



**STAFF REPORT  
ACTION REQUIRED**

**Temporary Suspension of Domti Engineering & Construction Limited**

<b>Date:</b>	March 20, 2015
<b>To:</b>	Public Works & Infrastructure Committee
<b>From:</b>	Executive Director, Engineering & Construction Services Director, Purchasing & Materials Management Division
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2015\Cluster B\ECS\ PW15022 (AFS # 21020)

**SUMMARY**

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This report recommends that City Council declare Domti Engineering & Construction Limited (Domti) ineligible to bid on or be awarded any City of Toronto tenders for a period of one year.

This recommendation is based on demonstrated poor performance by Domti on two recent Engineering & Construction Services contracts and is made in accordance with the City’s Contractor Performance Evaluation Tool. Domti's actions on these contracts demonstrated inadequate contract management, unacceptable work performance, poor administration, lack of diligence, and risk to public safety with respect to the state of the construction site due to Domti's actions as the Constructor on one of these contracts. City Council approval is required in order to suspend a contractor from contract awards for poor performance.

**RECOMMENDATIONS**

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

1. City Council declare Domti Engineering & Construction Limited ineligible to bid on or be awarded any City of Toronto construction tender calls for a period of one year as a General Contractor or Sub-Contractor, 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 Domti Engineering & Construction Limited be ineligible to bid on or be awarded City of Toronto construction tender calls for a period of one year as a General Contractor or Sub-Contractor, from the date City Council approves this recommendation.

## **Financial Impact**

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

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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

Both tenders for Contracts 14TE-19RD & 14TE-18RD were issued in 2014 and included reference to the Contractor Performance Evaluation Procedure as a method for monitoring and evaluating performance as per the special conditions of the contract.

## **ISSUE BACKGROUND**

Domti Engineering & Construction Limited (Domti) has exhibited poor performance on two recent Engineering & Construction Services contracts (14TE-19RD & 14TE-18RD) supporting the City's Transportation Services State of Good Repair program, Toronto Water's Wet Weather Flow Master Plan, and City Planning and Economic Development & Culture's Streetscaping initiatives. The following provides a brief overview of these two contracts and their significance to the City's Capital Works Program.

***Contract 14TE-19RD, Tender 57-2014, Contract Value \$980,587.00 net of taxes, awarded May 21, 2014. Original Stipulated Contract Completion: 50 working days.*** This contract was initiated as part of Transportation Services 2014 Transportation Safety and Local Improvement Program (TSLIP) and included a City Planning initiative to

enhance the streetscaping near the intersection of Fairford Avenue and Coxwell Avenue. The scope of work for this contract involved reconstruction of Fairford Avenue from Coxwell Avenue to 15 m east of Rhodes Avenue, and included curb bump-outs, resurfacing and realignment of the Fairford Avenue and Coxwell Avenue intersection, streetscaping, and construction of a parkette which included a stormwater management bioretention cell. The contract challenges included coordinating sub-contractors and suppliers for the streetscaping component of the project given the specialized and decorative nature of the work.

***Contract 14TE-18RD, Tender 168-2014, Contract Value \$687,621 net of taxes, awarded June 18, 2014. Original Stipulated Contract Completion: 50 working days.***

The scope of work included streetscaping along Bloor Street West from Dufferin Street to 777 Bloor Street West (The Bickford Centre) and driveway reconstruction at the Bickford Centre. The contract challenges included timely coordination of suppliers for the submittal and approval of shop drawings to show exact manufacturing specifications for all decorative elements and the subsequent delivery of these elements for the specialized streetscaping works.

Domti's performance on the above-noted recent contracts is characterized by:

- Violations of the *Occupational Health and Safety Act* (OHSA);
- Inadequate contract management resulting in significant delays in mobilization after contract award and during construction, and ineffective coordination of sub-contractors leading to additional delays to the overall contract schedule;
- Unacceptable work performance due to intermittent work being done at the site which was compounded by insufficient labour when Domti was on site, resulting in significant delays to the overall contract schedule;
- Poor administration and lack of diligence characterized by Domti's virtual non-responsiveness to requests for information, shop drawings, schedules and little to no effort to minimize disruptions to the public or City operations;
- The substantial additional effort required on the part of City staff to manage the two contracts; and,
- Failure to correct defaults on one of the contracts, leading to termination of the contract by the City (after consultation with Legal Services).

A summary of Domti's performance history for each contract is presented below according to the categories outlined in the City's Contractor Performance Evaluation tool.

### **Contract 14TE-19RD (Fairford Avenue and Coxwell Avenue)**

#### **A. Safety and Compliance – Laws and Standards**

##### ***Compliance with Occupational Health and Safety (OHSA)***

On July 23, 2014, Domti was issued a non-compliance order from the Ontario Ministry of Labour for violating OHSA safety requirements by allowing a worker to enter an open excavation without having the necessary shoring in place, thereby putting the worker's safety at risk. Domti rectified the order without delay.

Domti failed to satisfactorily manage pedestrian traffic at the intersection of Fairford Avenue and Coxwell Avenue at various times during construction. This resulted in pedestrian safety concerns and several complaints from the public.

The Contract requirements stipulated that only one curb bump-out at the same intersection with Fairford Avenue was to be constructed at a time. The reason for this requirement was to minimize disruption to the public by not having construction work on both sides of the street at the same time, given that Fairford Avenue only permits a single lane of traffic in each direction. However, Domti ignored the stipulation and proceeded with construction of two curb bump outs at common intersections. The City wrote to Domti on August 8, 2014, and reminded them of the need to follow the contract staging requirements and Domti subsequently addressed the deficiency.

Based on observations by City staff, on September 11, 2014, Domti was notified by City staff in writing about the need to ensure pedestrian access and safety at the intersection of Fairford Avenue and Coxwell Avenue, including the need to provide appropriate traffic controls. Notwithstanding the notification from staff, Domti removed the sidewalks at all four corners of the intersection simultaneously, and failed to maintain safe pedestrian access and safe crossing at the intersection. This situation presented a risk to public safety. The concerns were again highlighted to Domti at a site meeting on September 17, 2014. Two further written notifications were given to Domti by the City on September 19 and 22, 2014, regarding the pedestrian access and safety issue. Domti was non-responsive and slow to take corrective action after being notified by the City.

## **B. Organization – Work Plan and Management**

### ***Commence Work on Time***

The project's pre-construction meeting was held on June 5, 2014, where the official start date was agreed by Domti to be July 7, 2014, and the City issued the order to commence accordingly. However, Domti did not commence work according to the contract requirements, thus creating a major delay. Domti commenced work on July 19, 2014, but provided no valid reason for the late start.

### ***Adequate Staff and Resources***

Domti did not employ enough personnel on site during construction resulting in constant delays. Concerns about insufficient on-site personnel were documented at site meetings with Domti held on August 12 and September 17, 2014. The City also notified Domti in writing on August 20, 2014, emphasizing the need for appropriate staffing and resources to undertake the contract and expressed concern about the slow progress of the work. The City's Contract Administration records show that between July and November of 2014, Domti failed to undertake construction work at the site on 33 working days. In addition, the records also show that a minimal workforce of only one to three workers at the site on another 18 working days.

### ***Response to Information Requests***

At the project's pre-construction meeting it was emphasised to Domti that it was critical to have all submittals including shop drawings provided on time due to the specialized

nature of the streetscaping and parkette improvement work. Domti failed to provide timely submittals, despite repeated requests by City staff at various construction progress meetings and via e-mail. Domti was late in submitting traffic control plans, Ministry of Labour Notice of Project, updated construction schedules, the soil mix for the stormwater management bioretention cell, and Requests for Quotations (RFQs) for relocating electrical work in the area and for construction of a concrete sign pedestal. Speciality submissions related to bioretention soil testing data and trench drain shop drawings were not provided in accordance with the contract requirements. Due to Domti's lack of responsiveness and consistently late submissions, City staff were required to spend a significant amount of time and resources to obtain the required responses and submissions from Domti on the various required contract submittals. The cost of the additional City staff time and resources to manage the project and issues with Domti is estimated at \$50,000.00.

#### ***Work of Sub-contractors***

Domti did not effectively manage the work of sub-contractors. The work that Domti sub-contracted, and which caused the project's completion to be delayed, included the supply and installation of the following: pedestrian lighting, special finish (decorative) concrete, metal ornamental fence, trench drain, and bioretention soil mix. The delays resulting from ineffective management of its sub-contractors were highlighted as a concern by City staff at eight construction progress meetings held between July and November of 2014. City staff also wrote to Domti on November 21, 2014, and again on November 27, 2014, requesting construction updates and a firm completion schedule for the project. However, no response to these written requests was received from Domti.

#### **D. Execution – Work Performance**

Domti failed to satisfy their contractual obligations and failed to complete the project within 50 working days as per the contract schedule. Contractually, all work on the project was to have been completed by September 22, 2014. However, as of the date of this report, the project remains unfinished.

#### **E. Administration – Contractor Performance and Diligence**

##### ***Disruption to the Public and City Operations***

The lack of communication, poor coordination, and extensive delays on the project caused by Domti resulted in chronic frustration for residents in the affected construction areas, and for the City's project management staff. As indicated above, City staff were required to spend significant additional time and resources to obtain responses and action from Domti on various contractual issues.

On December 8, 2014, Domti was declared in default of contract and was issued a Notice of Default based on:

- Lack of progress at the work site including abandoning the work site from time to time and insufficient work force;
- Failure to effectively co-ordinate and manage the work of sub-contractors; and,
- Failure to communicate and comply with a firm schedule for completion of the work.

In accordance with the Contract, Domti was given five working days to correct the defaults; however Domti failed to meet this obligation.

On December 22, 2014, Domti's contract with the City for Contract 14TE-19RD was terminated. Domti's poor performance on the contract and failure to correct the deficiencies identified in the 'Notice of Default' dated December 8, 2014, provided the basis for termination of the contract.

### **Contract 14TE-18RD (Bloor Street West)**

#### **B. Organization – Work Plan and Management**

##### ***Commence Work on Time***

The contract consisted of two work areas:

1. The Bickford Centre, a Toronto District School Board facility that provides specialized adult learning programs (777 Bloor Street West); and,
2. Bloorcourt (Bloor Street West, from Dufferin Street to Montrose Avenue).

The Contract stipulated that the Bickford Centre construction was to be completed by August 31, 2014, to minimize disruption to school operations.

At the pre-construction meeting held on July 17, 2014, City staff requested a baseline schedule, which Domti agreed to provide by July 24, 2014. At the same meeting, the importance of timely shop drawing submittals was emphasized to Domti by City staff, in order to ensure timely production and delivery of decorative construction materials (e.g., bronze street markers, coloured pavers, specialized bicycle racks) required for this contract. A start date of August 5, 2014, was agreed for construction at the Bickford Centre and the City subsequently sent an order to commence for this date. In spite of this, no schedule or shop drawings were submitted and Domti did not begin work at the Bickford Centre by the agreed date. The City sent numerous e-mails to Domti requesting shop drawing submittals and an update on work commencement, but received no response.

By the time of the first progress meeting on August 21, 2014, a baseline schedule had still not been submitted. At the meeting, Domti promised the City that the work at Bickford would start on August 26, 2014, however no work commenced on this date either.

A second order to commence for the entire project was sent by mail to Domti on September 15, 2014, following completion of road work by another contractor within the Bloorcourt area. At the following progress meeting on September 18, 2014, Domti advised that work at the Bickford Centre would start on September 22, 2014, and a baseline schedule was finally submitted. Domti began work on September 26, 2014, by fencing off the area and excavating the site, however granular material was not placed until the following week and the site was then abandoned for more than three weeks with no documented workers on-site.

### ***Schedule Updates***

As no progress was being made and major schedule milestones leading to the agreed November 2014 completion were being missed, the City requested an updated schedule from Domti at the progress meeting on October 16, 2014. In addition to the missed milestones, very few shop drawings had been submitted by the time of the October 16 progress meeting and the Domti representative attending the October 16 meeting did not provide any updated or new information. Based on this lack of responsiveness, the City issued a letter on October 21, 2014, notifying the Contractor of concerns regarding poor progress at the Bickford Centre work site as well as concerns about shop drawing submittals, and requested submission of a revised schedule. A revised schedule was submitted by Domti on October 30, 2014, proposing that the majority of construction be delayed until Spring 2015 due to Domti's inability to complete the project prior to the onset of winter weather.

### **D. Execution – Work Performance**

As mentioned earlier, the contract stipulated that the Bickford Centre construction was to be completed by August 31, 2014, a date with which Domti made no effort to comply; no explanation for their lack of progress on the contract was ever received.

From the date of the pre-construction meeting on July 17, 2014, the City repeatedly requested both verbally and in writing that Domti submit a project schedule, which was not submitted until a progress meeting held on September 18, 2014, more than two months after the pre-construction meeting and three weeks past the original August 31, 2014, deadline for completion.

The schedule submitted by Domti on September 18, 2014, indicated a completion date of November 28, 2014, with construction beginning at the Bickford Centre. Due to a lack of sufficient labour on-site (four workers documented by the City on site on September 26, 2014; and, one supervisor and only one worker were documented on-site on October 1, 2 and 3, 2014, with no workers on site any other day). While construction at the Bickford Centre started, it did not adequately progress, resulting in the main driveway into the property remaining closed for over three weeks. This caused inconvenience for staff and students at the Bickford Centre, who were unable to access the main driveway for pick-ups and drop-offs. Importantly, the closed driveway prevented access for emergency vehicles.

According to the schedule submitted by Domti on September 18, 2014, work was to commence at Bloorcourt on September 29, 2014. Although Domti was repeatedly reminded at every meeting that timely shop drawing submittals were critical to the completion of the project, Domti had still not provided the majority of shop drawings for Bloorcourt as of the September 18, 2014 progress meeting. Due to Domti's failure to submit shop drawings for approval in a timely manner, work did not commence as planned on September 29, 2014, because Domti could not excavate the sidewalks and boulevards because there was no timeline for delivery and installation of materials.

Failure to follow the planned schedule and meet major project milestones resulted in Domti's inability to meet the November 28, 2014 contract completion date, which caused much frustration among the City project team, Bickford Centre staff, Bloorcourt businesses owners, local Councillors, area residents.

## **E. Administration – Contractor Performance and Diligence**

### ***Communication, Cooperation, Collaboration***

Domti continually demonstrated a lack of willingness to communicate and cooperate with the City and stakeholders, whether via phone, e-mail, or at project progress meetings.

Domti repeatedly failed to respond to phone calls and e-mails from the City requesting information. Domti did not reply to e-mails sent by City staff on July 23, 2014, August 12, 2014, August 27, 2014, August 29, 2014, September 5, 2014, September 29, 2014, and October 17, 2014.

In addition, little effort was made to work with the City project team and stakeholders by regularly attending scheduled progress meetings. At progress meetings held on September 18, 2014, and October 16, 2014, Domti sent a newly hired staff member, who was unable to provide updates on the status of work, schedule, or shop drawing submittals. At the October 16, 2014, progress meeting, the City formally requested that a Domti representative with knowledge of the project and decision making authority attend all future meetings, a request that Domti honoured.

## **COMMENTS**

Domti's poor performance on recent Engineering & Construction Services construction contracts put the health and safety of their workers and the public at risk, as documented by the Ontario Ministry of Labour safety order and by City staff. Domti demonstrated poor contract management and work performance as evidenced by the lack of continuous progress at work sites, insufficient work force, failure to effectively co-ordinate and manage the work of sub-contractors, and poor responsiveness on numerous contract matters. These issues resulted in continual delays on the projects and ultimately led to the termination of Contract 14TE-19RD (Fairford Avenue and Coxwell Avenue).

Domti's poor performance on Contracts 14TE-19RD and 14TE-18RD were documented and discussed with Domti on two separate interim Contractor Performance Evaluations completed in November and December of 2014. Domti's weighted total score in each performance evaluation was 2.41 for Contract 14TE-19RD and 2.47 for Contract 14TE-18RD, both falling below the minimum expectation of 2.50. The Contractor Performance Evaluation Procedure specifies that a suspension report may be initiated for Council approval when there are at least 2 interim evaluation scores of less than 2.50 in 5 years.

Pursuant to the Contractor Performance Evaluation Procedure, following review of the interim Contractor Performance Evaluations and after consultation with Legal Services, warning letters were issued to Domti by Purchasing & Materials Management Division on December 15, 2014, and January 30, 2015, respectively. The letter issued January 30, 2015, warned Domti that their failure to meet expectations on the two City Contracts may



lead to suspension following a decision by Council. Domti did not respond to either letter.

Given the documented examples of poor performance by Domti on recent contracts under the City's Capital Works Program, as summarized in this report, Engineering & Construction Services and Purchasing & Materials Management Division, in consultation with Legal Services, are recommending Domti 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 Domti and the wider construction industry that poor performance will not be tolerated on City of Toronto contracts.

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## **SIGNATURE**

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