements are not completed. In consideration of these risks, along with the appeal rights afforded to affected landowners as outlined herein, the recommendation is to proceed with award of the tender.

5. FINANCIAL MATTERS:

As this is a drainage project being conducted under the provisions Section 78 of the Drainage Act, final project costs will be assessed to affected landowners according to the Drainage Report prepared by RC Spencer Inc., dated June 28, 2019.

The total project cost for improvements to the Ouellette Drain West is estimated as follows:

Drainage Project: Ouellette Drain West	Budget ⁽¹⁾	Actual (incl. net HST)	Variance (over)/under
Cost:			
Engineering & Project Management		\$ 62,500	
Cost of ERCA Permit		800	
Tribunal Costs		11,290	
Allowances (per Engineer's Report) ⁽²⁾		1,650	
Construction – Tender Pricing ⁽³⁾		249,516	
Total Project Cost	\$ 244,000	\$ 325,756	(\$ 81,756)
Funding⁽⁴⁾:			
Taxation (Municipal Share)	\$ 39,338	\$ 52,867	(\$ 13,529)
Assessment to the County of Essex	24,624	33,093	(8,469)
Landowner Assessments	180,038	239,796	(59,758)
Total Project Funding	\$ 244,000	\$ 325,756	(\$ 81,756)

Notes:

1. The 2021 Budget includes an allowance of \$244,000 in the Drainage budget centre under Drain Construction expense for completion of these works, to be funded by recoveries from benefitting property owners. The estimated Town share of the cost is funded from taxation and is allowed for under the Public Works budget centre as Municipal Drain Expense. (see note 4 below)
2. Allowances to be paid to lands specified under the Drainage Report, the cost of which makes up part of the total project cost, are collected through assessment.
3. The recommended tender for the Ouellette Drain West includes a contingency allowance of \$10,176 including net HST (\$10,000 plus HST), which will be used for unforeseen expenditures should they arise during construction.
4. Subsequent to the Town's budget process, an updated drainage Engineer's Report was completed resulting in the development of an updated Schedule of Assessment to reflect the removal of one property from the drain. As a result, the proportionate shares of funding have been updated based on the Schedule of Assessment.

In addition, the estimated cost of the works shown above pro-rates the entire amount of the \$10,000 contingency (plus tax) across the assessment schedule (shared by all benefitting properties). Should the contingency allowance be required to fund unforeseen costs that arise during construction, such costs will be pro-rated appropriately to all of the lands and roads according to the Schedule of Assessment.

Of the \$400,000 budgeted under the 2021 Budget for Municipal Drain Expense in the Public Works budget centre, \$39,338 was allocated to fund the Town's assessed share of the Ouellette Drain West project. Based on the tender results and the updated project cost estimate, including the Town's share of the contingency allowance and taxes, the road share of project costs is now estimated at \$52,518, an increase of \$13,180.

It is recommended that the Town's share of the project over-expenditure be funded from current taxation, particularly since the estimated overage includes contingency allowance which may not be incurred..

6. CONSULTATIONS:

The Consulting Engineer (RC Spencer Associates Inc.) reviewed the tender submissions. They are recommending awarding the contract to Nevan Construction Inc.

The Director of Corporate Services was consulted on this report.

7. CONCLUSION:

Administration is recommending that Council award the Ouellette Drain West to Nevan Construction Inc.



Shane McVitty
Drainage Superintendent and Engineering Coordinator

Report Approval Details

Document Title:	Ouellette Drain West Improvements - Tender Results.docx
Attachments:	- 210311 - LETTER - RC Spencer - Ouellette Drain West - letter of recommendation.pdf - AGREEMENT - Ouellette Drain West - Agreement with Nevan Construction.docx
Final Approval Date:	Apr 6, 2021

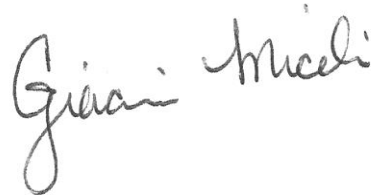
This report and all of its attachments were approved and signed as outlined below:



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