



## Staff Report

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**Report To:** Dan Best, Chief Administrative Officer  
**From:** **Rebekah Msuya-Collison, General Manager of Corporate Services**  
**Date:** July 18 2022  
**Report:** CL#16-2022  
**Subject:** Pickering Municipal Drain 2022 Tender

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### Recommendations:

**That** South Huron Council receives the report from Rebekah Msuya-Collison, General Manager of Corporate Services re: Pickering Municipal Drain 2022 Tender; and

**That** South Huron Council terminate the Drainage Act proceeding and repeal By-Law # 40-2022.

### Purpose:

The purpose of this report is to notify Council of the tender results for the construction of the Pickering Municipal Drain and to terminate the *Drainage Act* proceeding.

### Background and Analysis:

The Pickering Municipal Drain was petitioned under Section 78(5) of the *Drainage Act* for the Minor Improvement Process and Council authorized staff to initiate the tender process and passed Provisional By-Law 40-2022 at their June 20, 2022 Regular Council meeting. The Engineer's estimated construction costs for this project was \$39,900.00 plus HST.

The tender for the Pickering Municipal Drain was posted on the Bids & Tenders on June 23, 2022. Tenders closed on July 13, 2022 at 2:00 p.m. and four (4) tenders were received. In accordance with the Municipality's e-

tendering process and updated procurement By-law #09-2021, all tenders were received in a digital format by our on-line bidding service, Bids&tenders.

After the prescribed closing time, all tenders were downloaded from Bids&tenders secure web site and opened by Deputy Treasurer Maggie Delbridge. The tender opening was witnessed virtually via Zoom utilizing screen sharing, by Councillor Dianne Faubert; Maggie Delbridge, Deputy Treasurer; Don Giberson, General Manager of Infrastructure and Development and Rebekah Msuya-Collison, General Manager of Corporate Services/Clerk.

The following are the Pickering Municipal Drain 2022 tender results:

Contractor	Total Cost	Total Cost with HST	Non-recoverable HST	Total Cost to South Huron (including non-recoverable HST)
Robinson Farm Drainage	\$36,400.00	\$41,132.00	\$640.64	\$37,040.64
VanDriel Excavating Inc.	\$61,188.40	\$69,142.89	\$1,076.92	\$62,265.32
Van Bree Drainage and Bulldozing	\$61,350.00	\$69,325.50	\$1,079.76	\$62,429.76
JLH Excavating Inc.	\$78,280.00	\$88,456.40	\$1,377.73	\$79,657.73

All tenders were checked for conformance with the tender specifications and forwarded to Dietrich Engineering for his review. The tender submitted by Robinson Farm Drainage was incomplete and therefore rejected in accordance with the procurement bylaw. The remaining tenders were in conformance with the tender specifications, however are over the engineer's estimate.

### **Drainage Act Considerations**

This project was completed under Section 78(5) of the *Drainage Act* and the tenders that have not been automatically rejected under the Procurement By-Law are over 133% of engineer's estimate.

The following clause is contained under O.Reg.500/21 for minor improvements to drainage works made under the *Drainage Act* (Part II, Section 10):

"If the engineer or municipality determines that the contract price of carrying out the activity exceeds 133 per cent of the engineer's estimate of the contract price set out in the engineer's report,

(a) the minor improvement project will proceed if the applicant consents to the new contract price; or

(b) the minor improvement project will not proceed and the municipality will repeal the by-law authorizing the project if the applicant does not consent to the new contract price."

The regulation indicates that *"the minor improvement project will not proceed and the municipality will repeal the by-law authorizing the project if the applicant does not consent to the new contract price"*. To provide further clarity, either the applicant says yes to higher contract price or the minor improvement project is terminated and the By-Law is repealed. It is important to note that this process is specific for the 78(5) regulation when activity exceeds the 133 percent of the engineer's estimate.

The applicant and the municipality are not bound by the tender quotes as the tendering occurs with 'pause' if contract price exceeds 133% of engineers estimate and the Applicant is asked whether they approve the higher contract. If the Applicant does not approve the higher contract price then the project is terminated and the applicant pays all the project costs.

Staff met with Mr. McCann on July 28, 2022 to review the tender summary and the applicable clause of O.Reg. 500/21 and to ask him whether he consents to the new contract price. Mr. McCann provided written confirmation that he did not consent to the new contract price and provided a letter for Council consideration, which correspondences are attached to this report.

## **Operational Considerations:**

By-Law # 40-2022 remains a Provisional By-Law and technically may not need to be repealed however to ensure the municipality conforms with the regulation and to ensure termination of the project is tracked, staff recommend repealing the provisional By-Law.

## **South Huron's Strategic Plan:**

Section 6.2.2 of the Municipality of South Huron 2015-2019 Strategic Plan identifies key priorities and strategic directions. The following elements are supported by the actions outlined in this report:

- ✓ Administrative Efficiency and Fiscal Responsibility
- ✓ Transparents, Accountable and Collaborative Governance

### **Financial Impact:**

Dietrich Engineering assessed the cost of this work for a total estimated construction cost of \$39,900.00 and total estimated project cost of \$60,900.00, as outlined in the report dated May 31, 2022. The tender price exceeds 133% of engineers estimate and in order to proceed, the Applicant must approve the higher contract. This is a minor improvement only affecting one property and the owner of that property will be responsible for all costs associated with this specific improvement.

If at any stage a minor improvement project is terminated, the requesting property owner is required to pay all the costs incurred to date including engineering, construction, contingency and eligible municipal administrative costs.

### **Legal Impact:**

From the procurement aspect, if the low bidder is automatically disqualified then the Municipality would be exposing itself to a lawsuit from the second low bidder should it decide to accept the disqualified bid or tender for same scope of work. From the *Drainage Act* aspect under O.Reg. 500/21, if the Applicant does not consent to the higher contract, then the project is terminated and the By-Law is repealed.

### **Communication Actions:**

Tender notice was posted on Bids&tenders which can be accessed through the municipal web site. Unofficial tender results were posted on Bids&tenders.

### **Policies/Legislation:**

*Drainage Act*

[O.Reg. 500/21](#)

Procurement By-Law – 9-2021

### **Consultation:**

Dietrich Engineering Limited

Municipal Solicitor

D. Giberson, General Manager of Infrastructure and Development

CL#16-2022 – Pickering Municipal Drain Tender 2022

S. Becker, General Manager of Financial Services/Treasurer  
Maggie Delbridge, Deputy Treasurer

**Related Documents:**

David McCann – Correspondences dated August 2, 2022

CL#01-2022 – [Appoint Engineer](#)

CL#14-2022 – [Minor Improvement Process](#)

[Pickering Municipal Drain 2022 - Report](#)

Respectfully submitted,

**Rebekah Msuya-Collison, General Manager of Corporate Services**