



STAFF REPORT ACTION REQUIRED

Temporary Suspension of Trisan Construction

Date:	April 30, 2014
To:	Public Works & Infrastructure Committee
From:	Executive Director, Engineering & Construction Services Acting Director, Purchasing & Materials Management Division
Wards:	All
Reference Number:	P:\2014\Cluster B\TEC\PW14026 (AFS # 19186)

SUMMARY

This report recommends that City Council declare 614128 Ontario Ltd., operating as Trisan Construction ("Trisan"), ineligible to bid on any City of Toronto tenders for a period of one year.

This recommendation is based on demonstrated poor performance by Trisan on two recent Basement Flooding Protection Program contracts. Trisan's actions as the Constructor on these contracts potentially put staff, the public, homeowner properties, and City infrastructure at risk, which was repeatedly documented by Engineering & Construction Services staff, as well as a number of other Agencies having jurisdiction on construction sites. City Council approval is required in order to suspend a contractor from contract awards for poor performance.

RECOMMENDATIONS

The Executive Director, Engineering & Construction Services and the Acting Director of Purchasing & Materials Management recommend that:

1. City Council declares 614128 Ontario Ltd., operating as Trisan Construction, ineligible to bid on or be awarded any City of Toronto construction tender calls for a period of one year, from the date City Council approves this recommendation.
2. City Council declare that any legal entity that is related to or has the same operating mind as 614128 Ontario Ltd. shall also be ineligible to bid on or be

awarded City of Toronto construction tender calls for one year, from the date City Council approves this recommendation, where PMMD (in consultation with Legal Services) determines that such entity was created or its being used for the purpose of evading the City's decision to suspend 614128 Ontario Ltd.

Financial Impact

There is no financial impact from Recommendation No. 1 and Recommendation No. 2.

DECISION HISTORY

At its meeting held on September 25, 26 and 27, 2006, City Council adopted Administration Report 11 Clause 6 entitled "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/minutes/council/cc060925.pdf>

At its meeting held on November 13, 14, 15, and 18, 2013, City Council adopted Item PW26.4 entitled "Contractor Performance Evaluation Procedure" which outlined information regarding the implementation of the Contractor Performance Evaluation ("CPE") Procedure on all City construction projects. This decision was made subsequent to the award of the two contract discussed in this report therefore the Contractor Performance Evaluation Procedure is being used as a guideline. The Council decision document can be found at:

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

ISSUE BACKGROUND

Trisan has exhibited poor performance on two recent Engineering & Construction Services contracts supporting the City's Basement Flooding Protection Program. The following provides a brief description of these two contracts and their significance to the Basement Flooding Protection Program.

Contract 12FS-14WP, Tender 141-2012, Contract Value \$14,778,056.05 net of taxes, awarded September 19, 2012

The scope of work includes sewer and watermain upgrades on Pleasant View Drive, Brian Drive, Ipswich Crescent, Old Sheppard Avenue, Cairnside Crescent, and Pondsview Drive, all included within Ward 33. Contract challenges include the installation of a 2700 mm diameter concrete storm sewer pipe within the right of way of residential streets.

Contract 12FS-22WP, Tender 230-2012 Contract Value \$17,075,384 net of taxes, awarded January 16, 2013

The scope of work includes sewer and watermain upgrades on Seacliff Boulevard, Navenby Crescent, Gracedale Boulevard, Hansbrooke Drive, Pearldale Avenue, Finch Avenue West, Crimscott Road, Cherrylawn Avenue, and Duncanwoods Greenbelt, all included within Ward 7. This work requires significant excavation and installation of sewers at depths of 9 metres.

The sewer upgrades, which make up both these contracts, are required in order to protect neighbourhoods against basement flooding due to sewer surcharging. Both contracts involved challenging sewer construction; one due to the size of the pipe and the second due to the depth. In both contracts Trisan's performance to date has clearly demonstrated that they are neither equipped nor sufficiently experienced to undertake this type of work and this has been demonstrated by:

- Violations of the *Occupational Health and Safety Act* ("OHS") and related regulations;
- Damage to adjacent utilities and infrastructure due to lack of proper protection of infrastructure;
- Damage to private properties as a result of sewer surcharge caused by Trisan's construction activities;
- Lack of responsiveness and little effort to minimize disruptions to the public or City operations; and,
- Additional effort on the part of City staff and the project's engineering consultant to manage the contracts to help ensure public safety.

A summary of Trisan's performance history is described below according to various categories outlined in the City's Contractor Performance Evaluation form.

Safety and Compliance – Laws and Standards

Compliance with Occupational Health and Safety (OHS) Requirements

Contract 12FS-14WP (Brian Drive and Old Sheppard)

On January 15, April 15, and October 23, 2013 Trisan was issued Orders from the Ministry of Labour ("MOL") to stop work for various OHS safety violations, including:

- Lack of adequate barriers (guardrails) and signage around their open excavation;
- Open manholes that were not adequately covered and marked to prevent a fall;
- Lack of written measures and procedures on-site for working around live overhead electrical conductors; and,
- Lack of a copy of engineering drawings on-site for the shoring/piling being installed for trench support.

In September 2013, City staff observed Trisan's employees working within the trench but outside of the shoring system. This work practice is not compliant with the requirements of the OHS and Ontario Regulation 213/91, and is an extreme safety concern. City and Consultant staff identified their concerns to Trisan; however, no action was taken by Trisan to address these concerns. City Staff followed up with the Ministry of Labour to report safety concerns.

Contract 12FS-22WP (Navenby Crescent)

Between December 2013 and January 2014, Trisan's employees were observed on numerous occasions by City and Consultant staff working within the excavation either outside of shoring systems or inside improperly assembled systems. Consultant staff notified Trisan verbally numerous times regarding these concerns, without any response from Trisan. In an effort to protect workers and mitigate safety risks, a letter was issued to Trisan on January 30, 2014, which notified Trisan that they were at risk of default of the contract if the noted safety concerns were not addressed.

Protection of Existing Utilities and Infrastructure

Contract 12FS-14WP (Brian Drive and Old Sheppard Area)

Throughout the course of the contract to date Trisan has caused seven gas leaks between March 2013 and August 2013. The leaks were a result of inadequate support of an excavation and/or inadequate protection of an existing utility. With each break the public was placed at risk and existing infrastructure was damaged which then required repair by a third party.

The Technical Standards and Safety Authority ("TSSA") issued three separate Orders to Trisan and the City on July 8, August 2, and August 7, 2013, due to damage caused to existing gas utilities. These Orders required that Trisan cease and desist from interference or damage to any gas main or service. A meeting was held with Enbridge, MOL, Trisan, City Staff, and the Consultant in August to determine a solution to the recurrent problem and ensure no further damage to the existing gas utilities, in this meeting a direction was confirmed and agree to. In September 2013, inadequate utility support was again witnessed and documented by the City's Consultant.

Contract 12FS-22WP (Navenby Crescent Area)

On January 23, 2014, Trisan was sent a written notice from the Consultant who noted that a length of watermain had been left exposed in an unsupported area of the excavation, and requested immediate action from Trisan to rectify. Trisan did not respond nor take any immediate action. On January 24, 2014, a watermain failure was observed in this area resulting in significant damage to adjacent infrastructure (i.e., resulting in a total of three broken watermains, damage to a sanitary sewer pipe, storm sewer maintenance hole, and road surface). The flooding from the broken watermains also left a gas main suspended without support, with an associated risk of gas line breakage and leak, fire, or explosion. Additional efforts by both Toronto Water District Operations and Engineering & Construction Services staff were required onsite to coordinate the repairs and ensure further damage was not caused by the construction activities.

Proper Excavation Support

Contract 12FS-14WP (Brian Drive and Old Sheppard Area)

From the outset of the contract, repeated concerns were raised by the Consultant and City staff about the use of trench boxes in this deep excavation application; however Trisan continued their use without proper backfilling on each side. Contrary to the contract requirements, Trisan installed and utilized trench boxes at the excavation site. The continued use of trench boxes risked the stability of the trench and left excavation walls

unsupported and unsafe. Trisan was requested to submit a proposed contract-compliant alternate shoring system for approval and implementation. Tabulated data for the installed shoring system was only submitted by Trisan on September 24, 2013.

Contract 12FS-22WP (Navenby Crescent Area)

On November 29 and December 3, 2013, Trisan was issued written notices from the Consultant requesting corrective action for inadequate excavation (trench) support. Trisan failed to respond to additional information requests made by the Consultant regarding engineered shop drawings of the proposed excavation support system, then proceeded to install and use a shoring system that had numerous deviations from the submitted shop drawings.

On January 21, 2014, Trisan was notified by the Consultant of the precarious state of the excavation site including inadequate excavation support, an unnecessarily large amount of an intersection excavated and left open, and an excavator parked above a large area of undermined paving. Further warning was provided by the City in their letter dated January 30, 2014. Unsupported open excavations that are larger than required to complete the proposed works are prone to collapse, presenting higher risk to public safety and adjacent infrastructure. These concerns were repeated to Trisan at a site meeting on January 23, 2014. Written notification was sent to Trisan on January 21 and January 23, 2014, respectively, requesting that the situation be rectified immediately. No response was received from Trisan, nor were any corrective actions observed for a period of three months. The City Project Manager visited the site on January 24, 2014, observed the same unsupported excavations, and notified the Ministry of Labour to report the concerns.

Execution – Work Performance

Contract 12FS-14WP (Brian Drive and Old Sheppard)

On August 26 and August 28, 2013, Trisan's neglect during execution of Contract 12FS-14WP caused basement flooding at 25 homes in the construction area, which resulted in 33 damage claims (some homes were flooded twice). Details of the sequence of events over this time were detailed in two letters by the Consultant, dated April 8, 2014 and September 30, 2013. The Consultant determined that the downstream outfall of an existing storm sewer was completely blocked with soil from Trisan's excavation, and an upstream inlet of a storm sewer recently installed by Trisan was blocked by a steel plate that had been left unsecured in the excavation. These blockages caused the existing storm sewer to surcharge during rain events on August 26 and 28, 2013, resulting in the flooding of residential basements and property damage in the affected area.

Due to the flooding events on August 26 and 28, 2013, the City requested that the Consultant work extra hours each working day to document the state of the excavation every night before leaving the job site, to ensure that no sewers had been left blocked, and to make certain that the excavation site was left in a proper state. From November 2012 to September 2013, Trisan only provided part-time site supervision and this lack of supervision may have contributed to the cause of the flooding events.

On September 9, 2013, City and Consultant staff observed a significant soil blockage at the existing storm sewer outlet once again, and notified Trisan of their observations and concerns. Trisan took no immediate action to remove the blockage at the storm sewer outlet. Trisan did not take any actions to remediate the situation until the City put Trisan on Notice for Default of Contract on September 11, 2013 and copied the notice letter to their bonding company.

Subsequent to the storm sewer flooding on August 26 and 28, 2013, the City notified Trisan in writing on September 20, 2013 that we found their means and methods were the cause of the flooding in late August and that they should notify their insurer of potential claims. All claims resulting from the flooding were forwarded to Trisan between October 4, 2013 and October 20, 2013.

However, Trisan made no effort to contact the claimants and assess or resolve the residential damage claims. As a result, the City was forced to rely on its own adjustor to facilitate communication to residents, and expedite assessment and processing of their claims. The values of the claims were estimated at between \$185,174 and \$237,691 by Granite Claims Solutions. Due to Trisan's inaction in resolving these claims, 3 letters were sent to Trisan on January 17, January 20, and March 4, 2014, warning of the City's intent to retain from funds payable to Trisan a set-off amount, as permitted in the contract. In 2014, subsequent to the withholding of funds, Trisan's Insurer agreed to settle the claims with the City.

Contract 12FS-22WP (Navenby Crescent)

On November 26, 2013, the sewage bypass pumps that Trisan was using during the construction failed, causing basement flooding at an apartment building within the construction area. City Staff and the Consultant visited the apartment building to observe the extent of flooding damage and discuss the situation with the superintendent. The City required Trisan to investigate the cause of the bypass pump failure and produce a report of the incident, and has been reminded of this request at each subsequent site meeting, yet, to date, Trisan has not submitted a report of the flooding incident.

Administration – Contractor Performance and Diligence

Trisan has repeatedly demonstrated lack of initiative, poor responsiveness, and little effort to minimize disruptions to the public or City operations on recent contracts under the Basement Flooding Protection Program. The lack of responsibility and accountability exhibited by Trisan has often resulted in frustration by residents in the affected construction areas, and by staff and the Consultant.

As discussed in the previous sections of this report, City and Consultant staff have been required to spend significant additional time and resources to elicit response and action from Trisan on various contractual issues. Extra staff time and resources were also required to provide two (2) additional public meetings for Contract 12FS-14WP (one for the flooding incidents, and one for the multiple street closures and to address many questions and concerns from residents and the Councillor's office). The cost of additional

City staff time and resources to manage the overall performance issues with Trisan is estimated at \$50,000. The cost of additional Consultant staff time and resources attributed to the flooding incidents on Contract 12FS-14WP is estimated at \$60,000.

COMMENTS

In summary, Trisan's poor performance on recent Engineering & Construction Services construction contracts has presented great risk to the health and safety of their workers, as documented by repeated MOL and TSSA safety orders. Trisan has caused significant damage to residential properties and public utility infrastructure, including flooded basements with damage claims estimated near \$200,000, broken watermains, blocked sewers, and damage caused to existing gas utilities. Trisan has repeatedly shown neglect or failure to comply with contract requirements, requiring much additional City staff and Consultant time and resources to monitor and manage their performance. Their recent and repeated poor performance on various City contracts has produced significant negative impact and inconvenience to affected residents.

Given the documented examples of poor performance by Trisan on recent contracts under the Basement Flooding Protection Program, as summarized in this report, Engineering & Construction Services, in consultation with PMMD and Legal Services, are recommending Trisan be suspended from award of any City of Toronto contracts for a one year period.

By adopting these recommendations, City Council will clearly communicate to Trisan and the wider construction industry that poor performance will not be tolerated on City contracts.

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SIGNATURE

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