

Supplementary Report - GG20.12 - Litigation Arising from the Rehabilitation of Section 1 of the F.G. Gardiner Expressway (Jarvis Street to Cherry Street)

Date: April 22, 2025

To: City Council

From: Chief Procurement Officer and Executive Director, Engineering and Construction Service Division

Wards: All

SUMMARY

At the April 7, 2025 meeting, the General Government Committee directed the Chief Procurement Officer (CPO), in consultation with the Chief Engineer and Executive Director, Engineering and Construction Services, to report directly to the April 23, 24 and 25, 2025 meeting of City Council with a recommendation as to whether WSP Canada Inc. should be suspended from being eligible to bid on or be awarded any City of Toronto contracts as a supplier of goods and / or services or as a subcontractor to such a supplier and, if so, for how long.

Staff from PMMD and ECS, in consultation with Legal Services, do not recommend suspending WSP Canada Inc. ("WSP"). Suspension is not warranted taking into account the scope of work currently being undertaken by WSP and their overall performance on City contracts.

In addition, the Chief Procurement Officer is concerned that all of the steps required by the City's Supplier Suspension Procedure could not be followed given the time available.

RECOMMENDATIONS

The Chief Procurement Officer and Chief Engineer and the Executive Director, Engineering and Construction Service recommend that:

- 1) City Council allow WSP Canada Inc. ("WSP") to maintain its eligibility to bid on or be awarded any City of Toronto contracts as a supplier of goods and/or services or as a subcontractor to such a supplier.

2) In the alternative, if Council wishes to consider the suspension of WSP, City Council direct the Chief Procurement Officer to advise WSP of the proposed basis for its suspension, provide WSP with 30 days to respond to the communication, and to report to the General Government Committee in accordance with the requirements of the Supplier Suspension Procedure with a recommendation as to whether WSP should be suspended from being eligible to bid on or be awarded any City of Toronto contracts as a supplier of goods and / or services or as a subcontractor to such a supplier and, if so, for how long.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of this report.

DECISION HISTORY

At its meeting on April 7, 2025 the General Government Committee directed the Chief Procurement Officer, in consultation with the Chief Engineer and Executive Director, Engineering and Construction Services, to report directly to the April 23, 24 and 25, 2025 meeting of City Council.

<https://secure.toronto.ca/council/agenda-item.do?item=2025.GG20.12>

COMMENTS

Background

This supplementary report outlines the review undertaken by the Chief Procurement Officer and Executive Director, Engineering and Construction Services, in accordance with the direction from the General Government Committee on April 7, 2025.

Procurement Bylaw & Supplier Suspension Procedure

The City's procurement processes are governed by Toronto Municipal Code, Chapter 195, Procurement (the "Procurement Bylaw"). Article 13 Supplier Code of Conduct of the Procurement Bylaw sets out standards for ethical business practices, transparency, and accountability. The Supplier Suspension Procedure requires that decisions to suspend must be evidence-based, proportionate, and follow a transparent and fair process.

The Supplier Suspension Procedure contemplates that, where Council is considering suspension of a supplier, the supplier will receive advance notification inviting it to respond with any additional information within 30 days and the Chief Procurement Officer and relevant Division Head will report to the appropriate Standing Committee

with a recommendation. In accordance with Chapter 27, Council Procedures, a supplier would have an opportunity to depute at the committee meeting.

In this case, after the April 7, 2025 GGC meeting, in order to determine whether it was appropriate to recommend that WSP be suspended, PMMD and ECS reviewed the number and scope of existing contracts WSP has with the City, consulted with staff within ECS and other City divisions overseeing WSP projects, and invited WSP to provide information in response to the motion under consideration, as summarized below.

Analysis

The City has 88 active contracts with WSP with multiple City Divisions. Engineering and Construction Service (ECS) conducted outreach to City divisions holding the WSP contracts to assess WSP's performance on current and past projects. The feedback received from operational staff confirmed that WSP continues to meet overall expectations in its active work for the City.

Based on this due diligence, ECS submitted a recommendation to the CPO not to proceed with suspension.

In addition to ECS's outreach, the Purchasing and Materials Management Division (PMMD) reviewed WSP's performance under the Contractor Performance Evaluation Procedure. The evaluation, based on defined, transparent metrics, resulted in a positive score, providing further evidence that suspension is not warranted.

The CPO wrote to WSP on April 16, 2025 advising it that Council would be considering her recommendation with respect to whether to suspend it, and invited WSP to respond with any information that it thought relevant to her review. WSP responded by letter dated April 21, 2025, a copy of which is attached for Council's reference. In their letter, WSP noted that it has approximately 190 ongoing projects and that it greatly values its business relationship with the City. In addition, the action filed by the City against WSP related to the Rehabilitation of Section 1 of the F.G. Gardiner Expressway (Jarvis Street to Cherry Street) has not concluded and the outcome has not yet been determined. The design errors alleged to have arisen during this project were addressed during construction so the outstanding issue to be determined now is how the costs incurred to address those errors is to be apportioned. WSP indicated that it is responding to this claim in a good faith manner and committed to finding an amicable resolution.

Conclusion

Following a review of the current situation, including WSP's performance history, the City of Toronto's procurement policies, the Supplier Suspension Procedure and Chapter 195 of the Municipal Code, the Chief Procurement Officer does not recommend suspending WSP Canada Inc. Instead, continued monitoring and engagement with the supplier should be pursued to address any concerns and ensure compliance with contractual obligations.

CONTACT

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SIGNATURE

Geneviève Sharkey
Chief Procurement Officer

Jennifer Graham Harkness P.Eng. Chief Engineer and Executive Director, Engineering and Construction Services

ATTACHMENTS

Attachment 1 - City of Toronto Letter_21 April 2025
Attachment 2 - Schedule A - Project List for City of Toronto
Attachment 3 - Schedule 'B' - WSP