



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Carillion Canada Inc. v. City of Toronto Proposed Settlement of Outstanding Claims - Union Station Revitalization Project

Date: May 7, 2019

To: City Council

From: City Solicitor and the Deputy City Manager, Corporate Services

Wards: Ward 10 - Spadina-Fort York

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 global settlement of the action commenced by Carillion Canada Inc. against the City of Toronto and related proceedings, all arising out of the Union Station Revitalization Project's Stage 1 work.

RECOMMENDATIONS

The City Solicitor and Deputy City Manager, Corporate Services recommend that:

1. City Council approve the terms of settlement set out in Confidential Attachment 1.
2. City Council adopt the confidential instructions to staff 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 details are provided in the confidential attachment.

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

DECISION HISTORY

At its meeting on November 30, December 1, 2, 4 and 7, 2009, City Council authorized the award of a General Contractor / Construction Manager contract to Carillion Canada Inc, the recommended proponent, in an amount of up to \$450 M, to carry out all stages of the Union Station Revitalization Project

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM26.32>

At its meeting on December 16, 17 and 18, 2013 City Council approved the Union Station Revitalization - Status update, including authorization for the Chief Corporate Officer to change the delivery method for construction work of the remainder of the Union Station Revitalization Project

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.GM26.5>

At its meeting on July 7, 8 and 9, 2015, City Council authorized the award of tender call No. 75-2015, to Bondfield Construction Company Limited in the amount of \$178 M to carry out work on the Union Station Revitalization project, Stages 2 and 3

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM5.19>

At its meeting on November 14, 2016, Government Management Committee granted authority to amend Contract No 75-2015 with Bondfield Construction Company Limited by \$28 M to allow for the remaining scope of work from Stage 1 of the Union Station Revitalization Project to be transferred to Stages 2 and 3

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM16.12>

COMMENTS

Tender and Award of Construction and Design Services for the USRP

A construction management master contract for the construction component of the Union Station Revitalization Project (USRP) was awarded to Carillion Canada Inc. (CCI) in November 2009, in the amount of \$450 M.

The City retained CCI as the General Contractor-Construction Manager (GC/CM). The master contract contemplated that the City and CCI would enter into phase agreements for the full extent of the construction work required for the USRP. CCI, as the GC/CM, was contracted to provide specialized construction professional services, on behalf of the City, inclusive of providing construction leadership, contract management, direction, supervision, coordination and control of the construction work. This type of contract is typically used on a complex project when construction must be performed in stages before the total design and contract drawings are complete.

The City retained NORR Limited (NORR) as its prime consultant. NORR's role was to provide architectural, engineering and other consulting services for the design of the project and to administer the City's contract with CCI.

Construction - Stage 1

CCI commenced work to complete Stage 1 of the USRP in 2010, with heavy construction work commencing in 2011. It was originally estimated that the full scope of the USRP was to be complete by June 2015. When the project commenced contract drawings were approximately 30% complete.

Major elements of stage 1 work included the York West Concourse, West Wing, VIA elements including the new Panorama Lounge, major mechanical and electrical upgrades, exterior heritage façade restoration, and significant portions of the dig down beneath the tracks as well as the retail spaces beneath the VIA and York Concourses.

The USRP experienced challenges throughout, owing to the nature of the project and the performance of CCI. For example, Union Station's status as a National Historic Site meant that there were specific requirements associated with this designation that needed to be met. Also, construction work had to be coordinated with adjacent major capital projects being carried out by the TTC and Metrolinx. Unknown and unforeseen conditions frequently came to light as the construction progressed, primarily due to the age of the facility. Finally, design and coordination issues arose, given the City's commitment to ensure the facility remains active and to minimize impacts to commuters and stakeholders during the course of the USRP. These challenges impacted both the cost and schedule of the USRP.

In 2013, the City began to contemplate other available construction delivery methodologies, aside from the GC/CM master contract with CCI. In 2015, with the design now 100% complete and with ongoing and increasing issues with the progress of the project under the existing GC/CM arrangement with CCI, the City decided to pursue the delivery of Stages 2 and 3 through a more typical stipulated price, lump sum contract. CCI's scope of work would be reduced, limited to the completion of the Stage 1 work it had begun.

In 2016, some Stage 1 works remained incomplete, and the contract for the Stage 2 and 3 work had been awarded to Bondfield Construction Company Limited ("BCCL"). CCI performance issues, and ongoing challenges associated with the project's complexity, continued to impact progress of the remaining Stage 1 work, as well as the commencement of Stage 2 and 3 work in many areas. As a result, the City decided to transfer the remaining scope of Stage 1 work to BCCL (approximately \$20 M). The City quickly began to wind down its contractual relationship with CCI, and CCI was off site and no longer working on the USRP by the summer of 2016.

Stage 1 Construction Budget and Costs

The initial budget for Stage 1 construction on the USRP was \$280 M, plus an approximate 10% contingency of \$30 M for a total of \$310 M. Of this amount, approximately \$20 M was transferred to Stage 2 and 3 works. In total the City paid CCI \$366 M (inclusive of holdbacks) for the services and work performed on a reduced Stage 1 scope, prior to any claims. This was approximately 40% greater than the original budget for the reduced stage 1 scope of work CCI completed (\$260 M = \$280 M - \$20 M of scope transferred).

Litigation

Throughout the construction of Stage 1, multiple notices of claim were received in connection with the construction activities performed under CCI's contract. These claims were filed by CCI and its subcontractors. Claims in a project are not unexpected and must be carefully assessed, taking into consideration the complexity and duration of the project, as well as the number of changes required. The City took the step of obtaining external legal expertise to protect its interests to provide construction law support and litigation services to deal with the claims put forward by CCI and its subcontractors.

A complex set of lawsuits was started in 2015. CCI's claim was the largest. As issued, the claim was for \$160 M, excluding interest and costs. CCI's claims include flow through claims made against it by its subcontractors. NORR has also sued the City for \$15 M in extra fees, mainly due to the extended duration and additional work associated with Stage 1 as construction costs increased. The City has counterclaimed against CCI, has issued a Third Party Claim against Metrolinx, and has sued NORR for \$16 M.

A number of steps have been taken in these lawsuits. Parties with an interest in the resolution of these claims agreed to participate in a mediation, which was held over the course of 5 days on March 26, 27 & 28, and April 1 & 2, 2019. The participating parties included the City, CCI, CCI subcontractors, NORR, Metrolinx and AIG (CCI's surety). Of note, since the litigation was launched CCI applied for relief under the Companies' Creditors Arrangement Act ("CCAA"). Ernst & Young, the monitor appointed by the Court under that process therefore also participated in the mediation. A settlement in principle has been agreed to through the mediation process by all parties. The

settlement is subject to approval by City Council. Approval of the settlement terms and amount are being sought through this report, the particulars of which are presented and discussed in the Confidential Attachment.

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SIGNATURE

Wendy Walberg
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ATTACHMENTS

Confidential Attachment 1 - Carillion v. Toronto - Proposed Settlement Terms