



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

The Atlas Corporation v. The City of Toronto Proposed Settlement Outstanding Litigation - Old City Hall Mechanical Upgrade Project 60 Queen St. W, Toronto

Date: July 16, 2018

To: City Council

From: City Solicitor and General Manager, Facilities Management

Wards: Toronto Centre-Rosedale (Ward 27)

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to request instructions regarding a potential settlement of the action commenced by The Atlas Corporation against the City of Toronto, for damages arising out of delay claims from the Old City Hall Mechanical Upgrade Project - 60 Queen St. W.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council approve the settlement set out in Confidential Attachment 1;
2. City Council adopt the confidential instructions to staff set out in Confidential Attachment 1; and

3. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

Funding for the requested settlement is available in the 2018 - 2027 Council Approved Capital Budget and Plan for Facilities, Real Estate, and Environment & Energy (FREEE). Details are provided in the confidential attachment.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Council awarded the tender No. 192-2008 for the HVAC and Electrical Upgrade to Old City Hall to The Atlas Corporation ("Atlas") for \$32,700,000 at its meeting on April 29 and 30, 2009.

For budgetary reasons, Council awarded the tender in two parts, the first \$21,061,550 was awarded by Council on April 29, 2009.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM22.17>

Purchase Order No. 6029453 was issued on December 22, 2009 in the amount of \$21,061,550, net of HST.

The remaining \$11,638,450 was approved by Budget Committee on November 16, 2009 - Ref. BU59.1 and awarded by Council on December 8, 2009.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.BU59.1>

Purchase Order No. 6032199 was issued on December 24, 2010 in the amount of \$11,638,450, net of HST.

There were two amendments to Purchase Order No. 6032199. Amendment 1, dated June 13, 2016 increased the amount by \$11,900 in order to correct the total funds to release the hold back payment. Amendment 2, increased the amount by \$265,421 for a payment made to Atlas for overhead costs in relation to a contract extension that was provided because of the work restriction imposed in the Infrastructure Ontario tenanted areas during the project.

COMMENTS

Atlas commenced an action against the City for \$9,830,804 plus interest and legal fees, less \$265,421.45 already paid to Atlas by the City for the 7.5 month contract extension. The action is essentially a delay claim made by Atlas stemming from its contract to construct the Old City Hall Mechanical Upgrade Project.

The Mitchell Partnership ("TMP") was retained to both design the project and manage its construction. The contract for the construction was awarded to Atlas for \$32,700,000. Work commenced in February of 2010. It was estimated that the project would take 4 years to complete. The completion date calculated by the City was April 8, 2014.

During the construction of the project there was a 10 month cessation of the work in all areas tenanted by the Ontario Realty Corporation ("ORC") which would later become Infrastructure Ontario ("IO"), from February 2011 to December of 2011 (areas occupied by the courts, judicial and administrative staff). The cause of the work cessation is an area of dispute in the litigation. This led to a 7.5 month extension to the contract, the new schedule completion date was December 2014.

The implementation of the project was phased to accommodate the tenants and ensure that there was no disruption of their operations. As a result of the work cessation in IO tenanted areas, the phasing of the project required resequencing which affected the areas that could be worked in. The effect of the resequencing is an area of dispute in the litigation. The project reached substantial completion on November 9, 2015. Throughout the project, Atlas provided the City with numerous claims for delay. These claims culminated in the action commenced by Atlas against the City.

Staff from Legal Services and Facilities Management entered into settlement discussions with Atlas. A settlement in principle has been agreed upon by Atlas and staff from Facilities Management. Approval of the settlement terms and amount are being sought through this report, the particulars of which are in the confidential attachment.

CONTACT

Roberto E. Zuech, Solicitor 1, Legal Services, Telephone: (416) 392-3735, E-mail: Roberto.Zuech@toronto.ca

Patrick Matozzo, Director Project Management Office, Internal Corporate Services, Telephone: (416) 392-5198, E-mail: Patrick.Matozzo@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

Sunil Sharma
General Manager Facilities Management,

ATTACHMENTS

Confidential Attachment 1 - Confidential Information