



REPORT FOR ACTION

Temporary Suspension of Four Seasons Site Development Inc.

Date: March 20, 2017

To: Government Management Committee

From: Executive Director, Engineering and Construction Services

Director, Purchasing and Materials Management

Wards: All

SUMMARY

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

This recommendation is based on demonstrated unsatisfactory performance by Four Seasons on Contract 16ECS-TI-11SP, Tender 144-2016, Sidewalk Construction and Streetscape Improvements on College Street (which was terminated prior to completion due to unsatisfactory performance) and on Contract 16ECS-TI-18SP, Tender 165-2016, Watermain Replacement and Water Service Upgrades, Minor Arterial Road Resurfacing and Watermain Trench Restoration. The findings of unsatisfactory performance were based on evaluations conducted by City staff in accordance with the City's Contractor Performance Evaluation Tool. Four Seasons' actions on these contracts demonstrated inadequate contract management, unsatisfactory work performance and administration, lack of responsiveness, little effort to minimize disruptions to the public or City operations, and on one of the contracts, a risk to public safety.

Based on the unsatisfactory performance on Contracts 16ECS-TI-11SP and 16ECS-TI-18SP, the Director of Purchasing and Materials Management Division, under the authority delegated by section 195-13.14 of Chapter 195, Purchasing, of the Toronto Municipal Code, suspended Four Seasons from bidding on or being awarded any tenders for a period of six (6) months starting February 9th, 2017, pending Council consideration of this report. City Council approval is required in order to suspend a contractor from contract awards for unsatisfactory performance for a period beyond six (6) months.

RECOMMENDATIONS

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

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

FINANCIAL IMPACT

There is no financial impact from these recommendations.

The Deputy City Manager and 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 Committee Report 6 Clause 11, titled "Contractors, Consultants and Supplier Performance Evaluations", which outlined various recommendations with respect to the City's approach to vendor performance evaluation. The Council decision document can be found at:

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

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

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

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

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

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

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

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

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

COMMENTS

Background

Four Seasons Site Development Inc. (Four Seasons) has exhibited unsatisfactory performance on two (2) recent Engineering and Construction Services contracts – 16ECS-TI-11SP and 16ECS-TI-18SP – that were issued in support of the City's Economic Development and Culture Business Improvement Area Office initiative and the State of Good Repair capital program, respectively. Both tenders were issued in 2016 following publicly-advertised competitive bidding processes, and both tenders made reference to, and the Contracts themselves included, the Contractor Performance Evaluation Procedure in the conditions of the contract as a method for monitoring and evaluating performance.

Unsatisfactory Performance on the Contracts

On both contracts, Four Seasons exhibited unsatisfactory performance characterized by:

- Violations of the Occupational Health and Safety Act (OHSA) that endangered public safety;
- Poor worker and subcontractor management, which significantly delayed setting up the work zone after contract award, and resulted in significant delays to the start of active construction on each contract;

- Unsatisfactory construction work progress being achieved at the work sites due to insufficient labour resources being employed at each work site, resulting in significant delays to the overall contract schedules;
- Poor administration and lack of diligence resulting from lack of timely responsiveness to requests for information and updates to the schedules;
- Failure to minimize disruptions to the public and to City operations;
- Failure to comply with contract terms and conditions requiring extended construction work hours; and,
- Failure to correct defaults with respect to maintaining open access to businesses and residences and the lack of construction activity during the required hours of operations on contract 16ECS-TI-11SP, which led to the termination of the contract by the City (after consultation with Legal Services).

Due to Four Seasons' unsatisfactory performance, substantial additional effort was required on the part of City staff to manage the contracts.

The following are summaries of Four Seasons' performance history on each of the two (2) contracts, presented according to the categories in the City's Contractor Performance Evaluation tool.

Contract 16ECS-TI-11SP - College Street

This contract was part of an Economic Development and Culture Business Improvement Area Office initiative to enhance the streetscaping on the north and south sides of College Street from Shaw Street to Havelock Street. Attachment 1 contains a map showing the limits of the work site. The scope of work for this contract included the reconstruction of sidewalks, streetscape improvements, and the construction of special tree pits and parkettes. The streetscaping components of the project involved specialized and decorative work, and required careful coordination of subcontractors and suppliers to ensure the completed project conformed to contract specifications and City and BIA expectations. The value of the contract was \$3,453,499.00 net of all taxes and charges. Construction started on June 27, 2016 and the contract schedule allowed 60 calendar days for completion of the works, premised on using extended hours stipulated in the contract to be from 7 a.m. to 11 p.m. Monday to Friday and on weekends as required. The contract was to be completed by October 21, 2016.

A - Safety and Compliance – Laws and Standards

Compliance with Occupational Health and Safety (OHSA)

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

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

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

City staff received numerous complaints from the public about the inappropriate behavior of Four Seasons' workers, and Four Seasons received two written warnings regarding the workers' poor behavior and interaction with the public.

B - Quality – Compliance with Contract Standards and Specifications

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

With respect to materials and installation, some of the tree pit covers were improperly manufactured and did not fit within the tree pit structure, pavers were of poor quality, and installation of sidewalk pavers was poorly done, resulting in numerous deficiencies (e.g., Attachment 5).

C - Organization – Work Plan and Management

Inadequate Staff and Resources

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

Poor Response to Information Requests

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

Inadequate Management of Sub-contractors' Work

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

D - Execution – Work Performance

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

E - Administration – Contractor Performance and Diligence

Inadequate Communication, Cooperation and Collaboration

Four Seasons did not communicate project status updates as required by the terms of the contract. The lack of communication, compounded by poor coordination and the extensive delays to the project schedule, resulted in considerable frustration for local residents and businesses, and for City staff who were required to spend significant additional time and resources to obtain responses and action from Four Seasons.

Four Seasons was continually uncooperative toward the area businesses and residents affected by the work. Obstacles and physical barriers were put in place impeding residential and business access, as illustrated in Attachment 4. The City sent numerous written notices to Four Seasons stating that, as per the contract requirements, Four Seasons was required to ensure residents and businesses had access to their properties. Even though the City requested immediate action from Four Seasons to rectify these issues, Four Seasons did not respond nor take any immediate action to do so. Furthermore, Four Seasons refused to collaborate with local businesses to minimize the impact of construction, which included refusal to assist with the installation of "business is open during construction" signs.

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

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

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

On October 5, 2016, the City terminated Contract 16ECS-TI-11SP with Four Seasons. Four Seasons' unsatisfactory performance on the contract and failure to correct the defaults noted in the Notice of Default dated September 28, 2016, provided the basis for termination of the contract.

Contract 16ECS-TI-18SP - Shuter Street

The scope of work for this contract included watermain replacement, permanent road resurfacing on Shuter Street from Yonge Street to Church Street and new painted bike lanes on Shuter Street from Yonge Street to Sherbourne Street. Attachment 6 contains

a map showing the limits of the work zone. The value of the contract was \$2,886,570.00 net of all applicable taxes and charges. The original contract schedule allowed 80 calendar days for completion of the works.

A - Safety and Compliance – Laws and Standards

Site Office

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

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

Site Office Generator

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

Road Plates

During construction of the watermain, temporary plates were not installed over the open trenches in roadway areas, in contravention of the contract requirements.

Traffic Control

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

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

B - Quality – Compliance with Contract Standards and Specifications

Approval Documents

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

C - Organization – Work Plan and Management

Schedule and Updates

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

Communication

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

Site Supervision

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

D - Execution – Work Performance

As noted in the sections above, Four Seasons did not provide timely updates to schedule changes, and did not provide adequate site supervision which resulted in confusion and frustration to City, residents and business. City staff were required to spend a significant amount of time and resources to obtain the required responses and action from Four Seasons.

E - Administration – Contractor Performance and Diligence

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

Current Situation

Four Seasons' unsatisfactory performance on two (2) recent Engineering and Construction Services construction contracts put the health and safety of the public at risk, as documented by the MOL safety order and by City staff.

Four Seasons 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 subcontractors, and lack of responsiveness to numerous contractual matters. These issues resulted in continual delays on the projects and ultimately led to the termination of Contract 16ECS-TI-11SP (College Street).

Four Seasons' unsatisfactory performance on Contracts 16ECS-TI-11SP and 16ECS-TI-18SP was documented and discussed with Four Seasons during the course of the contracts. Two (2) separate interim Contractor Performance Evaluations were completed: on September 14, 2016, and on September 29, 2016, respectively. In both cases Four Seasons was given five (5) business days to submit a written objection to the scores.

Four Seasons received a score of 2.01 on Interim CPE Report #1 for Contract 16ECS-TI-11SP (College Street). For Contract 16ECS-TI-18SP (Shuter Street), on Interim CPE #1, Four Seasons received a score of 2.17. It should be noted that Interim CPE #1 was not provided to Four Seasons until December 20, 2016, however the contractor was well aware of all the reported issues. Interim CPE Report #2 for Contract 16ECS-TI-18SP (Shuter Street) with a score of 2.77, was provided to Four Seasons on December 19, 2016.

The Contractor Performance Evaluation Procedure specifies that a suspension recommendation report may be initiated for Council approval when there are at least two (2) interim evaluation scores of less than 2.50 in the past five (5) years. Regardless of the CPE scores, the termination of Contract 16ECS-TI-11SP alone represents a significant performance issue on the part of Four Seasons and warrants suspension as a result.

Four Seasons responded to CPE #1 for Contract 16ECS-TI-18SP (Shuter Street), requesting that because the CPE was provided after CPE #2, it should be removed from the record. Based on the background documentation, the City acknowledged receipt of the request from Four Seasons, but responded that the CPE would not be removed from the record because Four Seasons knew or ought to have known about the City's dissatisfaction with its performance on that Contract.

For Contract 16ECS-TI-18SP (Shuter Street), it should be noted that due to delays related to the poor water quality testing, Four Seasons was not able to undertake the permanent road restoration before the onset of inclement winter weather. As a result, Four Seasons is scheduled to perform the final permanent road restoration work on Shuter Street in the spring of 2017.

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 Four Seasons by Purchasing and Materials Management Division on November 21, 2016, and on January 17, 2017, respectively. The letter issued on January 17, 2017, warned Four Seasons that their failure to meet expectations on the two (2) Contracts could lead to suspension following a decision by Council.

On February 9, 2017, the Director of Purchasing and Materials Management Division issued a letter to Four Seasons advising the company that it was suspended from being awarded any City of Toronto contracts for a period of six (6) months based on the documentation of unsatisfactory performance as described in this report. The letter explained to Four Seasons that the six (6) month suspension would form part of the suspension that would be recommended by staff in this report, and that Four Seasons would have an opportunity to depute at Government Management Committee.

Other City Contracts

In addition to the contracts described in this report, Four Seasons currently has five (5) other contracts that are currently being completed and are expected to be completed regardless of the current suspension. The five (5) contracts are:

Contract	Description	CPE Score
15ECS-TI-103LR, Tender 119-2015	Road Resurfacing on Lawrence Ave.W; Watermain Replacement and Road Resurfacing on Westbank Cr., Scarlett Rd. and Riverlea Dr	Interim CPE #1: 2.8
16EY-118TR, Tender 39-2016	Mill and Pave Arterial, Collector and Local Roads Wards 1, 2, 3, 4, 5, 6, 7, 11, 12, 13 & 17 Etobicoke York	Interim CPE #1: 2.93
16ECS-LU-15SU, Tender 184-2016	Watermain Replacement on Cherokee Boulevard, Cornerbrook Drive, Greengrove Crescent, Laird Drive, Monarchwood Crescent, Nordic Place, Pinto Drive and Roanoke Road	Interim CPE #1: 3.12

Contract	Description	CPE Score
16ECS-LU-04SU, Tender 233-2016	Watermain Construction on Finch Avenue West and Watermain and Sidewalk Construction on Castlefield Avenue	Interim CPE #1: 2.9
RFQ 3905-16-5040	Asphalt and Concrete Paving Services at various Parks, Forestry & Recreation locations	N/A

Based on the documented unsatisfactory performance by Four Seasons on the two (2) recent contracts, namely 16ECS-TI-11SP and 16ECS-TI-18SP under the City's Capital Works Program and summarized in this report, Engineering and Construction Services and Purchasing and Materials Management Division, in consultation with Legal Services, are recommending Four Seasons be suspended from award of any City of Toronto contracts for a total period of three (3) years beginning February 9, 2017 and ending on February 9, 2020.

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

CONTACT

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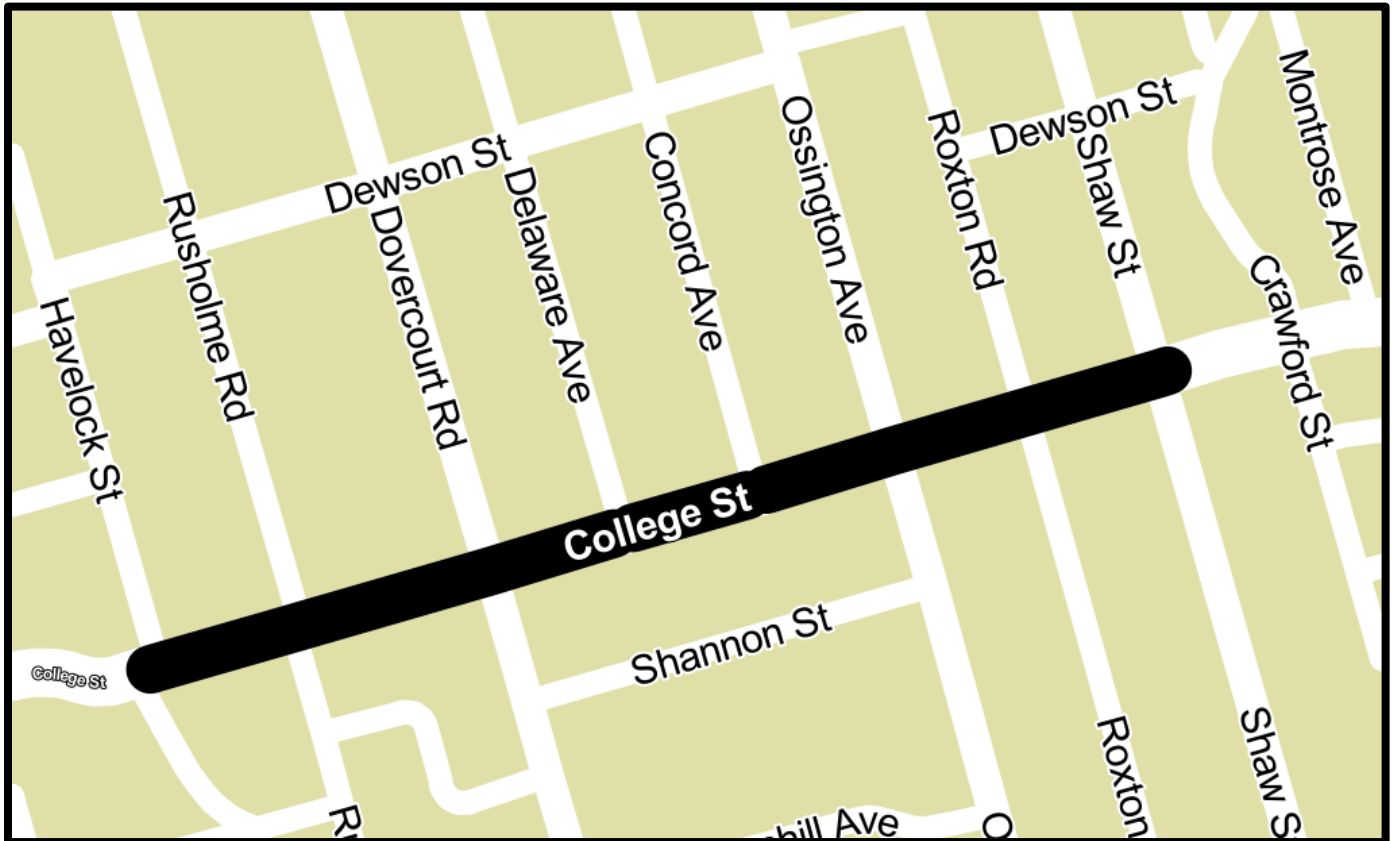
Michael D'Andrea, M.E.Sc., P.Eng., Executive Director, Engineering and Construction Services

Michael Pacholok, JD, Director, Purchasing and Materials Management

ATTACHMENTS

1. Limits for Contract 16ECS-TI-11SP
2. Photo of Health and Safety Issues
3. Photo of Health and Safety Issues
4. Photos of Access Restrictions
5. Photo of Deficiencies
6. Photo of Deficiencies
7. Photo of Deficiencies
8. Limits for Contract 16ECS-TI-18-SP

Attachment 1 - Limits for Contract 16ECS-TI-11SP, showing the work zone on College Street, from Havelock Street in the west to Shaw Street in the east.



Attachment 2 - Photo showing a pedestrian entering the work zone on the College Street project (Contract 16ECS-TI-11SP) without proper protection in violation of the Occupational Health and Safety Act and demonstrating Four Seasons' disregard for public safety.



Attachment 3 - Photo showing pedestrians walking without adequate protection within the work zone for the College Street project (Contract 16ECS-TI-11SP), demonstrating Four Seasons' disregard for public safety.



Attachment 4 - Two photos showing how Four Seasons restricted access to business and resident premises by installing six foot high metal fencing along the perimeter of the work zone on the College Street project (Contract 16ECS-TI-11SP), right in front of business and residential doorways, effectively blocking individuals from leaving the business or residential property.



Attachment 5 - Photo showing the placement of paving stone material at the incorrect elevation within the sidewalk area on the College Street project (Contract 16ECS-TI-11SP).



Attachment 6 - Map showing limits for Contract 16ECS-TI-18SP along Shuter Street from Yonge Street in the west to Sherbourne Street in the east.

