

IE10.2 - Attachment 13



July 31, 2019

Mr. Michael Pacholok, J.D.
Chief Purchasing Official & Director
Purchasing & Materials Management
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Re: Response to City of Toronto – Frank Clarizio Letter Dated June 10th, 2019

Dear Mr. Pacholok,

Toronto Zenith Contracting Limited (TZ) is in receipt of Mr. Clarizio's letter dated June 10, 2019, and we provide the following comments.

Prince Edward Viaduct

It is noted in the June 10, 2019 response letter that the City agrees that supporting documentation & comments were not provided to Toronto Zenith to support the City's failed safety ratings. The City indicates this is simply standard practice that fully conformed with City protocol. Standard practice or not, we believe the act of suspending a Contractor because of a Contractor Performance Evaluation should not be undertaken without providing proper supporting documentation. Furthermore, the City letter did not address our concern regarding the City ignoring our numerous requests to meet and discuss performance ratings when such ratings are disputed by a Contractor.

The City's letter also inaccurately describes the Pier A power line strike as a poorly managed issue and attempts to inaccurately accuse Toronto Zenith of trying to cover up the incident. The City description of what transpired is not accurate and requires clarification. Unidentified conduits at Pier A were in struck on the Wednesday evening shift Sept 17/18, 2014. Toronto Zenith immediately notified the Contract Administrator and immediately contacted Ontario One Call to report the incident. Ontario One Call dispatched an Inspector who immediately met with Toronto Zenith at the site on Sept 18th, 2014. The locate did not identify the buried utility and it was difficult for the Inspector to even determine which utility was in fact damaged given that several conduits were all together and wires were placed within shared conduits. The Inspector identified Allstream, Bell, & Rogers as potential Owners. It was determined shortly thereafter that it was in fact a Rogers wire (Owned by Bell and operated by Rogers) that had been damaged. Toronto Zenith then worked diligently with Rogers to accommodate the required repairs.

It was not until Oct 2, 2014, two weeks after the utility strike, that Toronto Hydro visited the site as they had been experiencing a power outage with some adjacent street lighting. Mr. Paul Vaters, a Supervisor with Toronto Hydro, met with Toronto Zenith on site on Oct 2, 2014, to conduct a review. It was then learned that the utility strike two weeks ago on Sept 17, 2014, had also damaged a City power feed wire.

Toronto Hydro's, Mr. Vaters and Toronto Zenith worked cooperatively together to have the cable repaired immediately, and Toronto Hydro took responsibility given the Locate did not properly identify it. The City acknowledged at the Oct 6th, 2014 Site Meeting #6, Minutes of Meeting Point 1.1, that the hydro line was not shown in the Locate Sheet.

When we stated previously that the City provides locates, we were referring to Toronto Hydro. Toronto Hydro Corporation's sole owner and shareholder is the City of Toronto. We trust this clarifies the issue and the City's Purchasing Office understands that when a Locate does not identify a buried wire, unfortunate utility strikes can easily occur, and this situation is always considered an excusable occurrence.

Toronto Zenith should not be rated negatively for damaging the utilities on Sept 17, 2014 when the utilities were not properly indicated on the utility locate sheet. We hit them simply because we did not know they were there and moreover, Toronto Zenith dealt with the situation in a professional and diligent manner.

TZ would also like to point out that some utilities on this contract which were to have been previously taken out of service prior to us starting the project were in fact not "dead" as represented, but "live". This issue is of significance given that Bell Canada had notified the City's Project Manager, Mr. Nisar Patel, in advance that the Bell utility running through the work zone, which were to be dead/abandoned, were in fact "live" which was unknown to Toronto Zenith at that time. Mr. Patel opted not to notify Toronto Zenith of this live utility in a timely manner which is of grave concern. It was not until the day after the Sept 17/18, 2014 utility strike that the City advised us through Instruction Notice to Contractor #9, issued Sept 19th, 2014, that the anticipated "dead" utility, was in fact "live". Mr. Patel opted to advise us of this situation after the utility strike occurred.

Regarding the City's June 10th letter regarding the City/Contract Administrator not being satisfied with our safety performance, Mr. Clarizio relies on a City letter dated August 14th, 2015. We draw your attention to this Aug 14th City letter as it clearly states in the last closing paragraph: "Overall TZ's performance was adequate in meeting the Contract requirements".

Despite the safety issues which did occur, Toronto Zenith dealt with all safety issues appropriately and our overall performance met the Contract requirements, and this is the point we have consistently made. A final failing safety score should not be entertained when the City advised Toronto Zenith at the end of the Viaduct Project that our overall safety performance **was adequate** in meeting the Contract requirements.

In our March 21st, 2019 letter Toronto Zenith had also highlighted that the City ignored our numerous requests to meet and discuss the disputed performance ratings however the City did not provide any comments regarding this issue. We had specifically asked if the City could provide a response to our March 26th, 2015, rating dispute

letter pertaining to the 2nd interim performance evaluation. This was also not addressed in the City's June 10th, 2019 letter.

Morningside Contract

In our March 21st, 2019 letter Toronto Zenith had requested a copy of the 1st interim CPE for the Morningside Project as we had never received this rating report from the City. The June 10th, 2019 City letter did not address this request.

Toronto Zenith requested that the City provide clarification regarding Site Figures 5&6, two photos the City relied upon in their January 11, 2019 letter to demonstrate safety non-compliance issues. This issue was not addressed in the June 10th, 2019 City letter. We simply ask once again that the City provide clarification as to what aspect of the two figures is considered by the City to be a non-conformance.

The City is alleging that an unmanned piece of equipment (bridge worker hydra-platform) which slid on the bridge deck on Nov 28 was not in any way attributed to early morning ice/frost on the deck. On Nov 29, 2017, the day following the incident an Incident Report was submitted to our Health & Safety Manager. The report clearly indicated the root cause to be the equipment sliding on the 5% bridge deck grade which contained patches of ice/frost. A photo of the ice spots on the deck taken on Nov 28, 2017 at 9:21 am clearly indicates some frost/ice patches. The Incident Report also clearly indicates that equipment was being started up that morning when the event occurred, and it was not unmanned.

With regards to the site access issue occurring between June 8 & June 11th, 2018, the City failed to mention in the June 10, 2019 letter that the public member entering the site and making such complaints between June 8 to June 11, 2018 was related to an ongoing public complaint issue which was occurring between MS Maria Alkis & the City of Toronto. Maria Alkis was the distraught daughter of Panayiota Alkis who had been seriously injured in a pedestrian/vehicle accident mishap in May 2018. The traffic accident occurred on the Project but was unrelated to Toronto Zenith's work. MS Alkis was lobbying hard with the City through daily emails to the City and through her local Member of Parliament (Office of Councilor Paul W. Ainslie, Ward 43 Scarborough East.) to have the City make the park entrance onto Morningside Ave. safer for pedestrians. The City's Project Manager requested that we not respond to her daily emails in which she copied her City Councilor.

This public site access issue clearly appears to be related to an ongoing legal proceeding between the City of Toronto, and the Panayiota Family. Aside from this distraught daughter who was concerned about her Mothers wellbeing, there were no other public complaint raised on the Project regarding site access.

The City also seems to be dismissing the fact that many of the safety comments were mis-categorized on the Morningside Contractors Performance Evaluation. In review of the City's own Statement of Facts (dated Jan 11, 2019) the non-OHSA related issues and OHSA related issues are separated and detailed as such. However, all safety issues were combined and entered in the Contractors Performance Evaluation under the OHSA related category A1. By way of example, on Page #5 of the Statement of Facts it properly categorized the Nov 28, 2017 Bridge



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Worker equipment sliding on the deck issue, and the June 8th to 11th, 2018 public access issue as non-OHSA related. However, in the Contractors Performance Evaluation these two incidences were incorrectly categorized into the OSHA-related mandatory compliance section of the Evaluation under Section A1 when they should have been entered under Section A2. This error should be corrected, and the rating assessment for Section A1 revisited.

Finally, the June 10th, 2019 City letter did not address the issue of Toronto Zenith's Performance Evaluation never being issued for the Rowanwood Ave. Project, a project which was completed during the same time period with no major safety issues identified. It appears the City subjectively determines when and if they issue Contractor Performance Evaluations. Despite the Contract requiring a Performance Evaluation, and the pre-construction meeting minutes stating it would be completed, the City has still not completed it.

We do request that these outstanding issues be properly reviewed, corrected, and responded to, given the magnitude of their outcome.

Regards

A handwritten signature in black ink, appearing to read 'Brian Morris', written in a cursive style.

Brian Morris, VP Construction

Cc: Tim Follwell, VP Toronto Zenith
Aldo Paganelli, President