

IE10.2 - Attachment 12



Memorandum

Frank Clarizio, P.Eng.
Director, Design & Construction
Transportation Infrastructure
Engineering & Construction Services

Metro Hall
55 John Street, 16th Floor
Toronto, Ontario M5V 3C6

Tel: 416.392.8412
Fax: 416.392.6279
Frank.Clarizio@toronto.ca

To: Michael Pacholok
Chief Purchasing Officer, Purchasing and Materials Management

From: Frank Clarizio, P.Eng., Director
Design & Construction Transportation Infrastructure

Date: June 10, 2019

Subject: Toronto Zenith – Temporary Suspension from City of Toronto Procurement Calls

The City is in receipt of a response letter from Toronto Zenith Contracting Limited (TZ) dated March 21, 2019 following communication outlining the City's intent to recommend a temporary suspension of TZ's bidding privileges to City Council.

ECS staff have reviewed the March 21, 2019 letter and provide the following response for your consideration:

TZ's letter outlines the firm's recognition by the Infrastructure Health and Safety Association (IHSA) as being COR™ certified as well their Contractor Performance Index Rating (CPI) with the Ministry of Transportation (MTO). The City does not consider ratings by other parties in our assessment of performance and/or Health & Safety concerns observed on City projects. Projects are assessed independent of previous performance on City projects or 3rd party projects.

Prince Edward Viaduct Contract

In reference to the Prince Edward Viaduct Contract (13ECS-TI-16BE), TZ expresses concern over the Contractor Performance Evaluation (CPE) process. TZ argues that the City should supply the comments and back-up material of the CPE so that the ratings can be reviewed and responded to. ECS staff followed the CPE Instructions prepared by PMMD and supplied TZ with the first and second pages of the signed PDF Evaluation to the Contractor.

TZ makes reference to the power line strike at Pier A and proceeds to describe what happened, and what TZ did to properly manage and rectify the situation. TZ was found to have reburied the damaged cable and did not report the incident. Site Instruction #10 was issued by AECOM to stop work until Toronto Hydro could isolate the cable and ensure the safety of the area. This damaged cable and hiding the occurrence was a serious hazard to TZ employees and resulted in a significant highway lighting outage. TZ's letter places blame on the City in a dubious manner for not providing an accurate locate sheet, ignoring the fact that the City does not provide locates. It is the responsibility of the contractor to obtain underground locates before any excavation work.

TZ makes reference to the City's Contract Administrator (AECOM) being satisfied with the safety performance "in most instances" on the PEV Contract. The letter goes on to reference several meeting minutes where no specific Health & Safety concerns were raised. ECS notes that TZ fails to address the numerous specific Health & Safety instances that were documented by the City's Contract Administrator throughout the project:

October 22/14: Instruction Notice to Contractor from Contract Administrator outlining Safety Concerns at various locations throughout the site including unsafe/uncertified scaffolding, working at height without fall protection, and a muddy site making walking difficult and cars getting stuck.

October 27/14: special meeting held to discuss significant safety concerns related to vertical cuts in slope adjacent to Pier A.

November 27/14: Instruction Notice to Contractor from Contract Administrator outlining prohibited lane closures on Bloor Street during rush hour.

January 26/15: Instruction Notice to Contractor from Contract Administrator repeating the instructions prohibiting lane closures on Bloor Street during rush hour.

February 6/15: Letter to Contractor from Contract Administrator outlining fifteen (15) safety issues documented to date (see attached).

April 10/15: Instruction Notice to Contractor from Contract Administrator addressing workers within 10m of nearest rail without presence of Metrolinx flagperson.

April 20/15: Instruction Notice to Contractor from Contract Administrator outlining workers at TTC track level without receiving a job briefing or signing in with a TTC representative. A sub-contractor was also found to be working without current TTC Subway Rule Book training.

April 24/15: Instruction Notice to Contractor from Contract Administrator outlining MOL Stop Work Order related to working within minimum distances from energized overhead electrical conductors, and scaffolding deficiencies.

In light of these records, stating that the Contract Administrator was satisfied with their safety performance is, at best, disingenuous. Safety concerns were regularly identified by the City's consultant and summarized in a letter to the City dated August 14, 2015 (attached). There are **twenty-seven (27)** documented safety issues. Any assertion by TZ that safety issues were minimal or within regularly accepted safety standards is not accepted by ECS.

Morningside Contract

In reference to the Morningside Contract (17ECS-TI-02BE), TZ expresses concern over the Contractor Performance Evaluation (CPE) process. TZ argues that the City should supply the comments and back-up material of the CPE so that the ratings can be reviewed and responded to. ECS staff followed the CPE Instructions prepared by PMMD and supplied TZ with the first and second pages of the signed PDF Evaluation to the Contractor.

In reference to the June, 2017 incidents of sub-contractor workers working at height more than 40 feet above the ground without proper fall arrest equipment, the City finds that the issue was addressed in the meeting of June 29, 2017 and is not disputed by TZ. TZ states that no further working from height concerns were raised by the City. However, the same issue was raised on June 18, 2018 when workers were again observed working without fall protection at a height of more than 40 feet above the ground including walking out to the work location by stepping on the bottom flange of the steel girders and placing plywood near an unguarded edge without fall arrest equipment. The daily work records document these incidents.

In reference to the October 24, 2017 incident where a 16KV power line was hit by a TZ Boom Truck and brought down into live traffic lanes, ECS finds that TZ acknowledges the incident and shares the City's concerns regarding utility strikes. TZ's response to the circumstances does not alleviate the concerns regarding this issue. TZ was aware of this utility and had been working the vicinity for

several months prior to operating a machine in an unsafe manner and ultimately causing a public safety hazard. Any efforts that TZ took after the fact should have been in place to prevent such a completely avoidable incident from occurring in the first place.

In reference to the November 28, 2017 incident where a parked, unmanned, piece of equipment slid across the bridge deck and hit the concrete barrier, pushing the barrier and fencing into the live traffic lanes, ECS finds that TZ has downplayed the incident and introduced a statement that the bridge deck was covered in ice. The daily work records indicate that the temperature was 4 to 5 degrees C at the time of the incident, in combination with a sunny day (as shown in the photographs). In addition, at no time was the temperature below 0 degrees C from midnight to the time of the occurrence. Our position is that there was no trace of ice or frost and that this incident had the potential to cause a significant accident within the live traffic lanes.

In reference to the June 8 to June 11, 2018 failure to close the site, potentially allowing pedestrians and vehicles to enter the work zone and reach the edge of the area where the bridge was removed, TZ does not dispute this serious safety incident but down plays the importance of ensuring public safety at the site. The following weekend, ECS received an additional complaint that the gates had been left open again. In investigating this incident, TZ was found to still be working at the site on the other end of the bridge, but no workers were present at the location where the member of the public had found the open gates. This second incident was reflective of TZ not taking the initial safety incident seriously or to the satisfaction of ECS.

In general, TZ makes numerous statements that highlight their health and safety records on other projects, their COR certification, and the companies approach to health and safety. While the City can acknowledge their written assertions, the number of health and safety incidents reported on these two projects are not reflective of a company that takes these issues seriously or to the standards expected on City of Toronto projects.

TZ also asserts that a number of health and safety incidents were mis-categorized as OHSA requirements. Upon review of these issues, ECS finds that a number of serious OHSA occurred on each contract, and there is insufficient evidence to change the selected rating. The A.1 ratings of "U" (Iterim #2) and "I" (Final) on the PEV project alone are sufficient to move forward with the suspension.

Finally, TZ asserts that the CPE process is very subjective in nature and makes no provision for the City's assigned Contract Administrator to take part in the evaluation process. This statement is false. ECS staff work in co-ordination with our Contract Administrators to complete the CPE. TZ regularly sends lengthy letters and documentation demanding that ratings that have been provided be adjusted to a higher rating. ECS staff take into account our professional observations, our Contract Administrators observations, and facts about health and safety occurrences on a particular project. TZ appears to spend more time writing verbose letters contradicting the ratings in the CPE, than making adjustments that will help improve their ratings as the project progresses.



Frank Clarizio, R.Eng.
Director, Design & Construction Transportation Infrastructure
Engineering & Construction Services



AECOM
5080 Commerce Boulevard
Mississauga, ON, Canada L4W 4P2
www.aecom.com

905 238 0007 tel
905 238 0038 fax

August 14, 2015

Mr. Nisar Patel, P.Eng.
Project Engineer, Linear and Structures
City of Toronto, Engineering & Construction Services
16th Floor, 55 John Street
Toronto, Ontario, M5V 3C6

Dear Sir:

**Regarding: City of Toronto Contract 13SE-16S
Structural Rehabilitation of the Prince Edward Viaduct
Safety Issues**

Further to our letter to Toronto Zenith (TZ) dated February 6, 2015, we observed and documented a number of safety issues throughout the contract. These have included TZ employees working in an unsafe manner, lack of site security and public protection, unsafe excavations, safety hazards at TTC track level, lack of containment of debris, improper traffic control, and damages to utilities.

The following lists the concerns that were documented throughout the contract:

August 25, 2014: During chipping of Bloor St. sidewalk concrete as part of the Bell Manhole removals, concrete debris was noted falling from height to the valley below, potentially falling on TZ employees, the public using the Don Valley Trail system, and the overhead hydro tower lines. This is considered to be an OHS violation of O. Reg. 213/91, s. 64. AECOM is not aware of any further incidents for falling concrete as part of the Bell Manhole removals.

September 12, 2014: Cables belonging to Bell and Rogers were excavated and damaged near Pier B. This could have resulted in significant disruption to Bell and Rogers service. These services were not shown on the locate sheets. As locates were completed prior to excavation, this is not considered to be an OHS violation. However, there were further incidents during this contract involving utility strikes.

October 2, 2014: It was discovered that a 600V hydro cable and manhole, near Pier A, had been excavated and damaged. The damaged cable was a serious hazard to TZ employees and resulted in a significant highway lighting outage. The damaged cable had been re-buried and the incident was not reported by TZ. Site Instruction #10 was issued to stop work until Toronto Hydro could isolate the cable and ensure the safety of the area. During Site Meeting #5, TZ was reminded of their responsibility to follow proper procedures regarding utilities. Per O. Reg. 213/91, s. 183, this is considered to be an OHS violation. TZ did not resume work in the area until Toronto Hydro was able to repair the damaged cable. Despite this incident, this same cable was struck again in December by TZ.

October 22, 2014: Site Instruction #14 issued to address concerns that TZ employees are working in an unsafe manner, including working at heights without fall protection, unsafe scaffold systems, and that

access roads are not being maintained. These items were also reviewed during Site Meeting #7. Such issues are a safety hazard to TZ employees and to other users of the construction area. These incidents involving fall hazards and scaffolding are considered to be an OHSA violation in contravention of O. Reg. 213/91, s. 26 and O. Reg. 213/91, s. 135. Although not an OHSA violation, access roads were not being maintained in accordance with the terms and conditions of the Contract. TZ followed up with the corrective actions: ensured scaffold systems were properly tagged, inspections were up to date, and inspection reports were available for review; meetings were held with employees to discuss working at heights and advised of further consequences should safe work practices be followed; and crushed stone was placed around the Bayview compound access roads.

October 25, 2014: It was discovered that TZ had excavated a number of vertical cuts in the slope on the East side of the Don Valley Parkway, exceeding the limits allowable by OHSA. The result could have compromised the slope stability adjacent to the DVP, resulting in a significant hazard to the public and possible closure of the DVP. TZ had performed concrete removals, constructed scaffolding, and stored equipment within the vicinity of the excavation. This is a violation of O. Reg. 213/91, s. 234. After the safety meeting on October 27, 2014, TZ proceeded to design and implement a slope restoration plan.

October 29, 2014: Site Instruction #19 was issued to remind TZ that all access gates shall remain closed during the day and locked at the end of each shift. Scaffold systems should also be secured to deter unauthorized public access. Issues with site security pose a significant risk to the public.

November 6, 2014: It was noted during Site Meeting #8 that safety issues continued to be observed on site. TZ was reminded that scaffold systems are to be inspected and approved prior to use, proper fall protection is to be used for work at heights, and concrete debris is not permitted to fall in a hazardous manner. Such issues are a safety hazard to TZ employees and to other users of the construction area. These incidents are considered to be an OHSA violation as noted above.

November 12, 2014: Site Instruction #29 was issued instructing TZ to secure all site access points to prevent unauthorized access by the public.

November 25, 2014: Site Instruction #23 was issued to instruct TZ not to park construction vehicles on the shoulder of the DVP as it creates a hazard to public traffic. This item was also reviewed during Site Meeting #10.

November 27, 2014: Site Instruction #24 was issued to instruct TZ not to park construction vehicles in live lanes on Bloor Street as it creates a hazard to public traffic.

December 3, 2014: A 600V hydro cable near the high mast pole north of Pier A was excavated. Although the conduit was damaged, there were no damages to the cables themselves. This item was also reviewed during Site Meeting #10. This incident could have resulted in significant service disruption, as well as being a serious hazard to TZ employees. TZ was aware of the location of this cable, but failed to mark its location. This is in violation of O. Reg. 213/91, s. 228.



AECOM
5080 Commerce Boulevard
Mississauga, ON, Canada L4W 4P2
www.aecom.com

905 238 0007 tel
905 238 0038 fax

December 3, 2014: A Stop Order was issued by the Ministry of Labour because no engineering documentation was in place to verify the sidewalk and bridge were able to support the load applied by the concrete pump truck outriggers. This was a violation of O. Reg. 213/91, s. 31. TZ followed up with engineering documentation and procedures for future concrete pours.

December 11, 2014: Site Instruction #27 was issued to address the concerns raised during the weekend closure of the TTC Subway. These concerns included scaffold systems missing handrails, scaffold systems missing planks, employees not using proper fall protection, employees not wearing full PPE, and the ignition of wood at track level caused by hot metal debris. These issues are a serious hazard to TTC employees and the public and could have resulted in long term closures of the Bloor-Danforth Subway Line. In addition to the scaffold system and fall protection violations noted above, this was also a violation of O. Reg. 213/91, s. 21. TZ advised they would be following up with additional safety talks prior to commencing work at TTC track level, and infraction notices would be handed out for non-compliance.

December 18, 2014: During Site Meeting #11, TZ was reminded that vehicles are not to park on the shoulder of the DVP, access roads must be maintained, and points of access must be secured to deter unauthorized use.

January, 2015: The City received a report that over Christmas, a fence panel along the DVP shoulder fell over striking a passing car.

January 15, 2015: During Site Meeting #12, TZ was reminded that access points must be secured, access roads must be maintained to minimize potholes, and the site must be maintained to minimize standing water.

January 26, 2015: It was discovered that an Imperial Oil hydro cable and rectifier cabinet had been damaged by falling debris during TZ concrete removals. This incident could have resulted in significant disruption to Imperial Oil.

January 31, 2015: It was discovered that concrete debris has previously been allowed to fall onto the power traction cables at TTC track level. This concrete was not cleaned up. Site Instruction #36 was issued to remind TZ utilities must be protected at all times and concrete debris must be cleaned up prior to the end of each track level shift. These issues are a serious hazard to TTC employees and the public and could have resulted in long term closures of the Bloor-Danforth Subway Line.

February 5, 2015: A ladder stored within TZ's hoarding at Pier E fell over striking a TTC employee that had entered the hoarding. This improperly stored material was a violation of O. Reg. 213/91, s. 37. TZ submitted an incident report and reviewed procedures (for TTC access into hoarded areas) with employees.

February 21, 2015: In response to AECOM's letter dated February 6, 2015, TZ submitted a letter highlighting safety measures taken by TZ on this project. These measures included continued work with

a 3rd party safety consultant, ongoing development of additional safety policies as required, regular safety talks, job assessment risk forms, on site signage, and infractions issued for unsafe work.

March 8, 2015: A number of safety concerns were observed during the TTC restricted non-operating hour shift, including a TZ employee wearing sunglasses at track level (at night), a physical barrier to delineate TZ's work zone was not installed prior to commencing work, TZ employees we observed working at heights without fall protection, and combustible scaffold materials were stored at track level after the shift. TZ submitted reports for the incidents and reiterated that employees not following safety procedures will be disciplined.

April 10, 2015: A TZ sub-contractor was observed walking within the Metrolinx railway corridor without flagging protection. TZ submitted an incident report, reviewed procedures with their sub-contractor, and scheduled a flagman for the upcoming week.

April 13, 2015: TZ was in the process of pouring self-consolidating concrete on the north Face of Pier C, within hoarding. At around 12:15, a gap opened in the north-east corner of the formwork, causing concrete to fall approximately 30 metres to the ground below. It is estimated that approximately one metre of concrete fell during a period of one minute. The falling concrete came within a few metres of employees working below. This incident was in violation of O. Reg. 213/91, s. 87. A stop order was issued by AECOM when TZ continued the concrete pour without addressing the cause of the formwork failure. Site Instruction #48 was issued instructing TZ to submit an incident report and an updated worker safety plan. TZ was also instructed to review any formwork already in place. TZ subsequently followed up with an incident report, non-conformance report, updated safety plan, and provided a revised the formwork design for the remaining hoarding locations.

April 19, 2015: A TZ employee was observed working at track level without receiving a job briefing, or signing in the TTC representative. It was also discovered that a TZ sub-contractor was working at Track Level despite expired training.

April 24, 2015: MOL performed an investigation of a complaint regarding TZ's work site. The MOL inspector issued a number of requirements related to guardrails, scaffolding, and equipment. The MOL inspector also issued a stop order as TZ did not have any written measures or procedures in place for the use of equipment around energized overhead electrical conductors. MOL determined TZ to be in violation of O. Reg. 213/91, s. 26, O. Reg. 213/91, s. 130, and O. Reg. 213/91, s. 188. TZ addressed the violations and the MOL performed a follow-up inspection on April 27, 2014.

April 27, 2015: The MOL performed a follow-up investigation. The MOL inspector issued a requirement to determine the bearing capacity of the existing grade below the stair towers. The inspector also issued a stop order for the scaffold north of Pier F and the scaffold between Pier F and Pier G, as the scaffold systems were not installed in accordance with the design drawings and other OHS regulations. MOL determined TZ to be in violation of O. Reg. 213/91, s. 128 and O. Reg. 213/91, s. 130. TZ addressed the violations and submitted a Notice of Compliance and the stop work orders were withdrawn on May 1, 2015.

June 5, 2015: A rain event caused material and debris from the restored slope, north of Pier A, to slide onto the DVP shoulder within approximately 150 mm of the edgeline, posing a hazard to public traffic on



AECOM
5080 Commerce Boulevard
Mississauga, ON, Canada L4W 4P2
www.aecom.com

905 238 0007 tel
905 238 0038 fax

the DVP. Site Instruction #65 was issued when TZ failed to take immediate action. TZ was instructed to clear the material from the shoulder immediately, remove all garbage and other debris that was improperly buried within the slope, and restore the slope in accordance with the plan provided by their geotechnical engineer. TZ was advised they would be held responsible for any incident attributed to the erosion of the slope or material left on the DVP shoulder.

In general, TZ's safety culture appeared to improve throughout the Contract, however OHSA violations and other safety incidents continued to occur throughout the duration of the Work. Overall TZ's performance was adequate in meeting the Contract requirements. Despite these incidents, AECOM is not aware of any lost time injuries.

Sincerely,

N. David LeBlanc, M.Eng., P.Eng., PE
Project Manager, Contract 13SE-16S
david.leblanc@aecom.com

cc:

Steve Farnham, Project Manager, AECOM
Britton Cole, Structural Engineer, AECOM
Jim Cumming, Contract Administrator, AECOM



226 Bradwick Drive
Concord, ON L4K 1K8
905-738-1500
torontozenith.com

March 21, 2019

Mr. Michael Pacholok, J.D.
Chief Purchasing Official & Director
Purchasing & Materials Management
City of Toronto
City Hall
18th Floor, West Tower
100 Queen Street West
Toronto, Ontario M5H 2N2

Re: Response to City of Toronto Letter Dated January 22, 2019 – Temporary Suspension from City of Toronto Procurement Calls

Dear Mr. Pacholok,

Toronto Zenith Contracting Limited (TZ) is in receipt of the City's letter dated January 22, 2019, with respect to the City's intention to recommend a temporary suspension of TZ's bidding privileges to City Council. As we understand it, the suspension recommendation is a result of the City's rating assessment of "I" or "U" within the A.1 section of the Contractor Performance Evaluation (CPE), on two (2) projects within the past 5 years. The A.1. rating is the CPE attribute pertaining to "Did the Contractor comply with OHS requirements," and the two (2) projects in question are the Viaduct and Morningside Contracts.

I would like to request that a meeting be held with you in order that we can further discuss before making any such suspension recommendation to City Council. The purpose of this letter to provide some insight into our position in order that an efficient follow up meeting can occur. This letter focuses on the safety related issues raised by the City given that it was these safety issues under Section A1 of the CPU's that have triggered the disqualification recommendation. Notwithstanding, we would like to further discuss the other issues noted in your letter, as these non-safety related performance issues require clarification and further review. Most importantly, we believe the CPE process is very subjective in nature, one-sided, and requires further discussion.

TZ is disappointed to learn that the City has such grave safety & performance concerns, given that we pride ourselves on our excellent track record and have always had the highest regard for safety & performance standards on all our projects. This situation of having a client concerned about our performance is a first for us, and we want to ensure that we adequately address any unnecessary and/or inaccurate perception.

While some safety related issues on these two projects occurred, one must keep in mind that safety issues on construction sites do occur and will continue to occur from time to time. What must be considered when



226 Bradwick Drive
Concord, ON L4K 1K8
905-738-1500
torontozenith.com

assessing overall performance is what corrective actions were taken and were the actions taken to mitigate further occurrences effective. We feel the City's CPE rating comments focus only on the safety occurrence itself and they make no mention as to how such issues were properly managed in accordance with our Company's Health & Safety Policy and the OHSA.

TZ was one of the first Toronto area construction firms in Year 2015 to become officially recognized by Infrastructure Health and Safety Association (IHSA) as being COR™ certified. The Viaduct was one of the three projects that IHSA selected to perform an in-depth analysis on to determine COR™ certification eligibility. IHSA's opinion of our safety practices being carried out on the Viaduct Project in Year 2015 certainly does not correlate well with the CPE recommended made by the City's Project Manager, Mr. Nisar Patel. Mr. Patel's safety criterion checks on Sept 23, 2015 are not consistent with IHSA's high standard rating assessment of us during the same period. It is also interesting to note that Mr. Patel's criterion checks made on Sept 23, 2015, was then approved by his Manager on the same day, and further approved by the City's Director the very next day with no comments. This is concerning given that the CPE was recommending a failed criterion check under a mandatory pass attribute.

Furthermore, TZ recently applied to have our IHSA COR™ designation recertified as it was due for renewal on May 25, 2018. As part of the recertification process, companies are required to perform an internal audit every year, and an external audit by IHSA every three years thereafter. Given our recent COR™ recertification requirement, IHSA assigned an Inspector/Auditor, Mr. George Lovell, to perform a company wide external audit in April 2018. Mr. Lovell's mandate did not only include a documentation verification of safe work procedures, hazard assessments & inspections, but he also had to attend and witness actual jobsite performance to ensure that active construction sites complied with all applicable safety standards, laws, regulations, and company policies and procedures.

Mr. Lovell's audit included an in-depth site review/audit of the Morningside Ave. Project itself. The findings of the IHSA external audit revealed Toronto Zenith's work force were knowledgeable and in compliance with OHSA and our Company's Health and Safety Program. All safety aspects onsite met the requisites necessary to maintain our COR™ certification. TZ is very pleased to report that IHSA renewed our certification with an IHSA audit score exceeding 90%.

This recent high IHSA score is also consistent with our Contractor Performance Index Rating (CPI) which we currently hold with the Ministry of Transportation (MTO), a public Owner who we are pre-qualified to perform work for. The MTO requires that an acceptable Contractor Performance Rating be maintained in order that we remain pre-qualified. TZ has always maintained an acceptable MTO performance rating and have never been disqualified from bidding work, work which we have been successfully performing for more than 30 years. An interesting thing to note is that TZ also performed MTO Contract #2017- 2041 adjacent to the Morningside project (Hwy 401/Morningside) while the Morningside Project was being carried out. On this adjacent MTO Contract we achieved an overall MTO CPE rating of 85.6%, with the safety rating attribute scored at 95%. It is troubling that the City has such a different perceptive of us and that their CPE ratings are not consistent with MTO or IHSA rating assessments.



226 Bradwick Drive
Concord, ON L4K 1K8
905-738-1500
torontozenith.com

On October 3, 2018, IHSA president and CEO, Mr. Enzo Garritano, presented Toronto Zenith with an Excellence and Milestone Award. This award recognizes IHSA member firms that have achieved and maintained their Certificate of Recognition COR™ certification and attained a specific number of work hours (based on their firm size) without a lost-time injury. This type of award also demonstrates that TZ's strong safety commitment, performance, and safety culture is not below an acceptable level as the City has portrayed.

TZ has always maintained a good safety status with IHSA and the Ministry of Transportation along with other Public Owners such as GO Metrolinx, Municipalities, etc. To learn that a valued client like the City has such a differing perspective of TZ and are contemplating bidding disqualification is something we take very seriously.

The Viaduct Contract:

On the Viaduct Contract, the City never provided us with the comments section of the CPE despite our numerous written requests that they provide it. This made it very difficult to properly review and respond to the rating at the time of issuance. On September 30, 2015, Mr. Easton Gordon provided a one-page final CPE with no accompanying comments section to support the rating. Given the subjective nature of the CPE process itself, the comments section of the process is very important as it is required to effectively support and/or dispute such ratings. The City's procedures clearly state that when rating a Contractor an "I" or "U" comments are to be included to substantiate the below average rating being assessed. The City is only now providing comments through their recent "Statement of Facts." which was provided with your letter dated January 22, 2019.

Many comments with the CPE do not accurately represent the issues as a whole. By way of example, one comment states that *"TZ hit a buried power feed at Pier A which de-energized some highway lighting"*. What the City does not seem to capture is why the mishap occurred in the first place and what did the Contractor do to properly manage & rectify the situation.

With the Pier A power line strike, this power wire was not initially identified on the Locate Sheet provided by the City. Site Meeting #6, Minutes of Meeting Point 1.1, the City indicated in writing that *"the line was not shown on the locate sheet. TZ is reminded to follow the procedure when whenever any utility is encountered even if it was not shown on the locates and that the Contractor will be responsible for the utility damages as per Contract"*. When TZ commenced working in this area the power cable became damaged when gaining access to Pier A and we didn't initially know it had been struck because it was buried, not visible, and it was not on the Locate Sheet.

TZ was not negligent in this situation, in fact, we had it repaired at no cost to the City, and all proper safety requirements were in place and the situation was managed properly & professionally. This utility strike is not considered an OHS non-compliance when the utility was not anticipated to begin with. The City's position that a Contractor should fail a safety rating attribute of a CPE simply because "an issue occurs", is not a reasonable position. To further suggest that a Contractor should have their bidding privileges revoked because a safety issue occurs is not only a concern to the us as a reputable Contractor, it should also be of

grave concern to the City's Purchasing Office. When buried utilities are not properly marked on Locate Sheets, mishaps can unfortunately occur, and one must look at what did the Contractor do to properly manage the situation when considering the final CPE assessment. This is just one example that demonstrates that the City must take into consideration all facts, not just the occurrence itself.

In review of the Viaduct minutes of meetings, the City's Contract Administrator was satisfied with our safety performance in most instances. The minutes of meetings clearly identify the following positive safety performance measures:

- Site Meeting #4, City recorded Point 1.1 – *"TZ is holding regular weekly Health & Safety Tail Gate Meetings every Monday Morning. There have been no Health & safety incidents since work commenced."*
- Site Meeting #7, City recorded Point # 2.1 – *"Site Instruction No. 14 issued Oct 22 outlined a few safety concerns. Since then, TZ has undertaken a number of corrective actions. TZ held a specific safety meeting to discuss working at heights."*
- Site Meeting #9, City recorded Point 1.1 – *"TZ has had a couple of minor injuries during the past two weeks. Proper reporting procedures were followed. No major incidents or safety violations observed."*
- Site Meeting #10, City recorded Point #1.1 – *"No injuries or incidents since last meeting."*
- Site Meeting #11, City recorded Point 1.1 – *"Only a minor injury since last meeting. Proper incident reporting procedures were followed. . Aecom will be performing a safety audit of TZ's work site."*

(No such audit was provided to TZ. Could you please provide us with a copy of this audit prior to us meeting with you?)

- Site Meeting #12, City recorded Point 1.1 – *"No injuries since last meeting. Aecom will be performing a safety audit of TZ's work site."*

(No such audit was provided to TZ. Could you please provide us with a copy of this audit prior to us meeting with you?)

- Site Meeting #13, City recorded Point # 1.1 – *"No injuries or incidents since last site meeting."*
- Site Meeting #14, City recorded Point #1.1 – *"No injuries or incidents since last site meeting. Earlier this week, TZ held a lunch-time refresher for the crews regarding a falling concrete protection plan; as info, the formalized-plan document was submitted to Aecom."*

- Site Meeting #15, City recorded Point #1.1 – *“No injuries or incidents since last meeting. It was acknowledged that over the past two months, in general, site safety has improved.”*
- Site Meeting #17, City recorded Point #2.1 – *“No incidents or injuries since last site meeting. It was noted that TZ’s night crew, in particular, have been working very safely.”*
- Site Meeting #18, City recorded Point #2.1 – *“Since the last meeting there were two instances where Aecom observed working at height issues. TZ Supervise took corrective action.”*
- Site Meeting #21, City recorded Point #2.1 – *“No recent incidents regarding site safety or security.”*
- TZ letter dated March 2, 2015 – TZ issues a letter to the City advising them of safety issues at TTC track level that were involving City forces that were also working in the area. The City took corrective action and had TTC rectify their issues.

The Contract Administrator recorded many good safety performance comments during the contract. We feel the CPE comments should accurately capture not only negative comments but should also include positive comments when warranted.

It should also be noted that TZ has no record of the 1st interim CPE being issued for the Viaduct project, and we would kindly request that it be provided. It must also be noted that TZ received a 2nd interim CPE on March 5, 2015, and TZ responded to the rating in writing on March 26th, 2015. Our previously submitted detailed responses (which we will provide once again) included rationale as to what rating attributes should be reconsidered. The City ignored our letter and provided no response to our concerns. On Sept 30th, 2015, the City provided TZ with the Final CPE and TZ responded to the rating on October 7th, 2015. Our detailed response provided rationale as to what rating attributes should be considered for adjustment. The City once again ignored our letter and provided no response to our concerns.

The City should not be allowed to simply ignore our written CPE dispute submissions, and we should be afforded an opportunity to discuss subjective CPE criterion checks being made given by the City. Especially in this circumstance where such subjective ratings could negatively impact our reputation and ability to remain a competitive Toronto based company.

The Morningside Contract:

On the Morningside Contract, the comments section of the CPE was provided, and we have noted that some of the comments are repeated as many relate to the same incidents.

When the final CPE comments are reconciled, the comments relate to seven (7) specific comments which include:

- 1) Steel subcontractor did not properly tie off on June 18th
- 2) Boom Truck contacted a hydro line on Oct 24
- 3) Parked piece of equipment slides on the sloped bridge deck during a Nov 28 winter weather day
- 4) Leaving a yard gate open on June 8th
- 5) TZ worker placing plywood form near unguarded edge not tied off on June 18
- 6) June 18 issue of a TZ foreman pick-up truck hitting a stationary telehandler
- 7) TZ working without adequate flagging protection on north pedestrian pathway

These seven (7) issues which triggered the City to give us a "I" or "U" on the A.1 attribute of the CPE will be addressed in detail later in this letter. It should be noted many of these comments do not belong within Section A1 as written on the CPE as they are not OHSA related. The City's seems to have also noted this error as their Statement of Facts more appropriately separates OHSA and non-OHSA related issues. With this error in reporting considered, the Morningside safety failure under Section A1, is the result of three (3) safety issues noted. The other four (4) safety issues/comments fall under Section A2 (non-OHSA) however were inadvertently placed within the incorrect comments section of the CPE. We request that the CPE be corrected accordingly.

With regards to the CPE's issued for the Morningside Contract, we note the following:

Interim CPE #1:

Received on Nov 10th 2017. The City did not provide comments with the evaluation. On Nov 13, 2017, TZ requested that the City provide comments so we could review, provide comments, and see where we could improve on our performance. The City informed TZ that their procedure is that they are not to share CPE comments with the Contractor. Several site level meeting discussions took place and ultimately the City never responded to any of our concerns.

Interim CPE #2:

Received on July 20th 2017. The City provides comments this time. TZ submits a letter challenging the rating within the timelines. The City responds to letter, indicating no rating adjustment will be considered and they ignored our request to provide feedback on how we can improve & ignored our request to a meet with them.

CPE Final:

Received on November 30th 2018. Comments were again provided this time. TZ submits a letter challenging the rating within the timelines. City responds to our letter indicating a rating adjustment will not be considered.



226 Bradwick Drive
Concord, ON L4K 1K8
905-738-1500
torontozenith.com

TZ would like to provide some written comments regarding the City's Morningside CPE comment:

1) *Steel worker found not tied off on June 18th.*

The City raised a worker tie off concern at Site Meeting #6 held on June 29th, 2017. TZ learned that a worker employed by our demolition Subcontractor, Priestly Demolition (PDI), was observed by a WSP Inspector, to be working at heights without proper fall protection.

Immediately upon becoming aware of the situation (immediately following the Site Meeting), a discussion was held between Toronto Zenith management staff and PDI's Foreman to emphasize the utmost importance of fall protection and working safely at heights. Following this discussion, TZ & PDI, the PDI foreman conducted a safety talk with all workers on site (A copy of the documented safety talk is attached in Appendix A). Toronto Zenith sent an email on June 30th, 2018 to the City as a follow up to this incident. The email submission included a copy of the safety talk from PDI reinstating the importance of fall protection and that this situation was taken seriously, and actions were taken (A copy of the email is attached in Appendix B). Since the time corrective action was taken, no further working from height concerns have been raised by the City.

The Morningside Project at that time had been ongoing at that point for 12 months with approximately 34,000 man-hours exhausted including an approximate 22,000 individual "tie-offs" successfully performed. As the City correctly outlined, improper fall protection is not acceptable, however when reviewing working from heights overall, compliance on this Project overall had been exemplary.

In review of the City's recent photos (Figures 5&6), which the City is relying on to demonstrate an OHSA non-conformance, Figures 5&6 clearly show three (3) workers working on the structural steel and they are all using proper fall arrest equipment. We would kindly request that the City provide clarification of what part to photo they are referring to regarding a worker not being tied-off.

2) *On October 24, 2017 a 16KV live electrical wire was hit by Boom Truck*

On October 24th 2017, a TZ Boom Truck hoisting cable contacted an overhead electrical wires while rigging material. While no personal injuries resulted in this strike, TZ shares the City's concern regarding utility strikes. Two overhead uninsulated electrical wires were contacted; one wire a primary voltage at 16,000 volts and the other wire a neutral wire. These electrical wires were feeding City of Toronto Morningside Yard. Immediately following the contact, the area was safely secured by Toronto Zenith workers to ensure no persons were at risk. Workers were immediately dispatched to man & redirect pedestrian sidewalk passages. Emergency services were also contacted & police were notified to temporarily redirect traffic in the area until the situation was remedied. It was Toronto Zenith that

contacted Toronto Hydro to inform them of the incident and Toronto Hydro sent a work crew to carry our repairs with our assistance.

Furthermore, TZ's Safety Manager and the Ministry of Labour (MOL) were contacted as per OHSA and our Health & Safety Policy. Aside from TZ performing their own incident investigation, the MOL also performed their own safety investigation for which TZ fully supported and cooperated with. The MOL 1st order was to leave the equipment and the scene for further investigation the following day. The MOL conducted their investigation and issued two (2) Orders, one for providing equipment manuals, and the other one to have the Boom truck inspected (Copies of the MOL work orders were sent via email to the City and are also attached in Appendix C). TZ's safety report was shared with the City to keep them apprised of the mishap (See Appendix D).

TZ also conducted a safety talk with all site personnel on October 25th, 2018 regarding safe work procedures when working around power lines. At this safety talk the procedure and safety checklist were discussed with all site personnel (A copy of the safety talk is attached in Appendix E). TZ management staff also made sure that all project stakeholders were notified of the safe work procedures and safety checklist (A copy of the procedure and checklist is attached in Appendix F).

Following the incident, TZ implemented companywide implementation measures to ensure similar incidents could be avoided/mitigated. These measures include, but are not limited to, the following:

- Notification of the incident companywide to promote awareness.
- Safety Talks were conducted regarding safe work practices around power lines on all active jobsites.
- TZ submitted RFI-96 on Nov 7th, 2018 to propose relocating the power lines and the pole to eliminate the hazard for Stage 2 construction. This RFI was not unfortunately approved by the City, therefore TZ proceeded with the installation of line insulation protection on the wires for the duration of Stage 2. Stage 2 work sequence was also modified by changing site equipment to larger equipment that could perform the work from under the bridge and eliminate the hazard from working from the top of the bridge.
- Mandatory completion of working near powerlines checklist when any machine capable of contacting power lines is working in their vicinity.

Points worthy of noting:

- At that time, there was a total of 32 working near powerline checklist completed on the Morningside Project (Copies are attached in Appendix G).

- TZ Health & Safety department cooperated fully with the City's Health and Safety department in providing all required documentations and remedial actions regarding this incident (A copy of the email communication can be found in Appendix H).
 - MOL has not issued any orders or fines to Toronto Zenith regarding this incident.
 - There have been no reoccurring incidents since the Oct 24th, 2017 strike, and there had been no previous issue regarding utility strikes. Since the occurrence, TZ successfully utilized boom trucks, cranes, concrete pumps, genie lifts, & high reach excavators in the same area with no similar incidents reported.
 - TZ managed this incident professionally, there were no injuries, and everything was repaired at no cost to the City.
- 3) *On November 28, 2017 a parked Bridge Master moved approximately 10 meters unmanned from its parked position until it hit struck the concrete barrier moving it approximately 5 inches while bending and pushing the fence partially into the live traffic lane.*

TZ employees had been working with a Hydra Platform to perform deck formwork stripping operations up to the day leading to Nov 28. The platform was used successfully for several days leading up to the incident.

Prior to starting work on the morning of Nov 28th, our Foreman removed the wheel chocks to move the equipment into the desired work location that day so that the crew could commence work. When the wheel chocks were removed, the platform wheels were locked with the equipment's parking brake on. Due to the presence of frost on the deck surface, combined with the 5% slope of the bridge deck, the platform began to slide. The equipment slid and contacted the TCB, displacing it approximately 5 inches towards the travelled portion of the roadway. A TZ flag person was immediately deployed to the northbound lane upstream of the dislodged TCB to stop & direct traffic. Before the flag person could reach the end of the bridge, one truck passed by the location of the dislodged TCB and damaged its side mirror. Traffic was temporarily stopped, and the platform was pushed back from the TCB and the TCB was reset to allow traffic to pass safely.

The Hydra Platform is rated for use on a 5% slope which is the slope of the Morningside bridge deck. Due to the presence of frost/thin layer of ice, the drive/locking wheel was no longer effective at stopping the platform from moving on a 5% grade which resulted in the machine sliding even though the drive wheel was locked. At the time of the incident all operating procedures were being correctly followed, and the unit was being operated within its design capabilities.

The Owner of the truck was contacted immediately following the incident and repairs to the damage of the truck (replaced the trucks mirror) was paid in full by Toronto Zenith. Toronto Zenith submitted the incident report to the City via email (A copy of the incident report can be found in Appendix I).

Following the incident, Toronto Zenith performed a thorough investigation and decided to discontinue the use of the Hydra Platform on the Morningside Ave. Project given the profile grade of the bridge and wintery like conditions being experienced late in the season.

The Hydra Platform had not been used on Nov 28 and it was only when it was being deployed to the work area in the morning that the mishap occurred. The unit had not yet been used on Nov 28 by workers, and this was not an OHSa non-compliance issue.

This is not considered to be an OHSa related contravention, and the City has agreed in their Statement of Facts. The comment has been placed within the incorrect comments section of the CPE, as it belongs in Section A2, not Section A1. The CPE should be corrected accordingly.

- 4) *From June 8, 2018 to the morning of June 11, 2018, Toronto Zenith failed to make the site safe for the public because the north end of the bridge was left unprotected with no barriers or fencing to prevent accidental fall of vehicles or pedestrians more than 40 feet below the bridge with a potential risk of injury or death.*

On Friday June 8th, 2018, TZ did unfortunately forget to close the fence/gate at the north end approach to the structure. TZ realized the gate was opened on the Monday morning when arriving on site. At that time TZ informed the City via email (A copy of the email can be found in Appendix J).

In review of the City's photos (Figures 9, 10 & 11), Figure 10 clearly shows that an access platform with proper guarding/railings was in place around the perimeter of the abutment and there was little risk of falling 40 feet to the ground as the City indicates in their "Statement of Facts", as a person would have climb up and over the safety railing. Although we are disappointed this incident occurred, leaving the yard gate open one time on a long duration Contract is not a situation that should result in having bidding privileges suspended. The City agreed in their Statement of Facts that this issue is non-OHSa related, however its occurrence was placed within the incorrect section of the CPE. The comment needs to be included in Section A2, not Section A1.

It should be further noted that a safety talk was conducted immediately after the incident on the importance of public safety and closing the fences and securing the site at the end of each work shift (A copy of safety talk can be found in Appendix K).

Additional no entry signage had been installed on both approaches to the bridge. A dedicated TZ Foreman then made a point to ensure that the gate was closed at the end of each shift and documents

the sighting with a time/date stamped photograph. It should be noted that prior to, and since the June 8th mishap occurred, the site was successfully closed off each day.

5) *June 18 issue of a TZ foreman pick-up truck hitting a stationary telehandler.*

This issue did not occur within the construction zone limits. There was an issue in the City of Toronto maintenance yard driveway adjacent to the jobsite entrance whereby a TZ pick-up truck was following our telehandler up the driveway when the telehandler stopped suddenly, and the pick-up truck rear-ended it causing minor vehicle damage, and no injuries. This issue was treated as a traffic accident and was reported and dealt with accordingly with the driver receiving a work suspension. This was not an OHS compliance issue, did not occur on the Project site, and should not have formed part of the OHS compliance Section A1 of the CPE.

Other points to consider:

The Morningside Ave. Project involved much more than just the bridge rehabilitation as it also included major road resurfacing on Morningside Ave. from Kingston Rd up to Ellesmere Rd. This road work is within a heavily populated urban area that includes a residential zone, signalized intersections, 2 schools, 10 businesses and 50+ residences including an apartment building complex. During road reconstruction of this heavily travelled section of the City, TZ successfully performed extensive staged road reconstruction while maintaining live traffic and pedestrian access.

TZ also successfully performed extensive concrete rehabilitation work involving Pier #1 located immediately adjacent to a live pedestrian park trail that had to remain opened during all phases of construction.

Moreover, TZ provided helpful ideas to the City improve public safety on this contract. By way of a few examples only, I provide the following:

- TZ was proactive and identified through RFI #14 a design deficiency related to the bi-directional crash attenuators at the end of the TCB's on the bridge deck. The Contract specified attenuators would have resulted with a blunt edge for opposing traffic with the potential of significant injuries and risks to the City. The City issued CO-01 and a different type of attenuator was installed insuring safety for both directions of traffic.
- TZ identified and submitted RFI-#1 regarding construction zone signage limits provided in the Contract Drawings Sheet TS2 & TS3. To be compliant with Ontario Traffic Manual Book #7, the Contract zone signage had to be reconfigured from what was indicated in the original Contract

- TZ was proactive in submitting a sketch of where the site fence/gate was to be located at the bridge limits. The Contract Specifications mentioned that the fence/gate was to be located as shown on the Contract Drawings, however no such location was indicated in the Drawings.
- TZ also suggested at a Site Meeting and that there was no proper barrier to prevent an errant vehicle from driving into the work zone and driving over the removed bridge deck. The City then asked us to add concrete blocks at the gate locations over the weekend or when work was not occurring in that area. TZ accommodated the City's request.

TZ has fully cooperated and helped the City with enhancing the safety around the park entrance. TZ sent an email on May 22nd, 2018 suggesting the addition of temporary traffic signals (A copy of the email can be found in Appendix M).

A few other issues that should be noted:

- Upon completion, more than 48,000 Man-hours were exhausted with a further 17 subcontractors utilized on the Morningside Project.
- Toronto Zenith had completed a total of 98 Safety Toolbox Talks on this Contract.
- The Morningside Project was inspected by the MOL on June 8th, 2017, with no concerns noted.
- There are 16 recorded Minutes of Meeting which under the section "Health and Safety"; the City notes there are no Health and Safety issues or concerns on the Morningside Project.
- Daily-Job Assessment Risk (JAR) forms complete for all shifts worked, the JAR forms identify risks & safety requirements for specific tasks performed during that work shift by the workers.
- Daily-Prestart safety meeting including site hazards and subcontractor interface.
- Daily-Equipment pre-inspection check list complete for all machines & equipment on site.
- Weekly-Tool box talks on pre-emptive topics and post incident topics.
- Weekly-Safety inspection by Toronto Zenith Health & Safety department.
- Bi-Weekly-safety inspections by 3rd party safety professional.

- Weekly-Site safety inspection by management site staff.
- Monthly-Site safety inspection by workers health & Safety representative.
- Quarterly- Emergency preparedness drill with all site workers.
- Quarterly- Health and Safety Management meeting.
- Bi-yearly- Toronto Zenith performs Health and Safety evaluation of subcontractors.

TZ previously submitted the following documents (Documentation can be found in Appendix L):

- Site specific health and safety plan
- Working at heights procedure
- Working around overhead wires procedure
- Working with light/heavy equipment procedure
- Procedures for addressing non-compliance issues by employees and/or Subcontractors
- Procedures for addressing public safety and security and safety of the site
- Training records matrix for all workers, supervisors and sub Contractors working on this project
- Proof of training on any new implementations, procedures, forms, including employees/supervisors/subcontractors' signatures
- Copy of the hazard assessments conducted for this project

The City's evaluation system is very subjective in nature and makes no provision for the City's assigned Contract Administrator of a Project to even take part in the evaluation process. It is only the City's Project Manager (who is on site an average of about 5 hours per month), who completes the evaluation and recommends it to the Sr. City Manager level for approval. On the two projects in question, the Morningside Contract Administrator (Doug Dixon, WSP) and the Viaduct Contract Administer (Jim Cummings, Aecom) were

not even involved in the CPE process. The on-site Contract Administrators know the Project the best and they should be the individuals who craft the CPE and make appropriate rating recommendations to the City.

It is also noted that the City does not complete a CPE on all their construction projects, which contravenes both the Contract and the City's internal procedures. The City letter indicates that the Morningside & Viaduct Projects were two of our most recent Contracts within the past five (5) years however that is not the case. In fact, TZ had completed another bridge rehabilitation Project in Year 2015-2016, Rowanwood Ave., Contract # 11FS-235, which was completed without any issues. The City did not perform a CPE despite them advising us in writing at the start of the project that they would in fact do so. The City advised in writing at Site Meeting #1, minutes of meeting Point 18.1, that the City would, as a minimum, issue "*one interim and one final Contractor Performance Rating would be performed*". No such CPE was ever issued by the City for the Rowanwood Project, which is concerning to us as a very favorable rating was warranted. It is unusual that a CPE was never issued for this Project.

Furthermore, on the Viaduct and Morningside projects, there were significant disputes right from the onset of construction with respect to responsibility of delays and corresponding time & cost implications which necessitated involvement of Sr. City Management Staff. Is it possible that this conflict is a factor in the low CPE ratings?

TZ takes Health and Safety very seriously and we will continue to work with all our Stakeholders to make safety our number one priority. While the City has brought up some valid safety issues, TZ feels the City did not accurately capture our overall performance when generating the CPE. Many of the City's comments within the A1 Section of the CPE (OHS compliance) ought to have been included in Section A2 (non OHS issue).

Given the nature of road and bridge building work, there will continue to be Health and Safety issues that will arise, and an effective performance measure is assessing how the Contractor addresses each of these issues and manages situations. Our Health and Safety program will continue to evolve as we make ongoing enhancements to our policies and procedures as work progresses.

We would like the opportunity to meet with you to further discuss the CPE of these two projects, the subjectivity of the process, and to address your intention to temporarily suspend Toronto Zenith's bidding privileges.

Please advise when a meeting can be arranged.

Regards



Brian Morris, V.P. Construction