

THE CORPORATION OF THE TOWNSHIP OF
ASSIGINACK
BY-LAW # 14-17

Being a by-law to provide for the authorization of tendering.

WHEREAS the Municipal Act, R.S.O. 1990, provides that councils may authorize tendering;

AND WHEREAS the municipal council of the Corporation of the Township of Assiginack deems it expedient to enact a by-law to govern the authorization of tendering;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ASSIGINACK HEREBY ENACTS AS FOLLOWS:

1. Definitions

In this by-law:

- a. "council" means the council of the Corporation of the Township of Assiginack;
- b. "reeve", "clerk-administrator" shall mean the Reeve and Clerk-Administrator of the municipal corporation respectively;
- c. "municipal corporation" means the Corporation of the Township of Assiginack;
- d. "bidder" or "tenderer" means a person, agent, company or other such entity that formally responds to a call for tenders by submitting a bid to do work or provide the product, or to purchase real property;
- e. "tender" means an application by a bidder to the municipality stating the cost of providing a good or service, or cost of real property to the municipality;
- f. "security deposit" means the deposit required by the municipality in the form of a money order, certified cheque, letter of credit, etc.;
- g. "performance bond" is a form of security provided by the bidder whereby the surety company agrees to pay to the municipality the full amount of the bid should the tender fail to complete or comply with the contract as agreed;
- h. "prequalification" is a requirement that bidders satisfy the municipality that they have undertaken similar work or supplied similar services on other tenders;
- i. "addendum" is the additional information supplied by the municipality after the original tender call.
- j. 'standard terms and conditions for municipal purchasing': unless otherwise noted herein, where applicable, all tender, quotations and proposals shall adhere to this document.

2. Tendering

Unless otherwise authorized by Council:

- a. The municipality will supply the tender documents which outline the specifics of the tender as well as the guidelines for the completion of the tender documents;
- b. Whether the bid is received through the mail or by personal delivery, the date and time of the receipt will be stamped or written directly on the envelope containing the bid and an independent record will be kept as well by the Clerk-Administrator.
- c. The Clerk-Administrator will secure the sealed tenders in the office until such time as the tenders are open for inspection.
- d. The Clerk Administrator will secure all opened tenders awaiting Council's decision in the office.

3. Advertising for Tenders

Unless otherwise authorized by Council:

- a. Advertising for tenders will be placed at least twice in two local papers no later than 10 days, including holidays, before the dead-line for acceptance of bids;
- b. The following information will be included in each advertisement for tender;
 1. The name of the Municipality calling the tender;
 2. A description of the work, equipment required or property to be sold;

3. Where plans, specifications and forms may be obtained;
4. The person or place where tenders should be sent;
5. The date and time of closing for the receiving of tenders;
6. The bonding or deposit requirements;
7. The statement that "the lowest or any bid not necessarily accepted";
8. The name and position of the Clerk-Administrator or appropriate Department Head.

4. Opening Tenders

Unless otherwise authorized by Council:

- a. When tenders are being opened, the Clerk-Administrator or the Treasurer and one other staff member, may open the tenders, provided that the tenderers and Council members have been notified of the date and time of the opening, and invited to attend the opening;
- b. The tenders will be opened in the order in which they were received with the first tender received be opened first, etc.;
- c. After all tenders have been opened and noted, the actual tender price of each bid will be announced except where a request for withdrawal has been made;
- d. Subsequent to the announcing of the tenders, each bid must be validated by insuring that certain conditions, such as the following, have been met:
 1. The tender is properly signed, sealed and complete;
 2. The calculations, if any, must be correct;
 3. The bid must be on the forms supplied by the municipality;
 4. No unacceptable conditions to the Municipality can be enclosed;
 5. Proper security deposits and other bonds, if required, will be adhered to.
- e. Following this review, the tender prices are recorded and initialed by those present.
- f. Late tenders shall not be opened but shall be returned to the bidder in question.
- g. That all tenders, once opened by the Clerk-Treasurer or Deputy Clerk-Treasurer and one staff member, shall be submitted to Council for their decision.

5. Acceptance of Bids

- a. Written notice will be sent to the successful bidder and to all unsuccessful bidders.
- b. If more than two tenders are received, the municipality may retain at least one of the other bids in addition to the successful bidder until a formal agreement has been entered into with the successful bidder.
- c. The municipality reserves the option to re-advertise should they decide not to accept any of the bids.
- d. Where two or more tenders are equal, the tender that was received earlier shall be deemed to be higher.

6. Forms and Documents

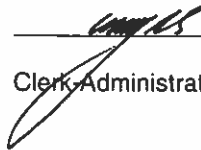
The Clerk-Administrator may prepare the forms of certification, approvals, and authorizations referred to herein and all members of Council, other officers and employees shall adhere the same to.

In the event that any particular provision or provisions or part of a provision is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or provisions or the part of the provision shall be deemed to be severed from the remainder of this By-law and all other provisions shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

READ A FIRST AND SECOND TIME THIS 8 DAY OF July, 2014 AND
FINALLY PASSED ON THIS 8 DAY OF July, 2014.



Reeve



Clerk-Administrator

SEAL

MUNICIPALITY



OF ASSIGINACK

P.O. BOX 238 MANITOWANING, ON, P0P 1N0
(705) 859-3196 or fax 859-3010

www.assiginack.ca

STANDARD TERMS AND CONDITION
MUNICIPAL PURCHASING

1. DEFINITIONS

TOWNSHIP – The Corporation of the Township of Assiginack.

BIDDER – The person, firm or corporation submitting a bid to the Township.

BID – An offer by a bidder in response to the document issued by the Township.

COMPANY – The person, contractor, firm or corporation to whom the Township has awarded the Contract, its successors and assigns.

CONTRACT – The purchase authorization to the Company to perform work, the documents and addenda, the bid and surety.

SUBCONTRACTOR – A person, firm or corporation having a contract with the Company for any part of the work.

DOCUMENT – The documents issued by the Township in response to which bids are invited to perform the work in accordance with the specifications contained in the document.

WORK – All labour, materials, products, articles, equipment, fixtures, services, supplies, act required to be done, furnished or performed by the Company, which are subject of the Contract.

2. SUBMISSION OF BID

The Township's purchasing procedures will apply for the calling, receiving and opening of bids.

The bid must be submitted on the forms and in an envelope supplied by the Township unless otherwise provided herein. The bid must be signed by the designated signing officer of the Bidder. If a joint bid is submitted, it must be signed on behalf of each of the Bidders.

The bid must be legible, written in ink or typewritten. Any form of erasure, strikeout or over writing must be initialed by the Bidder's authorized signing officer.

The bid must not be restricted by a covering letter, a statement added or by alterations to the document unless otherwise provided herein.

Failure to return the document on invitation may result in the removal of the Bidder from the Township's Bidders List.

A bid received after the closing date and time will not be considered and will be returned, unopened.

Should a dispute arise from the terms and conditions of any part of the contract, regarding meaning, intent or ambiguity, the decision of the Township shall be final.

3. CONTRACT

The contract consists of a purchase order or resolution issued by the Township authorizing the Company to perform the work, alterations, addenda and the document, the bid and surety.

The contract and portions thereof take precedence in the order in which they are named above, notwithstanding the chronological order in which they were issued or executed.

The intent of the contract is that the company shall supply work which is fit and suitable for the Township's intended use and complete for a particular purpose.

None of the conditions contained in the Bidder's standard or general conditions of sale shall be of any effect unless explicitly agreed to by the Township and specifically referred to in the purchase order or resolution.

4. CLARIFICATION OF DOCUMENT

Any clarification of the document required by the Bidder prior to submission of its bid shall be requested through the Township's purchasing contact identified in the document. Any such clarification so given shall not in any way alter the document and in no case shall oral arrangements be considered.

Every notice, advice or other communication pertaining thereto shall be in the form of a written addendum.

No officer, agent or employee of the Township is authorized to alter orally any portion of the document.

5. PROOF OF ABILITY

The bidder may be required to show, in terms of experience and facilities, evidence of its ability, as well as that of any proposed subcontractor, to perform the work by the specified delivery date.

6. DELIVERY

Unless otherwise stated, the work specified in the bid shall be delivered or completely performed by the company as soon as possible and in any event within the period set out herein as the guaranteed period of delivery or completion after receipt of a purchase order or resolution therefore.

A detailed delivery ticket or piece tally showing the exact quantity of goods, materials, articles or equipment shall accompany each delivery thereof. Receiving by a foreperson, storekeeper or other such receiver shall not bind the Township to accept the work covered thereby or the particulars of the delivery ticket or piece tally thereof.

Work shall be subject to further inspection and approval by the Township.

The company shall be responsible for arranging the work so that the completion shall be as specified in the contract.

Time shall be of the essence with regard to the contract.

7. PRICING

Prices shall be in Canadian funds, quoted separately for each item stipulated, F.O.B. destination.

Prices must include all incidental costs and the company shall be deemed to be satisfied as to the full requirements of the bid. No claims for extra work will be entertained and any additional work must be authorized in writing prior to commencement. Should the company require more information or clarification on any point, it must be obtained prior to the submission of the bid.

Payment shall be full compensation for all costs related to the work, including operating and overhead costs to provide work to the satisfaction of the Township.

All prices quoted will include applicable customs duty, excise tax, freight, insurance and all other charges of every kind attributable to the work. Harmonized Sales Tax will be extra and not shown, unless otherwise specified herein.

If the bidder intends to manufacture or fabricate any part of the work outside of Canada, it shall arrange shipping procedures so that its agent or representative in Canada is the importer of record for customs purposes.

Should any additional tax, duty or any variation in any tax or duty be imposed by the Government of Canada or the Province of Ontario become directly applicable to work specified in this document subsequent to its submission by the bidder and before the delivery of work covered thereby pursuant to a purchase order or resolution issued by the Township appropriate increase or decrease in the price of work shall be made to compensate for such changes as of the effective date thereof.

8. TERMS OF PAYMENT

Where required by the Construction Lien Act, appropriate monies may be held back until 45 days after completion of the work.

Payments made thereunder, including final payment, shall not relieve the company from its obligations or liabilities under the contract.

Acceptance by the company of the final payment shall constitute a waiver of claims by the company against the Township, except those previously made in writing in accordance with the contract and still unsettled.

The Township shall have the right to withhold from any sum otherwise payable to the company such amount as may be sufficient to remedy any defect or deficiencies in the work, pending correction of it or such amounts as may be sufficient to satisfy any claim under Section 23 hereof.

Payment may be made 30 days after delivery pursuant to the bidder submitting an invoice, contract requirements being completed and work being deemed satisfactory.

9. PATENTS AND COPYRIGHTS

The company shall, at its expense, defend all claims, actions or proceedings against the Township based on any allegations that the work or any part of the work constitutes an infringement of any patent, copyright or other proprietary right, and shall pay to the Township all costs, damages, charges and expenses, including its legal fees occasioned by the Township by reason thereof.

The company shall pay all royalties and patent license fees required for the work.

If the work or any part thereof is in any action or proceeding held to constitute infringement, the company shall forthwith either secure for the Township the right to continue using the work or shall at the company's expense, replace the infringing work with non-infringing work or modify it so that the work no longer infringes.

10. ALTERNATES AND EQUIVALENCY

Any opinion with regard to the use of a proposed alternate determined by the Township shall be final. Any bid proposing an alternate will not be considered unless otherwise specified herein.

Any option determined by the Township with respect to equivalency shall be final.

11. ASSIGNMENTS AND SUBCONTRACTING

The company shall not assign or sub contract the contract or any portion thereof without the prior written consent of the Township.

12. LAWS AND REGULATIONS

The company will comply with the relevant federal, provincial and municipal statutes, regulations and by-laws pertaining to the work and its performance. The company will be responsible for ensuring similar compliance with suppliers and subcontractors.

The contract will be governed by and interpreted in accordance with the laws of the Province of Ontario.

13. CORRECTION OF DEFECTS

If at any time prior to one year after the actual delivery date or completion of the work (or specified warranty/guarantee period if longer than one year) any part of the work becomes defective or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the contract, the company upon request, shall make good every such defect, deficiency or failure without cost to the Township. The company shall pay all transportation costs for work both ways between the company's factory or repair depot and point of use.

14. BID ACCEPTANCE

The Township reserves the right to award by item, or part thereof, groups of items, or part thereof or all items, and to award contracts to one or more bidders submitting identical bids as to price, to accept or reject any bids in whole or in part, to waive irregularities and omissions, if in doing so, the best interest of the Township is served. No liability will accrue to the Township for any decision in this regard.

Bids shall be irrevocable for 60 days after the official closing time.

The placing in the mail or delivery to the bidder's shown address given in the bid of a notice of award to a bidder by the Township shall constitute notice of acceptance of a contract.

15. DEFAULT BY COMPANY

A.1 If the company commits any act of bankruptcy or if a receiver is appointed on account of its insolvency or in respect of any of its property, or if the company makes a general assignment for the benefit of its creditors; then in any such case, the Township may, without notice, terminate the contract.

A.2 If the company fails to comply with any request, instruction or order of the Township or fails to pay its accounts or fails to comply with or persistently disregards statutes, regulations, by-laws or directives of relevant authorities relating to the work, or fails to prosecute the work with skill and diligence, or assigns or sublets the contract or any portion thereof without the Township's prior written consent, or refuses to correct defective work; or is otherwise delinquent in carrying out its part of any of the terms, conditions or obligations of the contract, then in any such case, the Township may upon expiration of ten days from the date of written notice to the company, terminate the contract.

A.3 Any termination of the contract by the Township, as aforesaid, shall be without prejudice to any other rights or remedies the Township may have or without incurring any liability whatsoever in respect thereto.

A.4 If the Township terminates the contract, it is entitled to:

- a) Take possession of all work in progress, materials and construction equipment then at the project site and finish the work by whatever means the Township may deem appropriate under the circumstances.
- b) Withhold any further payment to the company until completion of the work and the expiry of all obligations under Section 13 Correction of Defects.
- c) Recover from the company loss, damages and expenses incurred by the Township by reason of the company's default.

16. CONTRACT CANCELLATION

The Township will have the right, which may be exercised from time to time, to cancel any uncompleted or unperformed portion of work or part thereof. In the event of such cancellation, the Township and company may negotiate a settlement. The Township will not be liable for loss of anticipated profit on the cancelled portion of the work.

17. QUANTITIES

Unless otherwise specified herein, quantities are shown as approximate, are not guaranteed to be accurate, are furnished without any liability on behalf of the Township and shall be used as a basis for comparison only.

Payment will be by unit complete at the bid price on actual quantities deemed acceptable by the Township.

18. SAMPLES

Upon request, samples must be submitted strictly in accordance with instructions. If samples are requested subsequent to the opening of bids, they shall be delivered within three working days following such request, unless additional time is granted. Samples must be submitted free of charge and will be returned at the bidder's expense, upon request, provided they have not been destroyed by tests, or are not required for comparison purposes.

The acceptance of the samples by the Township shall be at its sole discretion and any such acceptance shall in no way be construed to imply relief of the company from its obligations under the contract. Samples submitted must be accompanied by current Material Safety Data Sheets where applicable.

19. SURETY

The company shall, if the Township in its absolute discretion so desires, be required to satisfy surety requirements by providing a deposit in the form of a certified cheque, bank draft or money order or other form of surety, in an amount determined by the Township. This surety may be held by the Township until 60 days after the day on which all work covered by the contract has been completed and accepted. The surety may be returned before the 60 days have elapsed providing satisfactory evidence is provided that all liabilities incurred by the company in carrying out the work have expired or have been satisfied and that a Certificate of Clearance from the Workplace Safety Insurance Board has been received.

The company shall, if the Township in its absolute discretion so desires, be required to satisfy fidelity bonding requirements by providing such bonding in an amount and form determined by the Township.

Failure to furnish required surety within two weeks from date of request thereof by the Township shall make the award of the contract by the township subject to withdrawal.

20. WORKPLACE SAFETY AND INSURANCE BOARD

All of the company's personnel must be covered by the insurance plan under the Workplace Safety and Insurance Act, 1997, or must provide an identification number from the WSIB verifying their status as an 'Independent Operator'. Upon request by the Township, an original Letter of Good Standing from the WSIB shall be provided prior to the commencement of work indicating all payments by the company to the Board have been made. Prior to final payment, a Certificate of Clearance must be issued indicating all payments by the company to the Board in connection with the subject contract have been made and that the Township will not be liable to the Board for future payments in connection with the company's fulfilment of the contract. Further Certificates of Clearance or other types of certificates shall be provided upon request.

For independent Contractors/Owners/Operators who have elected not to have WSIB coverage, the following shall be provided upon request of the Township:

Single independent contractors/owners/operators shall provide a letter from the WSIB confirming their independent operator status and identification number. To obtain this, contractors must complete the form 'Determining Work/Independent Operator Status' issued by the Board.

Single independent contractors/owners/operators must also provide a certificate from the WSIB confirming that they have purchased the optional WSIB coverage.

The Township has the right to reject any bid it deems to provide insufficient coverage.

21. INSURANCE

The company covenants that it shall take out and keep in full force and effect throughout the project until completion, and any renewals thereof, Comprehensive General Liability Insurance including premises and all operations. This insurance coverage will be subject to the limits of not less than \$ 2,000,000.00 inclusive per occurrence for third party Bodily Injury and Property Damage or such other coverage or amount as may be requested as per the Township of Assiginack's Certificate of Insurance, attached.

The policy shall include the Corporation of the Township as an additional insured in respect of all operations performed by or on behalf of the company. A certified copy of such policy or certificate shall be provided prior to the commencement of work. Further certified copies shall be provided upon request.

The Township of Assiginack requests your co-operation in having this form completed as is with no amendments being allowed or accepted. The company must carry valid insurance in accordance with the agreement for the entire duration of the agreement. An original copy with the original signature must be provided and this can be submitted via facsimile, however the original form is to follow promptly thereafter.

The company will take out and keep in full force and effect throughout this project until completion. And any renewal thereof, vehicle liability insurance for all licensed vehicles and equipment in a combined amount of not less than \$ 2,000,000.00 per occurrence, against claims for bodily injury and/or property damage including claims against the company under any hold harmless or indemnity provisions of the contract in respect of motor vehicles owned or leased by the company which are required by law to be licensed.

22. INDEMNIFICATION

The company agrees to defend, fully indemnify and save harmless the Township, its elected officials, employees and agents from and against all actions, suits, claims, demands, losses, costs, charges and expenses whatsoever for all damages or injury including death to any person and all damage to any property which may arise directly or indirectly by reason of a requirement of the contract, save and except the damage caused by the negligence of the Township or its employees.

The company agrees to defend, fully indemnify and save harmless the Township, its elected officials, employees and agents, from and against any and all charges, fines, penalties and costs that may be incurred or paid by the Township if the Township or any of its elected officials, employees and agents shall be made a party to any charge under the Occupational Health and Safety Act, in relation to any violation of the Act arising out of this contract.

The company agrees to defend, fully indemnify and save harmless the Township, its elected officials, employees and agents, from and against all actions, suits, claims, demands, losses, costs, charges and expenses whatsoever with respect to any claim under the Construction Lien Act.

23. LIABILITY

The Township will not be liable for any cost of preparation or presentation of bid submissions, and all submissions and accompanying documents submitted by the bidder become the property of the Township and will not be returned.

There will be no payment to bidders for work related to and materials supplied in the preparation, presentation and evaluation of any submission, nor the contract negotiations whether they are successful or unsuccessful.

The Township, its elected officials, employees and agents will not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any bidder, prior or subsequent to, or by any reason of the acceptance or non-acceptance by the Township of any tender, quotation or proposal, or by reason of any delay in the acceptance of any tender, quotation or proposal.

24. PROJECT SITE WORKING CONDITIONS

The onus will be upon the company to investigate the project site and inform itself, before submitting a bid, of all the physical and working conditions. The company shall comply with the administrative practices related to each participant during the performance of work.

25. SAFETY

The company will be responsible for being aware of, complying with and enforcing compliance of all governing regulations including any established by the Township related to employee health and safety.

26. UNPAID ACCOUNTS

The company shall indemnify the Township from all claims arising out of the unpaid accounts relating to the work. The Township will have the right at any time to require satisfactory evidence that the work in respect of which any payment has been made or is to be made by the Township is free and clear of liens, attachments, claims, demands, charges or other encumbrances.

27. SUSPENSION OF WORK

The Township may, without invalidating the contract, suspend performance by the company from time to time of any part or all of the work for such reasonable period of time as the Township may require.

The resumption and completion of work after the suspension will be governed by the schedule established by the Township.

28. CHANGES IN WORK

The Township may, without invalidating the contract, direct the company to make changes to the work. When a change causes an increase or decrease in the work, the contract price shall be increased or decreased by the application of unit process to the quantum of such increase or decrease or in the absence of applicable unit prices, by an amount to be agreed between the Township and the company. All such changes will be in writing and approved by the Township.

29. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The Freedom of Information and Protection of Privacy Act, 1990 applies to all tenders, quotations and proposals submitted to the Township. Submissions will be received in confidence subject to the disclosure requirements of the Act. Bidders should identify any portions of their tender/quotation/proposal which contains a trade secret, scientific, technical, financial, commercial or labour relations information supplied in confidence and which will cause harm if disclosed. Please be aware that bidder's names are always public and where applicable, the total bid amount.

30. CONFLICT OF INTEREST

The prospective bidders insure that no member of the Township's Council or an employee of the Township is, will be or has become interested, directly or indirectly, as a contracting party, partner, stockholder or in the supplies, work or business in connection with the said contract or in any portion of the profits thereof, or in any monies to be derived therefrom. For the purposes of this provision stockholders does not include a person who holds publicly traded shares of the prospective bidder.

31. LITIGATION AND BIDDERS

The Township reserves the right to not consider a bidder who has been terminated by the Township, been deemed to have provided unsatisfactory performance on any previous or current contract or consider a bidder who is currently involved in or responsible for litigation of any kind against the Township.

32. ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005

All contractors performing work for the Township must comply with the Accessibility for Ontarians with Disabilities Act (AODA), in particular the Accessibility Standards for Customer Service, O. Reg. 429/07 as well as the Integrated Accessibility Standards O. Reg. 191/11.

Pursuant to section 6 of O. Reg. 429/07, Accessibility Standards for Customer Service (the customer service regulation) made under the AODA, contractors who deal with the public or other third parties on behalf of the Township, will ensure that all of their employees, agents, volunteers or others for whom they are responsible, receive training about the work performed, including a review of the purposes of the AODA and the requirements of the customer service regulation, as well as instruction regarding all matters set out in section 6 of the customer service regulation.

Pursuant to section 7 of O. Reg. 191/11, Integrated Accessibility Standard (the integrated regulation) made under the AODA, contractors who provide goods, services or facilities on behalf of the Township shall ensure that all employees, agents, volunteers or others for whom they are responsible, receive training on the requirements of the accessibility standards referred to in the integrated regulation and Human Rights Code as it pertains to persons with disabilities. Contractors will submit to the Township, if requested, documentation describing their accessibility

training, together with a record of the dates on which training is provided and the number of attendees.

Unless determined by the Township to not be practicable, contractors will ensure that any information, products, deliverables and/or communications produced pursuant to the contract will be in conformity with the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and will be provided in accessible word, excel, power point, pdf etc.