

AVON MAITLAND DISTRICT SCHOOL BOARD

Create Positive, Inclusive Learning Environments, and Maximize Outcomes for Students

DIRECTOR'S ACTION REPORT

TO: Regular Board Meeting – Tuesday, May 9, 2017

AGENDA ITEM: 6.3 b)

SUBJECT: Approval of Tender: Civil at Elma Township Public School

1.0 Background

- 1.1 The project at Elma Township PS is the removal and replacement of the original 1967 asphalt in the parking lot and playground, which is in very poor condition. Work also includes the installation of new storm sewers and new electrical conduit to be installed along the driveway to the County road for future lighting purposes.

2.0 Project

2.1 Elma Township Public School

- 2.1.1 Four contractors received tender packages with the following four prices being received.

Contractor	Tender Price (including taxes)
Roubos Farm Service Ltd.	\$705,148.06
Kurtis Smith Excavating Inc.	\$679,695.00
Brantco Construction	\$656,578.59
Steed and Evans Limited	\$577,000.00

- 2.1.2 The Board's civil consultant, R.J. Burnside & Associates Limited, recommends that the low contractor, Steed and Evans Limited, be awarded the contract in the amount of \$577,000.00.
- 2.1.3 The recommended tender amount is less than the estimated budget amount for this project including fees of 12% to R.J. Burnside & Associates Limited.
- 2.1.4 This project will be funded through the Facilities Renewal grant. Attached is the recommendation from the Board's Consultant, which Administration supports.

3.0 Recommendation

It is recommended that

the Avon Maitland District School Board accept the tender from Steed and Evans Limited for civil and asphalt work at Elma Township Public School in the tender amount of \$577,000.00.

4.0 Subsequent Activity

- 4.1 Subsequent to this tender closing, there was a fire call at Elma Township Public School on Saturday, April 29, 2017 during the 50th Anniversary celebration. Temporary repairs were made to the electrical system and to the mechanical system for domestic water, allowing the school to continue operations through the end of June. In order to avoid the Board becoming the Constructor with this necessary repair, in addition to the aforementioned tendered project, it has been determined that our consultants need to issue an addendum to this tender to run the electrical underground conductors and replace the underground domestic water line, both 50 years old, and now beyond their serviceable life.

Please refer to Appendix A (re-issue) regarding Constructor under the Occupational Health & Safety Act for the detailed explanation, the summary of which is that “when an owner undertakes a project by contracting with more than one employer (contractor), the owner is undertaking the project and is the constructor”.)

- 4.2 The consultants are still determining the design and once complete will issue the addendum.
- 4.3 The additional estimate and actual cost will be picked up in the next Tender versus Board Actual Report, as has been our process for other similar and necessary additions to a project such as with this condition.

Janet Baird-Jackson
Superintendent of Corporate Services

Lisa Walsh
Director of Education and
Secretary of the Board

CLARIFICATION OF THE ROLE OF CONSTRUCTION MANAGER

References: *Occupational Health and Safety Act, R.S.O. 1990*

Section 1: Definitions

“construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project but does not include any work or undertaking underground in a mine; (“construction”)

“constructor” means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; (“constructeur”)

The following excerpt is taken from: *Constructor Guideline, Health and Safety Guidelines, Occupational Health and Safety Branch, Ministry of Labour, Revised: March 2009*

1. INTRODUCTION

The Occupational Health and Safety Act (the Act) defines “constructor” and details the duties of a constructor. Whenever there is a “project”, there is a “constructor.” Who the constructor is at a particular time or particular phase of the project can sometimes be difficult to determine and may change due to the dynamic nature of the work, the numerous parties involved, and the continuous change in the workforce due to the very nature of construction work.

This Guideline provides assistance in answering the following questions:

- Who is a constructor?
- Who is an owner?
- Does every construction project have an owner and a constructor?
- What are the key duties of a constructor?
- What is the relationship of the constructor to the other parties on a project?
- What is the extent of a construction project?

2. FREQUENTLY ASKED QUESTIONS

Who is a constructor?

The intent of the Act is to have **one** person with overall authority for health and safety matters on a project. This person is the **constructor** of the project.

Section 1 of the Act defines “constructor” as “a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer”. The dictionary definition for “undertake” is “make oneself responsible for”, which means a constructor is a person who is responsible for a project. The definition of “employer” in section 1 of the Act includes contractors and subcontractors. “Project” is also defined in section 1 of the Act.

The constructor is the party with the greatest degree of control over health and safety at the entire project and is ultimately responsible for the health and safety of all workers. The constructor must ensure that all the employers and workers on the project comply with the Act and its regulations.

Who is an owner?

Section 1 of the Act defines “owner” as including “a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate”.

Does every construction project have an owner and a constructor?

Every project that is governed by the Act has both an owner and a constructor. The constructor will either be the owner of the project or a third party contracted by the owner to undertake the project for the owner.

However, an owner who engages an architect, professional engineer or other person solely to oversee the quality control of the work at a project does not necessarily become a constructor (subsection 1(3) of the Act). Such an owner could engage a third party as a constructor as well as the person engaged only to oversee the quality control of the project.

The following examples illustrate some common situations for all owners of projects, including homeowners. Work in or about a private residence, performed solely by the homeowner or occupant (or a servant of either), is not subject to the Act. However, where the homeowner hires anyone to do the work, the Act applies in respect of that work. Who the constructor would be would depend on the circumstances.

- When an owner hires only one employer (contractor) to do all the work on a project, then that contractor is undertaking the work and is the constructor. This contractor is often referred to as the general contractor.
 - In the situation above, the general contractor may, in turn, subcontract some or all of the work to another party. He or she remains the constructor for the project, as long as he or she is the only party with whom the owner contracts to undertake the project.
 - In the situation above, if the owner is an employer who assigns his or her workers to work on the same project as the general contractor, he or she may become the constructor if the general contractor was not informed of and did not

agree to the presence of the owner's workers and does not exercise control over them. However, if the general contractor agrees to use the owner's workers and to direct their work, he or she will remain the constructor.

- When an owner undertakes a project by contracting with more than one employer (contractor), the owner is undertaking the project and is the constructor.
- When an owner contracts with more than one employer (contractor), the owner may enter into a contractual agreement with one of these employers or a third party to undertake the project on behalf of the owner. Provided the owner has relinquished control over the project and the employer or third party has assumed control, that employer or third party is the constructor, even if the owner is paying the other contractors on the project. The owner may also engage the services of a professional engineer, an architect, or another person solely to oversee the quality control of the project without becoming the constructor.
- Generally, when an owner of a project is an employer and uses his or her own workers to carry out that project, the owner is undertaking the project and is the constructor.

In summary, on **all** projects, either the owner or someone hired by the owner is the constructor. However, if the work is being performed by a homeowner or occupant (or a servant of either) in or about a private residence the Act does not apply in respect of that work.

Everyone involved with a construction project should be clear on who is undertaking the project, who the constructor is, and the responsibilities of all of the parties associated with the project. It is important to put this information in writing.

What are the key duties of a constructor?

Constructors have the following key responsibilities, on the projects that they undertake:

- ensure that the measures and procedures prescribed by the Act and its regulations are carried out on the project,
- ensure that every employer and every worker performing work on the project complies with the Act and its regulations,
- ensure that the health and safety of workers on the project is protected,
- ensure that a health and safety representative or a joint health and safety committee is selected or established, when and as required,
- ensure that the Ministry of Labour is notified of a project, when and as required,

- ensure that the Ministry of Labour is notified of an accident or occurrence, when and as required,
- ensure that every contractor or subcontractor receives a list of all designated substances present at the project before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project,
- ensure that written emergency procedures are established for the project and posted, and
- appoint a supervisor for every project at which five or more workers will work at the same time.

For a more detailed list of constructor duties, see the appendices. Constructors who are also employers, and constructors who are also project owners, have other duties under the Act and its regulations that must be fulfilled.

What is the relationship of the constructor to the other parties on a project?

The constructor has overall responsibility on a project for compliance with the Act, the Regulation for Construction Projects (O. Reg. 213/91) and other applicable regulations. The constructor may also have duties as an employer or as an owner.



April 26, 2017

Via: Email

Ms. Janet Baird-Jackson
Superintendent of Business
Avon Maitland District School Board
62 Chalk Street
Seaforth ON N0K 1W0

Dear Ms. Baird-Jackson:

**Re: Elma Township Public School Asphalt Resurfacing
Tender Results
Project No.: 300038406.0000**

In accordance with your instructions, the tender for the above-noted project closed at 2:00:00 p.m. on April 20, 2017. Four bids were received prior to the tender closing time and were reviewed for errors and omissions.

The following arithmetical errors were noted within the submitted Bids, which did not affect the overall ranking:

- Brantco Construction – The Schedule A total was \$800.00 less than indicated in their submission.
- Kurtis Smith Excavating Inc. – For Item C3 a) it appears the numbers were transposed and the extended price should have been \$24,960.00 instead of \$29,460.00 (\$4,500 less than indicated in their submission).

The Bid Submissions (including corrections) were as follows:

Rank	Bidder	Bid (including HST)
1	Steed and Evans Limited	\$577,000.00
2	Brantco Construction	\$656,578.59
3	Kurtis Smith Excavating Inc.	\$679,695.00
4	Roubos Farm Service Ltd.	\$705,148.06

Subject to the usual provision of proof of adequate insurance certificates and WSIB clearances, we recommend that the School Board accept the tender from Steed and Evans Limited.

We trust this meets your requirements at this time. We await your further instruction, so that Contract documents can be prepared and distributed, and the Contractor can be instructed to mobilize and commence the work as soon as possible.

Please contact our office if you have any questions or concerns.

Yours truly,

R.J. Burnside & Associates Limited



Jeremy Taylor, P.Eng.
Project Engineer
JT:js

cc: Mike Rau, Avon Maitland District School Board (Via: Email)
Laurel Mitchell, Avon Maitland District School Board (Via: Email)

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