



Municipal District of Pincher Creek No. 9

INSTRUCTIONS TO TENDERERS

INSTRUCTIONS TO TENDERERS

1. BACKGROUND

- a. The Municipal District of Pincher Creek No. 9 (“MD”) is seeking tenders for **Gravel Hauling** (the “Work”) as more particularly set out in Appendix “A” attached to these Instructions to Tenderers.
- b. The MD will receive sealed tenders until **2:00 p.m. MDT on April 13, 2023** (“Tender Closing”). Emailed tenders will not be accepted and will be returned to the Tenderer.

2. SUBMISSION OF TENDERS

- a. Each Tender shall be addressed to the MD in a sealed envelope clearly marked with the Tenderer’s name, address and “Gravel Haul Tender”. The sealed envelope containing the Tender shall be delivered before the Tender Closing to the MD in accordance with the Invitation to Tender and the Instructions to Tenderers at:

**MD of Pincher Creek
1037 Herron Ave
Pincher Creek, AB T0K 1W0
Phone: 403-627-3130
Fax: 403-627-5070
Office Hours: Mon. - Fri.
8:00 am - 4:30 pm**

- b. In the event of a dispute or issue about whether or not a tender complies with the Instructions to Tenderers, the MD reserves the right to retain and open a copy of the tender in question in order to seek and obtain a legal opinion in relation thereto. The opening of a tender does not in any way constitute an admission by the MD as to the compliance, or not, of the subject tender.

3. TENDER FORM

- a. Each Tenderer shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. Tenders shall be written in English.
- b. Notwithstanding the foregoing, the MD shall be entitled to accept a Tender in such form as the MD in its sole and unfettered discretion deems acceptable irrespective of irregularities whether of a trivial or substantial nature, or whether the Tender is noncompliant in a trivial or substantial manner.
- c. The MD shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain irregularities of any kind, or contain mathematical or calculation errors of any kind. On Unit Price Tenders, if

there is a discrepancy found between the unit price and the extended amount, the unit price shall be deemed to represent the intention of the Tenderer. Discrepancies between words and figures will be resolved in favor of the words. Discrepancies between the indicated sum of any figures and the correct sum thereof will be resolved in favor of the correct sum. Any discrepancies between the Tender Form and a post Tender Closing submission required by the Tender Documents will be resolved in favor of the post Tender Closing submission.

- d. Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing and actually received by the MD prior to the Tender Closing. Any withdrawal, modification or clarification of the Tender must be followed by a letter of confirmation signed and sealed in the same manner as the Tender and delivered to the address for the MD in the Invitation to Tender within 48 hours of the Notice of the Withdrawal, Modification or Clarification.

4. THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

All documents submitted to the MD will be subject to the protection and disclosure provisions of Alberta's *Freedom of Information and Protection of Privacy Act* ("FOIP"). FOIP allows persons a right of access to records in the MD's custody or control. It also prohibits the MD from disclosing the Tenderer's personal or business information where disclosure would be harmful to the Tenderer's business interests or would be an unreasonable invasion of personal privacy as defined in sections 16 and 17 of FOIP. Tenderers are encouraged to identify what portions of their submissions are confidential and what harm could reasonably be expected from its disclosure. However, the MD cannot assure Tenderers that any portion of the Tenderer's documents can be kept confidential under FOIP.

5. TENDER DOCUMENTS

The documents for the Tender are:

- **Instructions to Tenderers**
- **Appendices as follows: A**
- **Contract**

(Hereinafter collectively referred to as the "Tender Documents")

By submitting its Tender, the Tenderer acknowledges and agrees that it has received and reviewed the Tender Documents.

6. VARIATION IN TENDER DOCUMENTS AND NO IMPLIED OBLIGATIONS

- a. The Tenderer shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the MD at least five (5) calendar days prior to the Tender Closing. Where necessary the MD

shall respond to reported errors, omissions, discrepancies or clauses requiring clarification by way of Addenda.

- b. Should a Tenderer fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least five (5) calendar days prior to the Tender Closing, the MD shall be the sole judge as to the intent of the Tender Documents.
- c. No implied obligation of any kind by or on behalf of the MD shall arise from anything in the Tender Documents, and the express covenants and agreements contained in the Tender Documents and made by the MD, are and shall be the only covenants and agreements that apply.
- d. Without limiting the generality of Article 6.c., the Tender Documents supersede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender Closing, and no changes shall be made to the Tender Documents except by written Addenda.

7. ADDENDA

Any changes to the Tender shall be in writing in the form of Addenda. Any Addenda issued to the Tender shall form part of the Tender Documents, whether or not the receipt of same has been acknowledged by a Tenderer, and the cost for doing the work therein shall be included in the Tender Sum. Verbal representations shall not be binding on the MD nor form part of the Tender Documents. Technical inquiries into the meaning or intent of the Tender Documents must be submitted in writing to the MD as identified in Article 2.a. of the Instructions to Tenderers.

8. TENDER

- a. Tenderers submitting Tenders shall be actively engaged in the line of work required by the Tender Documents and shall be able to refer to work of a similar nature performed by them. They shall be fully conversant with the general technical phraseology in the English language of the lines of work covered by the Tender Documents.
- b. Each Tenderer shall review the Tender Documents provided by the MD and confirm that it is in possession of a full set of Tender Documents when preparing its Tender.
- c. Tenders shall be properly executed in full compliance with the following requirements:
 - (1) the signatures of persons executing the Tender must be in their respective handwriting;

- (2) if the Tender is made by a limited company, the full name of the company shall be accurately printed immediately above the signatures of its duly authorized officers and the corporate seal shall be affixed;
 - (3) if the Tender is made by a partnership, the firm name or business name shall be accurately printed above the signature of the firm and the Tender shall be signed by a partner or partners who have authority to sign for the partnership;
 - (4) if the Tender is made by an individual carrying on business under the name other than its own, its business name together with its name shall be printed immediately above its signature, or
 - (5) if the Tender is made by a sole proprietor who carries on business in its own name, the proprietor shall print its name immediately below its signature.
- d. Tenders received from agents representing principals must be accompanied by a Power of Attorney signed by the said principals showing that the agents are duly authorized to sign and submit the Tender and have full power to execute the Contract on behalf of their principals. The execution of the Contract will bind the principals and have the same effect as if it were duly signed by the principals.

9. INSURANCE

- a. The Tender shall be accompanied by a Certificate of Insurance, certifying that the insurance as required by the Contract, is in place or, if the required insurance is not in place, by a Letter of Insurability or Undertaking of Insurance in standard form from the Tenderer's Insurance Broker certifying that the required insurance will be issued to the Tenderer if the Tenderer is the Successful Tenderer.
- b. The Successful Tenderer shall be required to secure and maintain at its own expense the insurance provided for in the Contract.
- c. The Successful Tenderer shall provide all required insurance to the MD no later than 10 working days after receipt of a Letter of Intent from the MD provided in accordance with Article 14.

10. COMMENCEMENT AND COMPLETION OF WORK

The Successful Tenderer shall commence the Work once contacted by the MD, by phone call. The MD will call 10 working days in advance of the Work. We anticipate that the Work should start on or around May 15, 2023, dependent on weather conditions.

11. SITE CONDITIONS

- a. The Tenderer is responsible for inspecting the site(s) of the Work and for making whatever inquiries or arrangements necessary for it to become fully informed of the

nature of the site(s) of the Work, including the soil structure and topography of the site(s), and of the Work to be performed and all matters which may in any way affect the Work. Without limiting the foregoing, by the submission of its Tender, the Tenderer acknowledges that it has investigated and satisfied itself as to:

- (1) the nature of the Work;
 - (2) the location and all conditions relating to the location of the Work including, but not limited to, accessibility, general character, surface and sub-surface conditions, soil structure, utilities, road, uncertainties of seasonal weather and all other physical, topographical, geological and geographic conditions;
 - (3) the general character, conditions, laws and restrictions applicable to the Work that might affect the performance of the Work;
 - (4) all environmental risks, conditions, laws and restrictions applicable to the Work that might affect the Work; and
 - (5) The magnitude of the work required to execute and complete the Work.
- b. The Tenderer is fully responsible for obtaining all information required for the preparation of its Tender and for the execution of the Work. The MD is not responsible for undertaking any investigations to assist the Tenderer. Any information, plans, drawings, shop drawings or existing equipment or facilities, photos of the original construction, reports or other documents which are not included or referred to in the Tender Documents (the “Non-Tender Information”), form no part of this Tender. The MD and the MD’s Consultants assume no responsibility of any kind whatsoever arising from or relating to its failure to include or refer to such Non Tender Information. Tenderers who obtain or rely upon such Non-Tender Information or other documents, do so entirely at their own risk.
- c. The Tenderer’s obligation to become familiar with the information described in Article 13 is not lessened or discharged by reason of any technical reports, including soils reports or data, test hole drilling reports or other soils information, made available or supplied in conjunction with the tendering process. Any technical reports so provided are for information only and neither the MD nor the MD’s Consultants accept or assume any responsibility for the contents or accuracy of such technical reports and the Tenderer agrees that the MD, the MD’s Consultants and their representatives shall not be liable in any way to the Tenderer in respect of such technical reports. The Tenderer further agrees that it shall not rely upon any oral information provided to it by the MD, the MD’s Consultants or their representatives.

12. PRIME COST AND CONTINGENCY SUMS

The Tenderer shall include in its Tender Sum any prime cost sums or contingency sums. The Goods and Services Tax shall be shown as a separate amount.

13. PERMITS AND INSPECTIONS

The Tenderer shall include in its Tender Sum the cost of permits and inspections required by any governmental or other authority having jurisdiction or as required to fully perform the Work in accordance with the Contract.

14. SUCCESSFUL TENDERER

- a. Award of Contract by the MD occurs once the Tenderer receives a Letter of Intent duly executed by of the MD.
- b. Within 10 working days of receipt of the Contract from the MD, the Successful Tenderer shall duly execute the Contract and return the Contract to the MD.

15.

- a. Each Tender will be evaluated on the basis of the criteria listed below and the MD will have the sole and unfettered discretion to award up to the maximum number of points for each criteria as listed below. By submitting a Tender, the Tenderer TENDER EVALUATION CRITERIA acknowledges and agrees that the MD has, and it is hereby entitled to exercise, the sole and unfettered discretion to award the points for the evaluation of the noted criteria.
- b. By submitting its Tender, each Tenderer acknowledges and agrees that it waives any right to contest in any legal proceedings, the decision of the MD to award points in respect of the criteria noted below. The criteria and the maximum number of points for each criteria are as follows:

Criteria:

(1)	Knowledge of local roads and landmarks	30 Points
(2)	Previous experience	30 Points
(3)	Equipment Reliability	20 Points
(4)	Ease of working with	10 Points
(5)	Safety	10 Points

16. WORKERS' COMPENSATION

- a. Each Tenderer is to submit with its Tender, a letter of account from the Workers' Compensation Board – Alberta. This letter is to be current and not dated 14 calendar days prior to the Tender Closing.
- b. The Tenderer shall communicate the existence and effect of the Deeming Order to all of its employees, directors, proprietors, partners or employees.

- c. The MD will reject any Tender which fails to comply with the provisions set out in Article 16.

17. REGISTRATION

Prior to commencing the Work, the Successful Tenderer shall obtain all authorizations required by the laws of the Province of Alberta and of the Country of Canada enabling it to carry on business to complete the Work required under the Contract. Failure to be properly authorized shall entitle the MD to forthwith terminate the Contract without compensation.

18. TENDERS EXCEEDING BUDGET

- a. In addition to the rights contained within Article 20 herein, if the Tender Sum of every Tenderer exceeds the amount the MD has budgeted for the Work, the MD may reject all Tenders or attempt to negotiate a lower price with the Tenderer who, in the sole and unfettered discretion of the MD, has submitted the most advantageous Tender.
- b. Each Tenderer acknowledges and agrees that the MD has the sole and unfettered discretion to employ any criteria in order to determine the Tender most advantageous to the MD, that the MD has no obligation to neither disclose such criteria nor employ the criteria listed outlined in Article 15 Tender Evaluation Criteria.
- c. By submitting its Tender, each Tenderer waives its right to contest in any action, application, case or legal proceeding in any court, the decision which the MD may pursue under Article 18.a. and 18.b. herein.
- d. If the Tender Sum of every Tenderer exceeds the amount budgeted for the Work and the MD negotiates with the Tenderer who has submitted the Tender considered most advantageous to the MD:
 - (1) all statements made by either side in the course of negotiation are without prejudice and confidential;
 - (2) in particular, the MD's attempt to negotiate with such Tenderer does not constitute a rejection of its Tender; and
 - (3) The MD will not attempt to obtain a lower price for the same work that the Tenderer originally bid on, but may attempt to obtain a lower price for an altered scope of work. In no event will the MD be obliged to disclose the amount budgeted for the Work.

19. ACCEPTANCE OR REJECTION OF TENDERS

As it is the purpose of the MD to obtain the Tender most suitable and most advantageous to the interests of the MD, notwithstanding anything else contained within the Tender

Documents, the MD reserves the right, in its sole and unfettered discretion, to reject or accept any Tender, including the right to reject all Tenders. Without limiting the generality of the foregoing, any tender which:

- (1) is incomplete, obscure, irregular or unrealistic;
- (2) is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;
- (3) has erasures or corrections;
- (4) omits a price on any one or more items in the Tender;
- (5) Fails to complete the information required in the Tender; may at the MD's sole and unfettered discretion be rejected or accepted. Further, a Tender may be rejected or accepted on the basis of the MD's unfettered assessment of its best interest, which includes the MD's unfettered assessment as to a Tenderer's past work performance for the MD or for anyone else or as to a Tenderer's financial capabilities, completion schedule, or ability to perform the Work, or the MD's desire to reduce the number of different contractors on the location of the Work at any given time. The MD reserves the right to negotiate after Tender Closing time with the Tenderer that the MD deems has provided the most advantageous Tender; in no event will the MD be required to offer any modified terms to any other Tenderer, prior to entering into a Contract with the successful Tenderer and the MD shall incur no liability to any other Tenderers as a result of such negotiation or modification.

20. LAW AND FORUM OF TENDER

The law to be applied in respect of the Tender Documents and the Contract shall be the law of the Province of Alberta and all civil actions commenced in relation to the Tender Documents or Contract shall be adjudicated by the Courts of the Province of Alberta and by submitting Tenders, Tenderers are taken to have agreed to attorn to the jurisdiction of the Courts of the said Province.

21. ACCEPTANCE PERIOD

The Tender shall be irrevocable and open for acceptance by the MD for the period of time contained in the Invitation to tender, namely, sixty (60) days following the end of the day of the Tender Closing. The time and date of the Tender Closing is as defined in the Invitation to Tender.