



October 14, 2020

To: Kevin Arneson, Chair SHCA, kevin@allanconstruction.ca
Shantel Lipp, President SHCA, slipp@saskheavy.ca

And to: SHCA Board of Directors

Dear Kevin and Shantel,

As colleague associations we write to respectfully request your active engagement in pressing the Government of Saskatchewan to reverse local preference practices it has introduced in government tender and construction contract documents.

Saskatchewan's tender document evaluations include criteria designed to assess bids in a manner that offers a distinct advantage to resident Saskatchewan bidders, and intentionally disadvantage non-resident bidders.

Attached are:

- Saskatchewan Ministry of Transportation bid form evaluation criteria;
- an impact summary; and
- a Tender Result for Contract Number H20010 declaring Potzus Paving & Road Maintenance Ltd., a Saskatchewan-based company, as the successful bidder ahead of a low bid from an Alberta based bidder, which was \$1.2 million or 7% lower.

It is well-established that local preference practices work against the economic interests of our provinces and our country. A 2019 report from the International Monetary Fund concluded complete liberalization of internal trade in goods can increase GDP per capita by about 4 percent -- a significant boost to the economy especially during the pandemic.

The provisions not only conflict with long-held industry views supporting the elimination of trade barriers within Canada, but conflict with the New West Partnership Trade Agreement (NWPTA), signed by all four western provinces. Specifically, they offend provincial commitments to:

- remove barriers to the free movement of goods, services, investment, and people within and between the four provinces;
- avoid measures that restrict or impair trade between or through their province, or labour mobility between them;
- treat business and workers of the other provinces as they treat their own; and
- ensure that new measures do not create new impediments.

We recognize the impacts upon Canada's economy not only of a weakened oil and gas sector but as well the COVID-19 pandemic. Respectfully, neither justifies imposing barriers to free trade.

Our respective associations are willing to engage with you in further discussions and remain,

Yours truly,

BC Roadbuilders & Heavy Construction Association (BCRB&HCA)



Sandi Paulson
Chair



Kelly Scott
President

Alberta Roadbuilders & Heavy Construction Association (ARHCA)



Joe Kabarchuk, P.Eng.,
Chair



Ron Glenn
CEO

Manitoba Heavy Construction Association (MHCA)



Jack Meseyton, GSC
Chair



Chris Lorenc, B.A., LL.B.,
President

cc. Board of Directors: BC Roadbuilders & Heavy Construction Association (BCRB&HCA)
Alberta Roadbuilders & Heavy Construction Association (ARHCA)
Manitoba Heavy Construction Association (MHCA)

Bid Form

Contract No. B20113

Evaluation Criteria

Local Participation Commitment Declaration:

Description	Declared On Site Local Labour Cost Ratio (%)
The percentage of Total Labour Cost paid to all Local Persons who will perform more than 75% of their scheduled work time working on this Project Site, and if applicable, while Site Occupancy is being charged, will be:	

The Ministry reserves the right to audit and verify information provided.

Evaluation Criteria														
Item	Mandatory Requirements	Yes / No												
1	Mandatory requirements as per the Bid Package have been met.													
Item	Evaluation Criteria	Maximum Score												
2	<p>Work Zone Traffic Accommodation Audit Score (WZTA)</p> <ol style="list-style-type: none"> Contractors who have provided the CPE & WZTA Score Authorization form will be assigned the WZTA audit score set forth in the latest Verification e-mail sent by the Ministry to that Contractor prior to bid close, unless the Contractor has requested a correction prior to bid close. Contractors who have not provided the CPE & WZTA Score Authorization form will be assigned a WZTA audit score based on the average of that Contractor's WZTA audit scores in the Ministry's WZTA database. Contractors who do not have any WZTA audit scores in the Ministry's WZTA database will be assigned a WZTA audit score based on the average of all WZTA audit scores in the Ministry's WZTA database. Only WZTA scores based on contracts entered into on or after April 1, 2017 and are contained in the Ministry's WZTA database. <table border="1" data-bbox="565 1591 1019 1808"> <thead> <tr> <th>WZTA Audit Score</th> <th>Point Assigned</th> </tr> </thead> <tbody> <tr> <td>≤ 65 %</td> <td>1</td> </tr> <tr> <td>> 65 % and ≤75%</td> <td>2</td> </tr> <tr> <td>> 75 % and ≤85%</td> <td>3</td> </tr> <tr> <td>> 85 % and ≤95%</td> <td>4</td> </tr> <tr> <td>> 95 %</td> <td>5</td> </tr> </tbody> </table>	WZTA Audit Score	Point Assigned	≤ 65 %	1	> 65 % and ≤75%	2	> 75 % and ≤85%	3	> 85 % and ≤95%	4	> 95 %	5	5
WZTA Audit Score	Point Assigned													
≤ 65 %	1													
> 65 % and ≤75%	2													
> 75 % and ≤85%	3													
> 85 % and ≤95%	4													
> 95 %	5													

Bid Form

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<p>3</p>	<p>Contractor Performance Evaluation (CPE)</p> <ol style="list-style-type: none"> Contractors who have provided the CPE & WZTA Score Authorization form will be assigned the CPE score set forth in the latest Verification e-mail sent by the Ministry to that Contractor prior to bid close, unless the Contractor has requested a correction prior to bid close. Contractors who have not provided the CPE & WZTA Score Authorization form will be assigned a CPE score based on the average of that Contractor's finalized* CPE scores in the Ministry's CPE database. Contractors who do not have any CPE scores in the Ministry's CPE database will be assigned a CPE score based on the average of all the finalized* CPE scores in the Ministry's CPE database. Only CPE scores based on contracts entered into on or after April 1, 2017 and are within three years of the contract close date are contained in the Ministry's CPE database. The Bidder achieving the highest score will be assigned the maximum score allowed in this section; subsequent Bidder scores will be pro-rated as follows: $\frac{\text{Bidder's Performance Score} - 40}{\text{Highest Bidder's Performance Score} - 40} \times 10$ <p>* Finalized means one of the following:</p> <ol style="list-style-type: none"> The 28 calendar day appeal period is open but the Bidder has confirmed in writing to the contact indicated on the Contractor Performance Evaluation Form with copy to mhiprojectcontrol@gov.sk.ca, that it accepts its CPE score. An appeal was filed and the results of the appeal are known. The appeal period has expired without an appeal being filed. 	<p>10</p>						
<p>4</p>	<p>Community Benefits</p> <p>Points will be assigned based on the Declared Local Labour Cost Ratio using a sliding scale as outlined:</p> <table border="1" data-bbox="479 1654 971 1799"> <thead> <tr> <th>Declared Local Labour Cost Ratio (%)</th> <th>Points Assigned</th> </tr> </thead> <tbody> <tr> <td>100%</td> <td>25</td> </tr> <tr> <td>≤60%</td> <td>0</td> </tr> </tbody> </table>	Declared Local Labour Cost Ratio (%)	Points Assigned	100%	25	≤60%	0	<p>25</p>
Declared Local Labour Cost Ratio (%)	Points Assigned							
100%	25							
≤60%	0							

Bid Form

Contract No. B20113

	<p>For Declared Local Labour Cost Ratio (%) between 60% and 100%, the following formula will be used to calculate points assigned:</p> $\text{Points Assigned} = (0.625 \times \text{Declared Local Labour Cost Ratio}) - 37.5$ <p>Proponents who choose to not provide the Local Labour Cost Ratio will be assigned a score of 0 for Community Benefits.</p>	
5	<p>Total Amount of Bid The score for this category will be assigned as follows: 1. The Bidder with the lowest Total Amount of Bid is given a score of 70. 2. The remaining Bidders are given a score equal to ratio of the lowest Total Amount Bid to their Total Amount of Bid multiplied by 70.</p> $\frac{\text{Lowest Total Amount of Bid}}{\text{Evaluated Total Amount of Bid}} \times 70$	70
	Total Score	110

5. COMMUNITY BENEFITS

5.1 The Ministry of Highways and Infrastructure has taken measures to support regional economic development and enhance quality of life across the province of Saskatchewan. This Project is located in an area that has experienced a dramatic drop in employment and economic activity. Generating local community benefit is considered an objective of this Project and the Contractor's ability to offer these benefits will be assessed in this competitive process. The Ministry of Highways and Infrastructure is interested in achieving a specific commitment from the Contractor to generate economic development in the region and maximize the on-site employment opportunities for Local Persons on this Contract as defined below.

5.2 Definitions:

5.2.1 For the purpose of this Contract, the following definitions will apply:

5.2.1.1 Actual On Site Local Labour Cost is the aggregate monetary compensation, in CAD, including gross wages, overtime pay, or payments in lieu of the foregoing that is paid to each Local Person who performed more than 75% of their scheduled work time working on this Project Site, and if applicable, while Site Occupancy was being charged, as submitted in the statutory declaration and that is used in the calculation of the Actual On Site Local Labour Cost Ratio.

5.2.1.2 Actual Total Labour Cost is the aggregate monetary compensation, in CAD, paid to each person performing services for the Project, including gross wages, overtime pay, or payments in lieu of the foregoing and as submitted in the statutory declaration and used in the calculation of the Actual On Site Local Labour Cost Ratio.

5.2.1.3 Declared On Site Local Labour Cost is the aggregate monetary compensation, in CAD, including gross wages, overtime pay, or payments in lieu of the foregoing that is paid to each Local Person who will perform more than 75% of their scheduled work time working on this Project Site, and if applicable, while Site Occupancy is being charged, and that is used in the calculation of the Declared On Site Local Labour Cost Ratio provided in the Local Participation Commitment Declaration portion of the Bid Form.

Special Provisions

Contract No. B20113

5.2.1.4 **Declared Total Labour Cost** is the aggregate monetary compensation, in CAD, paid to each person performing services for the Project, including gross wages, overtime pay, or payments in lieu of the foregoing and is used in the calculation of the Declared On Site Local Labour Cost Ratio provided in the Local Participation Commitment Declaration portion of the Bid Form.

5.2.1.5 **Local Person** means an individual who has a permanent residence in Saskatchewan and is directly employed with the Contractor or an individual who has a permanent residence in Saskatchewan and is directly employed with a subcontractor providing services at the Project Site.

5.2.1.6 On Site Labour Ratio is determined using the following equation:

$$\text{On Site Labour Ratio} = \frac{\text{Actual On Site Local Labour Cost Ratio}}{\text{Declared On Site Local Labour Cost Ratio}} \times 100$$

5.2.1.7 Actual On Site Local Labour Cost Ratio is calculated as follows:

$$\text{Actual On Site Local Labour Cost Ratio} = \frac{\text{Actual On Site Local Labour Cost in CAD}}{\text{Actual Total Labour Cost in CAD}} \times 100$$

5.3 Without limitation to any term in the Contract, the Ministry reserves the right to audit the actual results of the community benefits Local Participation Commitment Declaration submitted by the Contractor. The Contractor's financial records related to Actual Labour Costs defined in 5.2.1.1 and 5.2.1.2. and the Local Participation Commitment Declaration are subject to auditing to ensure compliance and that the declared commitments were achieved during the term of the Contract and for an additional 2-year period from the date of final acceptance of the Contractors work.

5.4 If the Ministry determines that the Contractor has not achieved the Declared On Site Local Labour Cost Ratio as per the Local Participation Commitment Declaration, a lump sum penalty deduction in the amount of \$25,000.00 will be set off against amounts otherwise owing to the Contractor under the Contract. If the deduction exceeds amounts owing to the Contractor, then the excess amount will be a debt due and owing by the Contractor to the Ministry.

5.5 The parties agree that:

Special Provisions

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- 5.5.1 The Ministry has relied upon the commitments of the Contractor in the selection of a party to perform the Work;
- 5.5.2 The deductions in sections 5.4 and 5.6 are a genuine estimate of the damages incurred by the Ministry on behalf of the people of Saskatchewan as a result of the Contractor failing to provide the benefits that it has committed to and is not a penalty or punitive measure.
- 5.6 If the Contractor filled out the Local Participation Commitment Declaration, the following shall apply:
 - 5.6.1 The Contractor shall provide a statutory declaration indicating the Actual On Site Local Labour Cost and the Actual Total Labour Cost as a condition of final acceptance of the Work. For clarity, the Contractor is responsible to report its own and its sub-contractors' Actual Labour Costs defined in 5.2.1.1 and 5.2.1.2. Final Acceptance will not be granted for the Contract until receipt of an acceptable statutory declaration by the Engineer.
 - 5.6.2 At the end of the Project, if the On Site Labour Ratio is less than 100%, an additional deduction in an amount determined from the Table of Local Participation Deductions for On Site Labour Ratio will be assessed based on the Final Contract Amount and the On Site Labour Ratio achieved.
 - 5.6.3 A deduction will be applied for the On Site Labour Ratio in accordance with the ranges outlined in Table of Local Participation Deductions for On Site Labour Ratio.
 - 5.6.4 In addition, to the deductions noted in sections 5.4 and 5.6, if the Ministry determines that the Contractor has not achieved the Declared On Site Local Labour Cost Ratio, the Contractor Performance Evaluation score will be adjusted in accordance with the instructions for the Contractor Performance Evaluation score calculation.

Special Provisions

Contract No. B20113



Table of Local Participation Deductions for On Site Labour Ratio assessed on Final Contract Amount:

On Site Labour Ratio	Deduction Amount
≥95% and <100%	2%
≥85% and <95%	3%
≥75% and <85%	4%
<75%	5%

6. COORDINATION WITH CANADIAN NATIONAL RAILWAYS (CN)

6.1 Flagging and Permits

- 6.1.1 The Contractor shall contact and arrange all flagging protection to be provided during any construction within CN's right-of-way. The Contractor may be required to adjust their schedule to align with the CN's availability.
- 6.1.2 The Contractor shall contact and coordinate with the Engineer.
- 6.1.3 The Ministry will be responsible for payment of all costs and fees related to CN's flagging. The Contractor shall be responsible for payment of utility locates.
- 6.1.4 The Contractor shall obtain all necessary approvals, including payment of any fees, in excess to that established in the railway agreements. Such approvals include but are not limited to those required for construction activities on or adjacent to railway lines, construction of temporary at grade crossings, temporary railway closures and temporary clearance boxes used during construction.
- 6.1.5 Work completed within CN's right-of-way (ROW) shall be subject to acceptance by CN.
- 6.1.6 The Contractor shall coordinate all Work with CN and carefully stage the Work to minimize impact to both CN operations and traffic on the roadway.
- 6.1.7 CN, at their discretion, may conduct interim inspections of any portion of the Work within the ROW.

Evaluation Criteria – Impact Summary

- **Item 2 Work Zone Traffic Accommodation Score (WZTA)** - Put simply the Contractor is given a score from the Ministry **and unless** it has performed work involving traffic management in Saskatchewan in the last 3 years, the best it can be awarded for this section is the industry average (and.....they don't tell you what that is).

This accounts for up to 5 points out of 110. The specification is very clear as to what the contractor's responsibilities are. As well, there are penalty clauses in the event the contractor does not meet the minimum requirements. A non-Sask resident bidder could be exceptional when it comes to managing traffic through a construction site but the best it could hope for is the industry average until it has a few projects under its belt.

- **Item 3 Contractor Performance Evaluation (CPE)** - This item accounts for 10 of 110. Unless the contractor has successfully completed projects for the Saskatchewan Ministry the best it can hope for is the industry average. It does not matter how the contractor has performed on previous projects in other jurisdictions.

Also, the bidder does not know how the ministry score the contractors once they are actually working for the Ministry. This is clearly subjective and can be used any point as a difference maker in a tight bid between a non-resident and Saskatchewan contractor.

- **Item 4 Community Benefits** – The most offensive of the 3. This item can net the bidder a possible 25 points out of 110 and section 5.2.1.5 describes *Local Person* as an individual who has a permanent residence in Saskatchewan. This has nothing to do with community and everything to do with keeping other provinces out. This is clearly a clause to give the Saskatchewan contractor a healthy advantage over a contractor from another province. This provision on its own can dissuade bidding.



Tender Results

Tender Results For Contract Number H20010

CONSTRUCTION OF A SURFACING STRUCTURE on Highway No. 21 from its west junction with Highway No. 3 to 39.34 km north of its junction with Highway No. 3; for a TOTAL DISTANCE OF 39.34 km

Completion Date(s): August 31, 2022

Successful Bidder	Total Bid
Potzus Paving & Road Maintenance Ltd.	\$18,299,715.50

Remaining Bidders	Total Bid
Carmacks Enterprises Ltd.	\$17,101,029.98
W.F. Botkin Construction Ltd.	\$19,821,177.00
Langenburg Redi-Mix Ltd.	\$24,793,828.05
Venture Construction Inc.	\$24,587,543.70

Bidders may request a debriefing session from the Ministry by emailing spsconstruction@gov.sk.ca within 30 days after the award notification date. The intention of the debriefing is to aid the Bidder by identifying areas of improvement that may be applied to subsequent procurement opportunities.