



Instructions to Bidders

MD of Provost No. 52

INSTRUCTIONS TO BIDDERS

1 BACKGROUND

The MD of Provost No. 52 (the "MD") is seeking tenders for **Gravel Crushing Operations in 2010 (The Adams Pit (SW-27-40-6-W4) Approximately 25,000 cubic yards)** as set out on the specifications attached hereto as Schedule "A" in the invitation to tender.

- 1.1 The MD will receive sealed tenders until **12:00:00 p.m. MST on September 8, 2010** ("Tender Closing"). Faxed tenders will not be accepted and will be returned to the Bidder. Public tender opening will be at 1:00 p.m. that same day.

2 SUBMISSION OF TENDERS

- 2.1 Each Tender shall be addressed to the MD in a sealed envelope clearly marked with the Bidder's name, address and tender number. 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 Bidders at:

**MD of Provost No. 52
Administration Office
4504-53rd Avenue
Provost, AB
T0B 3S0**

Attention: Tyler Lawrason

3 TENDER FORM

- 3.1 Each Bidder shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. The Tender Sum must be written in words as well as figures, and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes other than the Goods and Services Tax which must be shown as a separate amount unless otherwise specifically stipulated (hereinafter referred to as the "Tender Sum"). In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount. Tenders shall be written in English.
- 3.2 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.
- 3.3 The MD shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain whiteouts or contain irregularities 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 Bidder.

- 3.4 Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing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 **Attention: Tyler Lawrason** of 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

- 4.1 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 Bidder's personal or business information where disclosure would be harmful to the Bidder's business interests or would be an unreasonable invasion of personal privacy as defined in sections 15 and 16 of FOIP. Bidders 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 Bidders that any portion of the Bidder's documents can be kept confidential under FOIP.

5 TENDER DOCUMENTS

- 5.1 The documents for the Tender are:

- Invitation to Tender
- Instructions to Bidders
- Tender Form
- Addenda No. _____
- Contract attached as Schedule "A" hereto

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

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

6 VARIATION IN TENDER DOCUMENTS

- 6.1 The Bidder shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the MD at least 10 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.
- 6.2 Should a Bidder fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least 10 calendar days prior to the Tender Closing, the MD shall be the sole judge as to the intent of the Tender Documents.

- 6.3 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.
- 6.4 Without limiting the generality of Article 6.3, the Tender Documents supercede 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

- 7.1 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 and the cost for doing the work therein shall be included in the Tender Sum. No verbal representations shall 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 person identified in Article 2.1 of the Instructions to Bidders.

8 TENDER

- 8.1 Bidders 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.
- 8.2 Each Bidder 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.
- 8.3 Tenders shall be properly executed in full compliance with the following requirements:
- 8.3.1 The signatures of persons executing the Tender must be in their respective handwriting; and
 - 8.3.2 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;
 - 8.3.3 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;
 - 8.3.4 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

8.3.5 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.

8.4 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 TENDER DEPOSIT

The Bidder is required to submit with its Tender, a Consent of Surety and a Bid Bond in a form acceptable to the MD, or a certified cheque or an irrevocable letter of credit in favour of the MD equal to 10% of the Tender Sum as a guarantee that, if awarded the contract for the Work, the Bidder will execute a contract.

9.1 The Bid Bonds, certified cheques or irrevocable letters of credit of the unsuccessful Bidders shall be returned as soon as possible after the Contract has been duly executed by the Successful Bidder.

9.2 The MD will not pay any interest on money furnished as security.

9.3 The Bid Bond and Consent of Surety shall be issued by a Surety Company licensed in the Province of Alberta and satisfactory to the MD.

10 INSURANCE

10.1 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 from the Bidder's Insurance Broker certifying that the required insurance will be issued to the Bidder if the Bidder is the Successful Bidder.

10.2 The Successful Bidder shall be required to secure and maintain at its own expense the insurance provided for in the Contract.

10.3 The Successful Bidder 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 16.

11 COMMENCEMENT AND COMPLETION OF WORK

11.1 The Successful Bidder shall commence the Work within three weeks after receipt of the Letter of Intent from the MD and shall complete the Work by the dates specified in the Invitation to Tender. Work to commence as early as possible after awarded and achieve substantial performance of the work for the project by November 15, 2010.

12 SITE CONDITIONS

- 12.1 The Bidder is responsible for inspecting the site of the Work and for making whatever inquiries or arrangements necessary for it to become fully informed of the nature of the site of the Work, including the soil structure and topography of the site, 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 Bidder acknowledges that it has investigated and satisfied itself as to:
- a) the nature of the Work;
 - b) 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;
 - c) the general character, conditions, laws and restrictions applicable to the Work that might affect the performance of the Work;
 - d) all environmental risks, conditions, laws and restrictions applicable to the Work that might affect the Work; and
 - e) the magnitude of the construction work required to execute and complete the Work.
- 12.2 The Bidder 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 Bidder. 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. Bidders who obtain or rely upon such Non-Tender Information or other documents, do so entirely at their own risk.
- 12.3 The Bidder's obligation to become familiar with the information described in Article 13.1 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 Bidder agrees that the MD, the MD's Consultants and their representatives shall not be liable in any way to the Bidder in respect of such technical reports. The Bidder further agrees that it shall not rely upon any oral information provided to it by the MD, the MD's Consultants or their representatives.

13 PRIME COST AND CONTINGENCY SUMS

- 13.1 The Bidder 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.

14 PERMITS AND INSPECTIONS

- 14.1 The Bidder shall include in its Tender Sum the cost of building and other 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.

15 SUCCESSFUL BIDDER

- 15.1 Award of Contract by the MD occurs once the Bidder receives a Letter of Intent duly executed by **Tyler Lawrason** of the MD after **Tyler Lawrason** has been duly and legally authorized by the MD to send such Letter of Intent.
- 15.2 The forfeiture of a Successful Bidder's certified cheque or Bid Bond or irrevocable letter of credit shall not be construed as a waiver of any rights or remedies which the MD may have against such Bidder for loss or damages incurred or suffered in excess of the amount of such certified cheque or Bid Bond or irrevocable letter of credit.
- 15.3 Within 10 working days of receipt of the Contract from the MD, the Successful Bidder shall duly execute the Contract and return the Contract to the MD.
- 15.4 Within 20 working days of receipt of a Letter of Intent in accordance with Article 16.1, the Successful Bidder shall submit a proposed Construction Schedule showing the anticipated time of commencement and completion of each of the various operations to be performed under the Contract.

16 TENDER EVALUATION CRITERIA

- 16.1 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 Bidder 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.
- 16.2 By submitting its Tender, each Bidder 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:
- | | |
|------------------------|------------|
| 1. Price | 20 points. |
| 2. Previous experience | 15 points |
| 3. Personnel | 10 points |
| 4. Subtrades/Suppliers | 5 points |
| 5. Timing/Completion | 15 points |

6. Equipment	15 points
7. Safety record	20 points
Total Points	[100 points.]

17 WORKERS' COMPENSATION

- 17.1 Each Bidder 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.
- 17.2 The Bidders who do not have an account with the Workers' Compensation Board-Alberta shall provide with their Tender evidence of a subcontractor or other company that will carry such coverage on their behalf.
- 17.3 If the Bidder is performing work in any exempt industry within the meaning of the Workers Compensation Board Act (the "WCB Act") and does not carry coverage, the Bidder acknowledges that
- 17.3.1 the MD is subject to a deeming order under s. 11(2) of the WCB Act (the "Deeming Order"); and
 - 17.3.2 the Deeming Order states that all of the Bidder's employees, directors, proprietors, partners or employees are deemed to be MD employees for the purposes of the WCB Act while performing work for the MD; and
 - 17.3.3 the effect of the Deeming Order is that the Bidder's employees, directors, proprietors and partners who are injured while performing work for the MD under the Contract, have no right to sue anyone and are limited to a claim under the WCB Act.
- 17.4 The Bidder shall communicate the existence and effect of the Deeming Order to all of its employees, directors, proprietors, partners or employees.
- 17.5 The MD will reject any Tender which fails to comply with the provisions set out in Article 18.

18 REGISTRATION

- 18.1 Prior to commencing the Work, the Successful Bidder 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.

19 TENDERS EXCEEDING BUDGET

- 19.1 In addition to the rights contained within Article 20 herein, if the Tender Sum of every Bidder 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 Bidder who, in the sole and unfettered discretion of the MD, has submitted the most advantageous Tender.

19.2 Each Bidder 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 disclose such criteria nor employ the criteria listed outlined in Article 17 Tender Evaluation Criteria.

19.3 By submitting its Tender, each Bidder 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 20.1 and 20.2 herein.

19.4 If the Tender Sum of every Bidder exceeds the amount budgeted for the Work and the MD negotiates with the Bidder who has submitted the Tender considered most advantageous to the MD:

19.4.1 All statements made by either side in the course of negotiation are without prejudice and confidential;

19.4.2 In particular, the MD's attempt to negotiate with such Bidder does not constitute a rejection of its Tender; and

19.4.3 The MD will not attempt to obtain a lower price for the same work that the Bidder 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.

20 CERTIFICATE OF RECOGNITION ("C.O.R.") SAFETY PROGRAM REQUIREMENT

20.1 Unless otherwise stated, Tenders will only be considered when the Bidder, prior to Tender Closing, has either full certification in the Alberta Labour approved Certificate of Recognition ("C.O.R.") Program appropriate to their industry or a temporary letter of certification issued by the Alberta Construction Safety Association or other appropriate industry association.

20.2 Certification shall be evident by inclusion of the Bidders name on the Alberta Construction Safety Association ("A.C.S.A.") C.O.R. certification list current at the Tender Closing, or submission of a copy of the Alberta Labour Certificate of Recognition or a temporary letter of certification with the Tender.

20.3 The MD will assume no liability for the non-inclusion of any Bidder on the A.C.S.A. C.O.R. certification lists for any reason whatsoever.

20.4 The MD reserves the right to terminate the Contract during the course of which the Contractor is decertified from the C.O.R. program or has their temporary letter of certification expire.

20.5 The MD will reject any Tender which fails to comply with the provisions set out in Article 21.

21 AGREEMENT ON INTERNAL TRADE

21.1 The provisions of the Agreement on Internal Trade, Part IV, Chapter Five – Procurement and Annex 502.4, (AIT) apply to this Tender.

22 ACCEPTANCE OR REJECTION OF TENDERS

22.1 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

- a) is incomplete, obscure, irregular or unrealistic;
- b) Is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;
- c) has erasures or corrections;
- d) omits a price on any one or more items in the Tender;
- e) fails to complete the information required in the Tender;
- f) is accompanied by an insufficient certified cheque, irrevocable letter of credit or by a Bid Bond in an unsatisfactory form,

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 Bidder's past work performance for the MD or for anyone else or as to a Bidder'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 Bidder 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 Bidder prior to entering into a Contract with the successful Bidder and the MD shall incur no liability to any other Bidders as a result of such negotiation or modification.

23.2 In the event of a dispute or issue about whether or not a bid has been submitted on time or in compliance with these Instructions to Bidders, the MD reserves the right to retain, open and copy the disputed Tender(s) for the purpose of obtaining a legal opinion.

23 LAW AND FORUM OF TENDER

23.1 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, Bidders are taken to have agreed to attorn to the jurisdiction of the Courts of the said Province.

24 ACCEPTANCE PERIOD

24.1 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.