

Ashbridges Bay Treatment Plant Effluent Disinfection System - Construction Delay Claims

Date: January 16, 2023

To: Infrastructure and Environment Committee

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

Background:

The City awarded Contract No. 17ECS-MI-03AB to Graham Construction and Engineering LP ("**Graham**") on January 19, 2018 to upgrade the effluent disinfection system at the Ashbridges Bay Treatment Plant ("**ABTP**") and to refurbish the water pumping station and seawall substation. The total value of the contract is \$209,363,500 excluding HST.

During excavation work, Graham discovered existing buried sheet piles which interfered with the proposed construction. The City was not aware of the sheet piles prior to excavation and issued a change directive to Graham dated August 20, 2018 for their removal.

The City issued a second change directive to Graham dated August 21, 2018 to remove a portion of the seawall which extended approximately 90 metres further west than shown in the contract drawings and was directly interfering with the location of influent channels and service tunnels that would support the disinfection building.

Due to the delays related to the work associated with the change directives, the City issued change order 097 ("CO97") dated November 25, 2020 to grant Graham an extension of time. Graham subsequently submitted a claim for costs arising from the modified scope of work and a dispute has arisen between the City and Graham with respect to the resulting time and cost impacts.

Graham's Additional Delay Claims:

In addition to the extension of time the City granted to Graham in CO97, Graham seeks additional extensions of time due to alleged delay events from January 31, 2019 to November 2020.

The City disputes Graham's assessment of the causes and calculation of these delays.

Confidential Attachment 1 contains legal advice from the City Solicitor with respect to the assessment of these claims and recommendations for dispute resolution.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the confidential instructions in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor and that the balance of Confidential Attachment 1 remain confidential in its entirety, as it pertains to potential litigation and contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1

DECISION HISTORY

None

COMMENTS

Engineering & Construction Services have been consulted in the preparation of this report and agree with these recommendations.

Further comment on this matter is discussed in Confidential Attachment 1

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Legal Advice and Confidential Instructions to Staff