



REPORT FOR ACTION

Temporary Suspension of Four Seasons Site Development Ltd.

Date: April 25, 2017

To: Government Management Committee

From: Deputy City Manager and Chief Financial Officer

Chief Engineer and Executive Director, Engineering and Construction Services

Chief Purchasing Official and Director, Purchasing and Materials Management

Wards: All

SUMMARY

This report recommends that City Council declare Four Seasons Site Development Ltd. ("Four Seasons") ineligible to bid on or be awarded any City of Toronto tenders for a period of three (3) years.

This recommendation is based on having had to terminate Contract 16ECS-TI-11SP Sidewalk Construction and Streetscape Improvements on College Street based on egregious breaches of the contract by Four Seasons; and unsatisfactory performance by Four Seasons on Contract 16ECS-TI-11SP, Tender 144-2016 and Contract 16ECS-TI-18SP, Tender 165-2016, Watermain Replacement and Water Service Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration.

Four Seasons' contract performance was unsatisfactory because it failed to comply with the Terms and Conditions contained in the Contracts and, as a result, received unsatisfactory evaluations from City staff under the City's Contractor Performance Evaluation Procedure. Four Seasons' actions on these contracts demonstrated inadequate Contract management, unsatisfactory work performance and administration, lack of responsiveness, little effort to minimize disruptions to the public or City operations, and on one of the contracts, a risk to public safety.

Based on the above, the Director of Purchasing and Materials Management Division, under the authority delegated by section 195-13.14 of Chapter 195, Purchasing, of the Toronto Municipal Code, suspended Four Seasons from bidding on or being awarded any tenders for a period of six (6) months starting February 9, 2017. Only City Council may suspend a contractor from Contract awards for unsatisfactory performance for a period of more than six (6) months.

This report provides further information on Four Season's contract performance and the Contractor Performance Evaluations it received for the contracts mentioned above to support the recommendation for a three year suspension of Four Seasons Site Development Ltd., and a review of possible alternatives to the proposed length of suspension as requested by Government Management Committee at its meeting of April 3, 2017, while considering item GM19.12 Temporary Suspension of Four Seasons Site Development Ltd.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer, the Chief Engineer and Executive Director, Engineering and Construction Services, and the Chief Purchasing Official and Director, Purchasing and Materials Management Division, recommend that:

1. City Council declare Four Seasons Site Development Ltd. ("Four Seasons") ineligible to bid on or be awarded any City of Toronto tender calls as a General Contractor or Sub-Contractor, from the date Council approves these recommendations until February 8, 2020, for a total period of three (3) years when combined with the temporary suspension that has already been imposed through the delegated authority of the Director, Purchasing and Materials Management Division.
2. City Council declare that any affiliated person of Four Seasons Site Development Ltd., as defined in Chapter 195, to be ineligible to bid on or be awarded City of Toronto tender calls for the same period as set out in recommendation 1 as a General Contractor or Sub-Contractor.

FINANCIAL IMPACT

There is no financial impact from these recommendations.

DECISION HISTORY

At its meeting held on September 25, 26 and 27, 2006, City Council adopted Administration Committee Report 6 Clause 11, titled "Contractors, Consultants and Supplier Performance Evaluations", which outlined various recommendations with respect to the City's approach to vendor performance evaluation. The Council decision document can be found at:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/adm6rpt/cl011.pdf>

At its meeting held on November 13, 14, 15, and 18, 2013, City Council adopted Item PW26.4, titled "Contractor Performance Evaluation Procedure" which outlined information regarding the implementation of the Contractor Performance Evaluation ("CPE") Procedure on all City construction projects. The Council decision document can be found at:

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getCouncilMinutesReport&meetingId=6813>

At its meeting of June 8, 2016, Bid Committee awarded Tender Call No. 144-2016, Contract 16ECS-TI-11SP, to Four Seasons Site Development Ltd. for Sidewalk Construction, Streetscape Improvements, Tree Trenches and Construction of Parkettes on College Street and Side Streets between Shaw Street and Havelock Street, as the lowest bidder meeting the specifications and in accordance with the Contract Details. The Bid Committee decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.BD86.5>

At its meeting of July 6, 2016, Bid Committee awarded Tender Call No. 165-2016, Contract 16ECS-TI-18SP, to Four Seasons Site Development Ltd. for Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Water Service Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration, as the lowest bidder meeting the specifications and in accordance with the Contract Details. The Bid Committee decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.BD86.5>

At its meeting held on July 12, 13, 14, and 15, 2016, City Council adopted Item GM13.13, titled "Amendments to the Purchasing By-law and Procurement Processes Policy" which amongst other things established a Supplier Code of Conduct and provided authority to the Chief Purchasing Official to temporarily suspend a supplier for up to 6 months for a violation of the Supplier Code of Conduct, which includes the requirement for Suppliers to maintain a satisfactory performance rating on City contracts. The Council decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM13.13>

At its meeting of April 3, 2017, Government Management Committee considered the staff report on the Temporary Suspension of Four Seasons Site Development Inc. and referred the item back to staff with a request for possible alternatives to the proposed length of the suspension, a summary of the Contractor Performance Evaluation and scoring, and other rationale to support the recommendation for a three year suspension. The Committee decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM19.12>

COMMENTS

Background

During 2016, Four Seasons had six active construction contracts with the City. The City terminated Four Seasons' Contract 16ECS-TI-11SP, Tender 144-2016 Sidewalk Construction, Streetscape Improvements, Tree Trenches and Construction of Parkettes on College Street and Side Streets between Shaw Street and Havelock Street, due to unsatisfactory performance and egregious breaches of the contract. Furthermore, Four Seasons' overall performance on Contract 16ECS-TI-18SP, Tender 165-2016, Shuter Street - from Yonge Street to Sherbourne Street: Watermain Replacement and Water Service Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration, was also unsatisfactory.

On both contracts, Four Seasons contravened Terms and Conditions contained in Sections 4, 4A and 5 of the Contracts, characterized by:

- Violations of the Occupational Health and Safety Act (OHSA) that endangered public safety and arose as a direct result of how Four Seasons elected to stage and carry out the construction work;
- Poor worker and subcontractor management, which resulted in significant delays to the start of active construction on each contract;
- Unsatisfactory construction work progress being achieved at the work sites due to insufficient labour resources being employed at each work site, resulting in significant delays to the overall Contract schedules;
- Poor administration and lack of diligence in responding to requests for information and updates to the schedules, which impacted staff, businesses, and residents;
- Poor quality materials and installation of tree pit covers and sidewalk pavers (on College Street);
- Failure to minimize disruptions to the public and to City operations;
- Failure to use extended construction work hours (on College Street); and,
- Failure to correct defaults with respect to maintaining open access to businesses and residences and the lack of construction activity during the required hours of operations on Contract 16ECS-TI-11SP, which led to the termination of the Contract by the City (after consultation with Legal Services).

Due to Four Seasons' noncompliance with the Terms and Conditions of the Contracts and unsatisfactory performance, substantial additional effort was required on the part of City staff to manage the contracts. Four Seasons also exacerbated the disruptive impacts of the work on businesses and residents in both the College and Shuter Street areas.

A summary of the Terms and Conditions breached by Four Seasons and the unsatisfactory performance of Four Seasons that City staff documented using the Contractor Performance Evaluation procedure for Contracts 16ECS-TI-11SP and 16ECS-TI-18SP is presented in the following.

Overview of Contract 16ECS-TI-11SP – College Street

This Contract was part of an Economic Development and Culture Business Improvement Area Office initiative to enhance the streetscaping on the north and south sides of College Street from Shaw Street to Havelock Street. Attachment 1 contains a map showing the limits of the work site.

The scope of work for this Contract included the reconstruction of sidewalks, streetscape improvements, and the construction of special tree pits and parkettes. The streetscaping components of the project involved specialized and decorative work, and required careful coordination of subcontractors and suppliers to ensure the completed project conformed to Contract specifications and City and BIA expectations.

The value of the Contract as awarded was \$3,453,499.00 net of all taxes and charges. Construction started on June 27, 2016 and the Contract schedule allowed 60 calendar days for completion of the works, premised on using extended hours stipulated in the Contract to be from 7 a.m. to 11 p.m. Monday to Friday and on weekends as required. The Contract was to be completed by October 21, 2016. The tender documents issued by the City emphasized the importance of the timely completion of the project because College Street is a major thoroughfare and it was a priority to minimize transit disruption and the impacts on area residents and businesses.

Breaches of Contract 16ECS-TI-11SP - College Street - Terms and Conditions

Contract 16ECS-TI-11SP contained a number of key Terms and Conditions mandating:

- Compliance with OSHA regulatory requirements (Section 5 of the Contract), so that the work zone was maintained safe;
- The project completion date (Section 4 of the Contract) and the use of extended work hours (Section 4A of the Contract), which were included in the Terms and Conditions in order to ensure that the project was completed expeditiously so as to minimize inconvenience to residents, businesses and visitors to College Street and to enable the Toronto Transit Commission (TTC) to resume regular streetcar service as committed; and,
- Maintaining access to all properties abutting the project, both residential and commercial, at all times during the project (Section 4A of the Contract), so that residents and business owners could continue to live and operate in the area during the period of construction.

Four Seasons failed to comply with all of the above-noted Contract Terms and Conditions, and many others. Extracts from Sections of the Contract which were breached by Four Seasons, are presented below together with a brief summary of Four Seasons' actions during the course of the project.

Failure to Comply with the Requirements of the Occupational Health and Safety Act (Contract Section 5 – 1a)

The Contract stated:

"The Contractor shall ensure that no work will commence, and that those engaged by the Contractor are aware of and comply with the requirements of the OHSA..."

On August 5, 2016, Four Seasons was issued a non-compliance order by the Ontario Ministry of Labour (MOL) for violating OHSA safety requirements for separation of the work zone from pedestrian traffic as shown in Attachments 2 and 3.

During the field visit by a MOL inspector the action plan agreed upon by the MOL, the City and Four Seasons was the installation of a temporary 1.8 metre high fencing between the public way and the project, and that Four Seasons would dismantle and re-erect the fencing when members of the public sought access and egress to premises on College Street.

The MOL field visit report, dated August 15, 2016, stated that the:

"Constructor reported that procedures were in place with ramp access provided to properties, with fencing re-erected when members of the public seek access/egress. Constructor noted that additional signage would be erected advising members of the public of the procedure."

After the MOL's field visit, Four Seasons did not do what it told the MOL it would do to provide safe access to members of the public accessing properties adjacent to their work area. Instead of complying with the agreed action plan, after the Order was issued, Four Seasons restricted pedestrian access to properties abutting the project site on the north side of College Street. Four Seasons erected fences to restrict access to the construction area but then refused to remove the fences and place ramps so that pedestrians could get in or out of their apartments or businesses in a timely manner. This led to increased friction between the public and Four Seasons staff.

By restricting access to properties abutting the project site, Four Seasons contravened Section 4A of the Contract, specifically:

- Special Specification 11.0 - Traffic Control, which stated:
"Access to all properties, residential and commercial, must be maintained at all times. Any work across driveways shall be done in a manner that will ensure continuous an unimpeded flow of vehicular traffic. Uninterrupted pedestrian traffic shall be maintained all times on both sides of the street during construction."
- Special Specification 19.0 - Access to Properties, which stated:
"The Contractor shall direct their operations to minimize any inconvenience to the owners or occupants of the affected properties"

Four Seasons failed to satisfactorily manage the pedestrian traffic to and from the businesses as per the Contract requirements, as is illustrated in Attachment 4. This negatively affected pedestrian safety and resulted in numerous complaints from the public and business owners, with respect to the limited or restricted access to their premises and the disrespectful behavior exhibited by Four Seasons' workers towards the public.

It is a standard, and not technically complicated, requirement that contractors provide access to businesses and residences even while performing road or sidewalk work because contractors frequently work in heavily trafficked areas of the City and minimizing disruption to businesses and residents is important. In this case, the difficulty that Four Seasons had in providing safe access to area businesses and residences was a direct result of how Four Seasons decided to carry out the work. It was Four Seasons' decision to maintain an active construction work zone for the entire north side of College Street from Havelock Street to Shaw Street (i.e., 775 metres representing seven street blocks), where they excavated the entire boulevard and sidewalk, effectively restricting access to 98 business and 98 residential units.

As a direct result of the above, the City staff received numerous complaints from the public about the restricted access and the inappropriate behavior of Four Seasons' workers.

Communication by the City with the Contractor

The City wrote to Four Seasons on August 18, 2016, reminding Four Seasons that the terms and conditions of the contract required Four Seasons to provide safe pedestrian and vehicular access to all the properties adjoining the work area at all times during construction.

The City provided Four Seasons with two written warnings regarding the workers' poor behavior and unacceptable interactions with the public.

Senior City staff convened a meeting with Four Seasons' representatives, including the owner (Rohit Bansal) on August 17, 2016 to discuss the importance of maintaining access to businesses and residences as well as possible mitigation measures to minimize impact to the premises on the north side of College Street.

Four Seasons took the position that they would continue to restrict access to the premises on the north side of College Street to perform their construction activity for the project, unless the City agreed to financial compensation. The City instructed Four Seasons to implement additional mitigation measures to minimize the impact to area businesses and residents and that the conditions of the Contract (i.e. Section 5, General Conditions of Contract, 3.14) provides for the contractor to submit claims for additional compensation to the City for consideration. Four Seasons refused to implement the mitigating measures and decided to continue their operations by restricting access to the College Street premises until such time as the City agreed to additional compensation. This was directly contrary to the terms of the Contract, which required Four Seasons to carry out work as directed by the City even where there was a dispute as to whether additional payment is owed; such disputes are to be resolved after the work is completed precisely to ensure that projects are completed with minimum disruption.

Failure to Comply with the Requirement to Use Extended Hours (Section 4A, Special Specification 12.0).

The Contract stated:

"For this contract the contractor must work extended working hours (7 am to 11 pm) from Monday to Friday (on weekends as required as per the note below) for timely completion of the contract"

"Any work affecting a major intersection area including signalized intersections shall commence on a Friday after 7:00pm followed by completion of work within the major intersections and signalized intersections on Saturday"

"The contractor shall consider multiple crews for each activity to minimize the duration of the said works."

"The Contractor shall schedule their work, as required, to include overtime and/or extended hours, weekend and night work to complete the Contract by the stipulated completion date. The cost of all overtime, weekend work, night work where permitted, etc., shall be included in the appropriate bid prices. No additional payment shall be made"

The extended hour requirements were included in the Contract in order to expedite completion of the work and adhere to the schedule noted above, and minimize impact to the affected residents, businesses, customers and the TTC.

Communication by the City with the Contractor

Concerns about insufficient on-site personnel and slow progress of the work were brought to Four Seasons' attention at construction site meetings held on July 19, July 26, and August 2, 2016, and in several other subsequent site meetings. Four Seasons was informed at all these meetings that their failure to make use of the extended hours of operation was directly impacting their ability to meet various project milestones.

Despite the verbal and written instructions given by City staff, Four Seasons failed to make use of extended work hours (i.e., 7 a.m. to 11 p.m. Monday to Friday and on weekends as required). Instead they typically maintained a regular work schedule, from 7 a.m. to 5 p.m. Monday to Friday, although they did work on three Saturdays from 7 a.m. to approximately 3 p.m. This schedule was inadequate to ensure the work was completed in the time frame required by the Contract, even without any unforeseen delays.

Failure to Comply with Project, Pre-Installation and Pre-Fabrication Meetings (Section 4A Special Specification 42.0):

The Contract stated:

"The Contractor shall prepare, and provide biweekly progress reports to the Project Engineer. These reports shall include updated schedules, shop drawing logs, submittals and budget to the Project Engineer."

The lack of communication, compounded by poor coordination and the extensive delays to the project schedule, resulted in considerable frustration for local residents and businesses, and for City staff who were required to spend significant additional time and

resources than typically needed for a project of this scale and scope to obtain responses and action from Four Seasons.

Communication by the City with the Contractor

Four Seasons did not communicate project status as specified in the Contract. Despite numerous requests for an updated construction schedule by City staff at construction project meetings on July 19, July 26, August 2 and August 9, Four Seasons did not provide an updated schedule until August 16, 2016. The revised construction schedule, submitted by Four Seasons indicated a completion date at the end of December 2016, which was rejected by the City because it did not adhere to the Contract requirement to complete the work by October 21, 2016.

Failure to Comply with Requirements for a Traffic Management Plan (Section 4A Special Specification 11.0)

The Contract stated:

"The Contractor shall maintain traffic in each direction at all times at all intersections, underpasses and side streets and shall provide all necessary asphalt ramping to the satisfaction of the Contract Administrator at intersections, entrances, bus stops, maintenance holes and any other location as required, at no cost to the City. The lane closures must be prearranged with the City of Toronto. The Contractor must provide a traffic control plan at the pre-construction meeting and shall be responsible for all traffic control measures.

The Contractor will provide a traffic management plan to be reviewed by Transportation Services. No claim for delay or expense shall be considered due to the rejection or revision to the traffic management plan.

Uninterrupted TTC bus routes shall be maintained at all times during construction. The Contractor shall provide adequate temporary signs and proper access ramps for public transit passengers.

In order to minimize safety concerns, materials and equipment must be confined to one side of street only and stored so as not to interfere with flow of traffic and visibility, in particular, at street corners and bends."

Communication by the City with the Contractor

Despite numerous requests from the City (made on July 19, July 26, August 2, August 9 and August 16), Four Seasons did not submit a traffic control plan based on the revised project start date until August 23, 2016.

However, the August 23 traffic control plan submitted by Four Seasons proposed work on both sides of College Street at the same time. This would have effectively turned College Street into a one way street, and would have virtually eliminated any transit services for the area, for an extended period of time.

Four Seasons' proposal to work on both sides of the College Street contravened Section 4A of the Contract:
Special Specification 12.0 – Construction Constraints, which stated:

"The contractor shall not be allowed to work concurrently on both sides of the street. The contractor shall only work on one side of the Street and shall not be allowed to start any construction work at the other side of the Street unless all construction including tree pits, precast covers, pavers sidewalk, electrical work and any other proposed installation is completed at the side of Street where the work started.

The City rejected Four Seasons' proposal because it did not comply with the Terms and Conditions of the Contract.

Failure to Comply with the Requirements of the Occupational Health and Safety Act (Contract Section 5 – Encountering Hazardous Materials)

The Contract stated:

"Where the Contractor encounters designated substance(s) or hazardous material(s) at the site or has reasonable grounds to believe that designated substance(s) or hazardous material(s) are or may be present at the site, the Contractor shall take all reasonable steps as deemed necessary to comply with the OHSA, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of such substance(s) or material(s), and immediately report the circumstances to the Contract Administrator and any other appropriate authority, in writing. Where there is a delay by reason of so doing, the Contractor shall be entitled to its reasonable costs, to the extent directly incurred by reason of that delay and directly related to designated substance(s) or hazardous material(s) which existed at the site prior to the commencement of the Work which were not disclosed by the City."

On July 18, 2016, Four Seasons found an abandoned oil tank in the College Street sidewalk, in front of 952 College Street. As the oil tank was isolated in front of 952 College Street, the City directed Four Seasons to secure the area and to continue with the remaining work on the north side of College Street. At the same time, the City engaged the professional services of an environmental consultant Amec Foster Wheeler (Amec) on July 25, 2016, to undertake an investigation and develop an appropriate remediation plan.

Soil samples were taken on September 14, 2016, in accordance with environmental sampling protocols. Upon receiving the results for these samples, a detailed report was prepared by Amec and submitted to the Technical Standards and Safety Authority (TSSA) for review and approval, in order to proceed with the decommissioning of the oil tank.

The final approval from the TSSA was issued on September 28, 2016, for decommissioning of the tank at 952 College Street and the City issued Four Seasons with a change directive on the same day to proceed with the decommissioning of the tank, which involved emptying the tank, and removing the tank from the site, removing the contaminated soil, and backfilling the site with clean fill material.

Along with the presence of the oil tank located in front of 952 College Street, there were two other areas where soil contamination was encountered:

On August 17, 2016, Four Seasons excavated the boulevard in front at 820/822 College Street for tree pit installations and advised the City of the possible presence of contaminants. Once again, because the soil contamination was localized, the City directed Four Seasons to secure the area and proceed with the remaining work on the north side of College Street. The City issued a change directive to Four Seasons which indicated that all the contaminated soil within the excavated area was to be removed by a licenced subcontractor.

Once all the contaminants were removed from the excavated area the City, following consultation with Amec, directed Four Seasons to proceed to backfill the open excavation. However, Four Seasons refused to backfill the trench due to concerns they expressed with the possible presence of contaminants beneath College Street.

Communication by the City with the Contractor

Since the environmental consultant retained by the City had not identified any additional concerns and had confirmed to the City that it was appropriate to backfill this excavation to proceed with other work, the City requested Four Seasons to provide evidence to support its claims that contaminants still existed within the excavated area. Four Seasons refused to provide any supporting documentation but they contacted the Ministry of Environment and Climate Change (MOECC) on September 9, 2016. Four Seasons told the MOECC that the City was proceeding to direct Four Seasons in contravention of applicable regulations; a characterization with which ECS entirely disagrees. The MOECC representative contacted City staff on October 3, 2016, requesting additional information on the matter and a summary of all activities undertaken to address the soil contamination areas. Upon speaking with City staff and obtaining all the background information on October 4, 2016, the MOECC did not raise any concerns with the actions undertaken by the City to remediate the areas of concern. Thus Four Seasons should have been carrying on with other work during this interval, but did not.

Based on the Terms and Conditions contained in Section 5, as presented above, Four Seasons' reliance on the presence of contaminated soil as a cause to delay proceeding with the construction was not accepted by the City because the localized soil and oil tank remediation work did not impede their ability to continue with the work on the north side of College Street and meet schedule milestones.

Furthermore, the City developed a contingency plan to enable Four Seasons to move to the south side of College Street once all the streetscaping work on the north side (where the contaminated soil and oil tank were located) was done, with the exception of remediation of the contaminated soil. This approach would have allowed Four Seasons to proceed with the work on the south side of College Street without any further delay. However, Four Seasons' lack of progress on the north side and their refusal to backfill the excavated areas led to significant delays to the project schedule.

Failure to Comply with the Requirements of the Occupational Health and Safety Act (Contract Section 5 – Breach of OHS is Not a Reason to Delay the Project)

The Contract stated:

"The Contractor shall be responsible for any delay in the progress of the Work as a result of any violation of a health and safety requirements of any federal, provincial or municipal governmental authority, it being understood that no such delay shall be deemed or construed as an "Unavoidable Delay" for the purposes of extending the time for performance for the Work or entitling the Contractor to additional compensation whatsoever, and the Contractor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to the City. The City shall not be responsible for any compensation, expense or liability resulting from any such delay.

Nothing in this Contract shall be construed as requiring the City to monitor or approve the workplace health and safety practices of the Contractor. The City shall not be liable to any person by reason of a breach by the Contractor or any subcontractor of any applicable health and safety standard or requirement."

Communication by the City with the Contractor

On August 18, 2016, the City issued a letter advising Four Seasons that restricting access to the premises on College Street to perform their operations was a direct contravention of the Terms and Conditions of the contract and that unless Four Seasons undertook immediate corrective measures the City would declare them in default of the contract.

Four Seasons countered that they would continue their operations and restrict access to the premises on the north side of College Street, unless the City agreed to financially compensate Four Seasons for the implementation of additional mitigation measures to minimize the impact to the area businesses and residents.

Failure to Comply with Requirement to Complete the Work by the Scheduled Date (Section 4)

The Contract stated:

"The work on College Street under this contract from Havelock to Shaw Street, including all site restoration, clean up, and rectification of all known deficiencies, must be completed by no later than August 19, 2016. The work on side Streets under this contract, including all site restoration, clean up, and rectification of all known deficiencies, must be completed by no later than October 21, 2016. The tentative construction start date is June 20, 2016"

Communication by the City with the Contractor

The City issued the order to commence on June 23, 2016, advising Four Seasons that they were required to start June 27, 2016 and that the work was to be completed by October 21, 2016. However, Four Seasons did not start construction until July 2, 2016 due to delays obtaining utility locates. Despite numerous requests from the City on July 19 and 26, August 2 and 9 Four Seasons did not submit a revised construction schedule until August 16, 2016. Four Seasons' revised construction schedule indicated a completion date of December 16, 2016, which was rejected by the City because it did not adhere to the contract requirement to complete the work by October 21, 2016.

The City informed Four Seasons that the revised schedule was unacceptable and that their lack of sufficient personnel on site during construction, along with their failure to make use of the extended work hour provisions that were specified in the contract, were resulting in delays to the project schedule.

Notice of Default on Contract 16ECS-TI-11SP

Four Seasons failed to satisfy their contractual obligations and failed to complete the project within the time specified in the contract. Furthermore, they did not meet any of the project schedule milestones. The work on the north and south sidewalks of College Street was supposed to have been completed by the end of August 2016. However, as of October 5, 2016 (the date of termination of the contract), the north side was only partially completed and no work had commenced on the south side.

The lack of communication, compounded by poor coordination and the extensive delays to the project schedule, resulted in considerable frustration for local residents and businesses, and for City staff who were required to spend significant additional time and resources to obtain responses and direct action from Four Seasons.

On September 28, 2016, Four Seasons was declared in default of Contract and was issued a written Notice of Default by the City based on:

- Failure to open and maintain safe access to all properties adjoining the work zone as required by the terms of contract; and,
- Failure to meet the extended work hour requirements specified in the Contract resulting in significant delays with no approved updated schedule defined for the remainder of the contract.

In accordance with the terms of the Contract, Four Seasons was given five (5) working days to correct the failures, but did not do so.

As a result, on October 5, 2016, the City terminated Contract 16ECS-TI-11SP with Four Seasons.

Four Seasons' unsatisfactory performance on the Contract and failure to correct the defaults noted in the Notice of Default dated September 28, 2016, provided the basis for termination of the contract. The termination letter for Contract 16ECS-TI-11SP is presented in Attachment 5.

Contractor Performance Evaluation of Contract 16ECS-TI-11SP - College Street

The Contractor Performance Evaluations for this project are contained in Attachment 6 the following summarizes the key issues affecting their poor performance scores, ordered by the headings contained in City's Contractor Performance Evaluation Procedure. The issues identified by ECS project staff in the contractor performance evaluation forms are issues that were raised with Four Seasons as the work was underway, by email, telephone, or in project meetings or site visits.

A - Safety and Compliance – Laws and Standards

Compliance with Occupational Health and Safety (OHSA)

On August 5, 2016, Four Seasons was issued a non-compliance order by the Ontario Ministry of Labour (MOL) for violating OHSA safety requirements for separation of the work zone from pedestrian traffic as shown in Attachments 2 and 3. After the Order was issued, Four Seasons restricted pedestrian access to properties abutting the project site.

Four Seasons failed to satisfactorily manage the pedestrian traffic to and from the businesses as per the contract requirements, as is illustrated in Attachment 4. This negatively affected pedestrian safety and resulted in complaints from the public and business owners, with respect to the limited or restricted access to their premises and the disrespectful behavior exhibited by Four Seasons' workers towards the public. Four Seasons also complained to the City about their interactions with members of the public or business owners. The City investigated these issues also.

The City wrote to Four Seasons on August 18, 2016, reminding Four Seasons that the terms and conditions of the contract required Four Seasons to provide safe pedestrian and vehicular access to all the properties adjoining the work area at all times during construction. This is a routine requirement imposed on contractors.

City staff received numerous complaints from the public about the inappropriate behavior of Four Seasons' workers, and Four Seasons received two written warnings from the City regarding the workers' poor behavior and interaction with the public. Had Four Seasons appropriately addressed the contract requirements to provide access to businesses and residences, ECS was firmly of the view that there would have been fewer complaints and less controversy or friction at the work site.

B - Quality – Compliance with Contract Standards and Specifications

Despite verbal and written instructions given by City staff to Four Seasons on several occasions, Four Seasons failed to make use of the extended work hours (i.e., 7 a.m. to 11 p.m. Monday to Friday and on weekends as required) for their construction activities, as stipulated in the contract. The extended hours were included in the contract in order to expedite completion of the work, which would in turn minimize disruption to the public and local businesses.

With respect to materials and installation, some of the tree pit covers were improperly manufactured and did not fit within the tree pit structure, pavers were of poor quality, and installation of sidewalk pavers was poorly done, resulting in numerous deficiencies (e.g., Attachment 7).

C - Organization – Work Plan and Management

Inadequate Staff and Resources

Four Seasons did not have enough personnel on site during construction, and failed to make use of the extended work hour provisions that were specified in the contract, which resulted in delays to the schedule. Concerns about insufficient on-site personnel and slow progress of the work were brought to Four Seasons' attention at construction site meetings held on July 19, July 26, and August 2, 2016, and in several other subsequent site meetings.

Poor Response to Information Requests

Four Seasons was late in submitting updated construction schedules and updated traffic control plans, and failed to submit the quality control plan for the construction of the infrastructure and materials as per the requirements of the contract. Due to Four Seasons' lack of responsiveness and consistently late submissions, City staff were required to spend significantly more time and resources than typically needed for a project of this scale and scope to obtain the required responses and actions from Four Seasons on these various contractual items.

Inadequate Management of Sub-contractors' Work

Four Seasons did not effectively manage the work of subcontractors. The work that Four Seasons sub-contracted, which contributed to delays, included the supply and installation of the unit pavers.

D - Execution – Work Performance

Four Seasons failed to satisfy their contractual obligations and failed to complete the project within the time specified in the contract. Furthermore, they did not meet any of the project schedule milestones. For example, the work on the north and south sidewalks of College Street was supposed to be completed by the end of August 2016. However, as of October 5, 2016 (the date of termination of the contract), the north side was only partially complete and no work had commenced on the south side.

E - Administration – Contractor Performance and Diligence

Inadequate Communication, Cooperation and Collaboration

Four Seasons did not communicate project status updates as required by the terms of the contract. The lack of communication, compounded by poor coordination and the extensive delays to the project schedule, resulted in considerable frustration for local residents and businesses, and for City staff who were required to spend significant additional time and resources to obtain responses and action from Four Seasons. Four Seasons was continually uncooperative toward the area businesses and residents affected by the work. Obstacles and physical barriers were put in place impeding residential and business access, as illustrated in Attachment 4.

The City sent numerous written notices to Four Seasons stating that, as per the contract requirements, Four Seasons was required to ensure residents and businesses had access to their properties. Even though the City requested immediate action from Four Seasons to rectify these issues, Four Seasons did not respond nor take any immediate action to do so. Furthermore, Four Seasons refused to collaborate with local businesses to minimize the impact of construction, which included refusing to assist with the installation of "business is open during construction" signs.

Negative Impacts of Four Seasons' Poor Performance on Contract 16ECS-TI-11SP

- 98 individual businesses impacted, 98 residential tenant units were affected from the start of construction on July 6, 2016 until such time as the contract was terminated on October 5, 2016.
- College Street businesses and residents will be impacted for an extra year because construction to complete the project must continue during the summer of 2017.
- A disruption in TTC streetcar service beyond the planned return of streetcar service on September 6, 2016, as well as an additional year of streetcar service disruption. These unplanned TTC streetcar disruptions requires TTC to plan for additional resources to accommodate transit users which result in an increase in TTC operating costs
- Due to Four Seasons' lack of responsiveness and consistently late submissions, City staff were required to spend significantly more time and resources than typically needed for a project of this scale and scope to obtain the required responses and actions from Four Seasons.
- The City was required to hire the emergency services of another contractor to remediate the excavated area at the northwest corner of Ossington Avenue and College Street and complete the backfilling operation on the open excavations at 952 College Street and 820/822 College Street.
- The City incurred extra expense to maintain the area in a safe and passable condition during the winter season.
- Additional City resources were required to prepare revised tender documents and re-tender the unfinished work, which includes the streetscaping work along College, parkettes on the side streets, and the correction of deficiencies on the work completed on the north side of College Street.

Overview of Contract 16ECS-TI-18SP – Shuter Street

The scope of work for this contract included watermain replacement, permanent road resurfacing on Shuter Street from Yonge Street to Church Street and new painted bike lanes on Shuter Street from Yonge Street to Sherbourne Street. Attachment 8 contains a map showing the limits of the work zone. The value of the contract was \$2,886,570.00 net of all applicable taxes and charges. The original contract schedule allowed 80 calendar days for completion of the works.

Contractor Performance Evaluation of Contract 16ECS-TI-18SP

The Contractor Performance Evaluations for this project are contained in Attachment 9. Two interim CPEs were prepared and presented to Four Seasons. The rationale for the evaluations is presented below, according to the CPE categories. On Interim CPE #1, Four Seasons received a score of 2.17. It should be noted that Interim CPE #1 was not provided to Four Seasons until December 20, 2016, however the contractor was well aware of all the reported issues. On Interim CPE Report #2 Four Seasons received a score of 2.77, and that was provided to Four Seasons on December 19, 2016.

A - Safety and Compliance – Laws and Standards

Site Office

Construction commenced on August 8, 2016, however Four Seasons did not establish a site office in accordance with Occupational Health and Safety Act (OHSA) requirements. Such requirements were identified and discussed at the pre-construction meeting on July 21, 2016.

An audit of the site office set-up was conducted on August 17, 2016, with the following items noted as outstanding: safety board; access/egress steps; Form 1000's for General Contractor and Sub Contractor (see Note 1) and, hospital plan. On August 21, 2016, the site office was damaged beyond repair after being struck by a vehicle during non-working hours. A replacement trailer was provided on August 31, 2016; however, there were again delays with respect to bringing the site office into OHSA compliance.

Site Office Generator

A site office generator was required to provide electrical power. Due to the fact that the site office was located in a residential area, a whisper generator was requested, and this was agreed by Four Seasons at the pre-construction meeting. However, the generator initially provided by Four Seasons was not a whisper generator and was not in compliance with the City's request. The City made several subsequent requests before a whisper generator was finally provided. In addition to not having the proper generator on-site, refuelling was reactive, and there were periods of time during construction when the site office was without power.

Road Plates

During construction of the watermain, temporary plates were not properly installed over the open trenches in roadway areas, in contravention of the contract requirements, and created unsafe conditions for pedestrians and road users.

Note 1: Form 1000 is an administrative requirement under the OHSA, specifically under Section 5 of the Regulation for Construction Projects (O. Reg. 213/91). Before beginning work at a project, every constructor and employer engaged in construction has to complete the Form 1000 registration form. This form does not have to be submitted to the Ministry of Labour, but it must be at the project site while the constructor is working there.

Traffic Control

Traffic control was not maintained on a regular basis which created unsafe conditions for pedestrians and other road users. Four Seasons did not actively maintain site traffic control, and would wait until issues were pointed out by City staff before taking action.

B - Quality – Compliance with Contract Standards and Specifications

Approval Documents

Four Seasons was consistently late in seeking approvals for documentation, such as traffic control plans and watermain disinfection proposals, putting Four Seasons out of compliance with the Contract standards and specifications. Furthermore, the City's requests for revisions to such documents were not completed by Four Seasons within acceptable timeframes.

C - Organization – Work Plan and Management

Schedule and Updates

Four Seasons did not provide schedule updates in a timely fashion. This project was located in a high traffic area, and during certain stages of the construction, neighbouring businesses and facilities were required to make temporary changes to their regular operations. Such changes included re-routing of ambulances to St. Michael's Hospital, additional coordination for deliveries to Massey Hall, and changes to the ingress / egress to the Eaton Centre parking garage on Yonge Street. Updates to area residents and businesses concerning schedule changes were crucial to their operations, and such updates were not provided by Four Seasons with sufficient time for those affected to make alternative arrangements.

Communication

Four Seasons did not maintain a consistent point of contact during construction. The original plan for correspondence, as agreed by Four Seasons and the City at the pre-construction meeting, was not followed, and this created challenges with respect to tracking of correspondence, and ensuring action items were being addressed. The point of contact continually changed during construction, and at times there was uncertainty about who from Four Seasons was managing the project.

Site Supervision

Four Seasons did not provide continuous site supervision while its watermain subcontractor worked on-site. This resulted in delays with respect to rectifying issues such as improper plating on roadways, maintenance of traffic control, and general house-keeping. As noted above, Four Seasons did not actively maintain the site, and it was Four Seasons' practice to avoid taking action to resolve site issues until they were pointed out, by the city inspector or by the public. On several occasions, these issues were raised several times before Four Seasons responded.

D - Execution – Work Performance

As noted in the sections above, Four Seasons did not provide timely updates to schedule changes, and did not provide adequate site supervision which resulted in confusion and frustration to City, residents and business. City staff were required to

spend a significant amount of time and resources to obtain the required responses and action from Four Seasons.

E - Administration – Contractor Performance and Diligence

Four Seasons did not provide adequate communication with respect to the updates required on site matters.

Rationale for 3-Year Suspension

The rationale for requesting a three year suspension for Four Seasons is based on their failure and refusal to adhere to the terms and conditions of the contract, which led to the termination of Contract 16ECS-TI-11SP - College Street, and their total disregard of the impact to the area residents and businesses from their operations.

Four Seasons was continually uncooperative toward area businesses and residents affected by the work. Obstacles and physical barriers were put in place that had a severe impact on residents and business owners. Four Seasons' lack of communication, lack of coordination and the extensive delays to the project schedule, resulted in considerable frustration for local residents and businesses, and for City staff who were required to spend significant additional time and resources to obtain responses from Four Seasons, and having to regularly respond to complaints about Four Seasons and their activities by residents, businesses and the BIA. Furthermore, Four Seasons refused to collaborate with local businesses to minimize the impact of construction, which included refusal to assist with the installation of "business is open during construction" signs.

While Four Seasons has completed other contract work for the City, its performance on the College Street and Shuter Street projects specifically was so inadequate and had such significant negative impacts on the City (including residences and businesses) that a 3 year suspension is warranted.

Suspension Alternatives

Table 1 sets out various alternative lengths of time City Council could suspend Four Seasons with associated comments. Each length would be inclusive of the six month temporary suspension that began on February 8, 2017. City Council could also consider other lengths of time.

Table 1 - Alternative Lengths of Suspension

Length of Suspension	Comments
6 month suspension - February 8, 2017 to August 7, 2017	This would be the length of the temporary suspension imposed by the Chief Purchasing Official. Due to the issues with Four Seasons as described above, staff do not feel a suspension of 6 months alone is adequate.

Length of Suspension	Comments
1 year suspension - February 8, 2017 to February 7, 2018	A 1 year suspension would be consistent with suspensions for contractor performance evaluation in previous years 2014 and 2015. However due to the issues with Four Seasons as described above, staff do not feel this is appropriate and are recommending three years.
2 year suspension - February 8, 2017 to February 7, 2019	
3 year suspension - February 8, 2017 to February 7, 2020	This is staff's recommendation.
Longer than 3 years	Staff are not recommending a longer suspension than what is being recommended, but Committee/Council has authority to impose a suspension of longer duration.

Additional Considerations

Pending Council consideration of the proposed temporary suspension of Four Seasons, the Director of Purchasing and Materials Management, who is the Chief Purchasing Official for the City, issued a letter informing Four Seasons that the company would be suspended from bidding on City of Toronto Contracts for a period of six months, commencing February 8, 2017. A copy of the letter informing Four Seasons of the six month temporary suspension is contained in Attachment 10. In addition, the Chief Purchasing Official and ECS staff met with Four Seasons, at Four Season's request, on February 24, 2017. Four Seasons asked for and was provided with an opportunity to discuss the Chief Purchasing Official's decision.

Four Seasons continues to work on three (3) other contracts for the City of Toronto, which are expected to be completed regardless of the current or proposed temporary suspension. Table 2 sets out the Four Seasons' other current contracts. With respect to the CPE scores, the scores are out of 5, with a score of 3 being adequate.

Table 2 - Other Existing Contracts with Four Seasons

Contract	Description	Contract Value*	Contract Start Date	Contract End Date	CPE Score
16ECS-LU-15SU, Tender 184-2016	Watermain Replacement on Cherokee Boulevard, Cornerbrook Drive, Greengrove Crescent, Laird Drive, Monarchwood Crescent, Nordic Place, Pinto Drive and Roanoke Road	\$6,939,956	September 9, 2016	June 30, 2017	Interim CPE #1: 3.12
16ECS-LU-04SU, Tender 233-2016	Watermain Construction on Finch Avenue West and Watermain and Sidewalk Construction on Castlefield Avenue	\$6,415,880	August 16, 2016	May 27, 2017	Interim CPE #1: 2.9
RFQ 3905-16-5040	Asphalt and Concrete Paving Services at various Parks, Forestry & Recreation locations	\$3,052,800	July 13, 2016	June 30, 2017 (with potential for two additional 1 year options).	N/A

*Net of HST recoveries.

Every year, new construction contracts are tendered by the City through a competitive procurement process, which has recently been strengthened in response to recommendations by the Auditor General. Contracting companies compete in order to be awarded a contract, the terms and conditions of which are clearly stated and provided to all bidders so that they may submit bids according to their skills and abilities. Contracts are awarded to ensure best value to the City and there is no guarantee that any company will be awarded any work by the City.

Finally, it should be noted that Four Seasons, through their lawyer, filed a notice of application, on March 28, 2017, for judicial review of the decision for the City to terminate Contract No 16ECS-TI-11SP (College Street) and the decision of the Director, Purchasing and Materials Management to suspend Four Seasons for six months beginning on Feb 9, 2017. The intent of this application is to have the Court quash both decisions to terminate the contract and to suspend Four Seasons. Four Seasons, through their lawyer, has also filed a notice of motion for an order to allow Four Seasons to bid on and be awarded City contracts pending the outcome of the notice of application. This notice of motion for an order will be heard on Friday April 28, 2017. The City will be defending against both the notice of motion and the notice of application for judicial review.

Conclusion

Based on the documented unsatisfactory performance by Four Seasons on the two (2) recent contracts, namely 16ECS-TI-11SP and 16ECS-TI-18SP, which were summarized under the CPEs for each of those contracts and the issues communicated to Four Seasons as the contracts progressed and further summarized in this report, Engineering and Construction Services and Purchasing and Materials Management Division, in consultation with Legal Services and the Deputy City Manager and Chief Financial Officer, are recommending Four Seasons be suspended from award of any City of Toronto contracts for a total period of three (3) years beginning February 9, 2017 and ending on February 9, 2020.

By adopting the recommendations in this report, City Council will clearly communicate to Four Seasons and the wider construction industry that unsatisfactory performance and poor customer service will not be tolerated on City of Toronto contracts.

CONTACT

Frank Clarizio, P. Eng., Director, Design and Construction, Municipal Infrastructure and Gardiner Rehabilitation Project,
Telephone: 416-392-8412, e-mail: frank.clarizio@toronto.ca

Joanne Kehoe, SCMP, Manager, Purchasing and Materials Management Division,
Telephone: 416-392-7323, e-mail: joanne.kehoe@toronto.ca

SIGNATURE

Roberto Rossini, Deputy City Manager and Chief Financial Officer

Michael D'Andrea, M.E.Sc., P.Eng., Chief Engineer and Executive Director, Engineering and Construction Services

Michael Pacholok, JD, Director, Purchasing and Materials Management

ATTACHMENTS

- Attachment 1. Limits for Contract 16ECS-TI-11SP – College Street
- Attachment 2. Photo of Health and Safety Issues
- Attachment 3. Photo of Health and Safety Issues
- Attachment 4. Photos of Access Restrictions
- Attachment 5. Letter to Four Seasons Terminating Contract 16ECS-TI-11SP
- Attachment 6. Contractor Performance Evaluation for Four Seasons on Contract 16ECS-TI-11SP
- Attachment 7. Photo of Deficiencies
- Attachment 8. Limits for Contract 16ECS-TI-18-SP – Shuter Street
- Attachment 9. Contractor Performance Evaluation for Four Seasons on Contract 16ECS-TI-18SP
- Attachment 10. Letter to Four Seasons Imposing a Six Month Suspension⁹