

Suspension of Duron Ontario Ltd.

Date: February 11, 2025

To: General Government Committee

From: Executive Director, Corporate Real Estate Management Division and the Chief Procurement Officer

Wards: All

SUMMARY

This report recommends that City Council suspend Duron Ontario Ltd.'s ("Duron") eligibility to bid on, or be awarded, any City of Toronto contracts for a period of five years for contraventions of the City of Toronto's Supplier Code of Conduct (Supplier Performance) in Chapter 195 of the Toronto Municipal Code, which clearly states that a supplier shall not: over-bill, double bill, retain a known over-payment, fail to notify the City of an over-payment or duplicate payment within a reasonable time, submit misleading information to the City, submit false or exaggerated claims to the City, bill for goods and services not supplied, or commit any professional misconduct that adversely reflects on the commercial integrity of the supplier.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management Division and the Chief Procurement Officer recommend that:

1. City Council suspend Duron Ontario Ltd.'s and any affiliated persons, as defined in Chapter 195, 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, including any options, renewals or extensions of existing contracts, for a period of five (5) years commencing upon the date of approval of this report.

FINANCIAL IMPACT

There are no financial implications from this recommendation in the report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information presented in the Financial Impact Section.

DECISION HISTORY

In accordance with the authority in Section 13.13(c) of the Procurement Bylaw, and the request of the Executive Director, Corporate Real Estate Management, on June 10, 2024, the Chief Procurement Officer issued a letter to Duron advising the company that the City was suspending Duron's eligibility to bid on any City of Toronto procurement opportunities for a temporary six (6) month period, based on the initial audit findings noted in the report. In accordance with the Supplier Suspension Procedure, Duron was provided with advance notification that the Chief Procurement Officer was considering a proposed temporary suspension of Duron, including the reasons for the proposed suspension. Duron was also provided with an opportunity to provide additional information to the Chief Procurement Officer relevant to the decision to approve the proposed suspension.

On December 17 and 18, 2024, City Council approved a four (4) month suspension of Duron's 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, including any options, renewals or extensions of existing contracts. The suspension also included any affiliated persons of Duron, as defined in Chapter 195. The extended suspension will expire on April 18, 2025. The purpose of this suspension was to provide Duron with an opportunity to present evidence to the City in consideration of a longer suspension as is being contemplated by this Report.

COMMENTS

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. It requires suppliers to engage with the City in an honest and fair manner, avoid conflicts of interest, respect confidentiality, and adhere to fair bidding practices. Suppliers must not engage in collusion, interference, or provide gifts to influence City officials. Compliance with the Supplier Code of Conduct is mandatory, and contraventions by suppliers, such as unethical behaviour or performance issues, can lead to disqualification, suspension, or further sanctions. The Supplier Code of Conduct ensures that suppliers uphold the City's high standards, contributing to a fair and responsible procurement and contracting process.

Following a series of concerns raised by Arcadis IBI Group ("Arcadis"), the consultant retained by the City, regarding Duron's invoicing practices with respect to a number of change orders, the City launched a formal investigation into Duron's conduct. Early discrepancies revealed potential overbilling and inconsistencies in subcontractor documentation that accompanied change orders submitted to the City. This prompted the City to retain a third-party to conduct an audit to investigate the full extent of the billing inconsistencies. This audit, led by KPMG, had multiple phases to provide a comprehensive review of Duron's billing practices related to the Toronto Accessibility

Upgrades Program ("TAU"). The audit's findings to date have further substantiated the City's concerns related to contraventions of the Supplier Code of Conduct and highlighted issues within Duron's billing processes for the TAU project.

Summary of the Investigation and Audit Process

Initiation of Investigation and Initial Findings (June 2022)

The investigation began in June 2022, when Arcadis, the City of Toronto's Prime Consultant of Record and contract administrator for the TAU project, alerted City staff of inconsistencies found in a contemplated change order ("CCO") that was submitted by Duron. A CCO is a written instruction to obtain pricing for work associated with a proposal to alter a product or service.

Arcadis and Duron reviewed the inconsistency on June 13, 2022, and it was discovered that alterations had been made to the subcontractors' invoices that formed the basis for the CCO. Examples of these inconsistencies are summarized below. For confidentiality purposes, the names of subcontractors and specific individuals involved in the investigations have been redacted.

- **Example #1:** A CCO submitted on April 18, 2022 by Duron to Arcadis quoted a price of \$4,031.14, from Subcontractor A. Arcadis requested a copy of the quotation from Subcontractor A, which noted a price of \$2,731.41 (discrepancy of almost \$1,300).
- **Example #2:** On November 3, 2021, Duron submitted a change order quoting \$3,369.00 for wall tiling materials from Subcontractor B. When Arcadis verified with Subcontractor B, they found the original quote was \$2,369.00, revealing a discrepancy of \$1,000.

After being notified of these findings, Duron indicated that a specific, but unidentified employee, was solely responsible for the alterations and reported that it had terminated the individual's employment. Duron also raised allegations of misconduct by Arcadis and its employee leading the initial investigation. To ensure fairness and impartiality in the investigation, the City, through a joint decision by the Corporate Real Estate Management ("CREM") and Purchasing and Materials Management Division ("PMMD"), engaged KPMG as an independent third-party to conduct an audit. Additionally, Arcadis and CREM staff simultaneously implemented additional checkpoints to verify and review future change orders from Duron on this project.

On August 2, 2022, the City sent Duron a notice that it would be exercising its contractual right to conduct an audit of Duron's billing related to the TAU project. KPMG began the audit in September 2023, employing a three-phase approach to investigate Duron's billing practices.

KPMG Audit - Phase 1, Change Order Sampling (September 2023)

In Phase 1, KPMG sampled 40 change orders from the TAU Program, finding multiple anomalies in 28. The sample represented approximately 10% of the change orders submitted by Duron on the TAU project. This initial phase confirmed the need for a deeper investigation into Duron's billing and documentation practices.

Phase 2 - Subcontractor Verification (February 2024 - April 2024)

In February 2024, KPMG launched Phase 2 of the audit, focusing on verifying documents directly with Duron's subcontractors. KPMG contacted 19 subcontractors to obtain original quotes, invoices and proof of payment, emails, and any other forms of communication they used with Duron. Four subcontractors provided documents to KPMG prior to April 19, 2024. KPMG also conducted additional follow up visits and sent follow up correspondence to subcontractors about documentation they provided. On April 19, 2024, KPMG presented preliminary Phase 2 findings to City staff, which revealed significant discrepancies in the change order documentation, including:

- The price presented by Duron to Arcadis was higher than what was observed in the quotes, estimates and other subcontractor documentation obtained by KPMG directly from the subcontractors;
- Differences in dates and/or the work described;
- Instances where the subcontractor advised KPMG that the quote did not exist in their system or they were not selected to perform the work set out in the quote and the work did not proceed; and
- Differences in font and formatting that do not align with the rest of the format.

Some examples of the above findings are listed below.

- **Example #1:** A quote submitted to Arcadis on January 26, 2022, by Duron as part of Quote #403954 from Subcontractor C, had a total price of \$34,383.66. The quotation received by KPMG from Subcontractor C as part of Quote #403954 had a total price of \$29,306.22.
- **Example #2:** A change order was submitted by Duron to Arcadis under Quote #403574 on February 16, 2022, from Subcontractor D. KPMG was told by Subcontractor D on March 1, 2024, that they could not locate this quotation in their records, and the subcontractor has no record of being paid for this work.
- **Example #3:** A quote submitted to Arcadis by Duron included a quotation from Subcontractor E, with a quotation date of February 9, 2021. The total of this quotation was \$20,070.00. KPMG received a copy directly from Subcontractor E on April 4, 2024, which reflected a quotation amount of \$15,070.00.
- **Example #4:** A quote submitted to Arcadis by Duron included a quotation from Subcontractor F, dated March 12, 2021, for CCO-18. The total of this quotation was \$1,850. This quotation was approved and paid by the City. On April 4, 2024, Subcontractor F confirmed to KPMG that work submitted in relation to this quotation was not completed by the Subcontractor and, therefore, they were never paid for the quoted amount.

On April 23, 2024, the City re-engaged Duron's subcontractors, advising them that KPMG was continuing to conduct an audit and requesting their cooperation. This further appeal resulted in a subcontractor providing further documents.

Phase 3 - Admissions and Further Findings (May 2024 - August 2024)

On October 8, 2024, KPMG submitted a preliminary reporting letter (the "Report") to the City outlining the progress of the audit to date, which is summarized below.

- At the conclusion of Phase 2 of the audit, KPMG reported that it had reviewed a sample of 42 Change Orders, which accounts for roughly 10% of all Change Orders on the TAU project. KPMG observed 12 instances involving differences in dollar amounts quoted with the effect of overstating Duron's cost or understating credits due to the City, resulting in an overbilling of \$40,658 (before tax) by Duron.
- On August 1, 2024, KPMG met with Duron management Staff A and Staff B as part of Phase 3 of the audit (the "Meeting"). In the Meeting, Staff A and Staff B admitted to KPMG that after Arcadis had identified irregularities in June 2022, Duron had commenced its own internal review. Duron's own internal review identified a number of occasions on which subcontractor quotes or invoices were altered and/or falsified before submission to Arcadis and Duron validated KPMG's findings. Despite the findings of its own internal investigation, nothing was communicated to the City until the Meeting with KPMG. Duron did not prepare nor provide a quantification of the amount overbilled to the City at the Meeting, but agreed there had been overbilling and committed to prepare a quantification of same for KPMG.
- By way of an explanation of the irregularities at the Meeting, Staff A and B indicated that the altered quotes were the result of the actions of two Project Managers: Project Manager 1 and Project Manager 2. Duron advised KPMG that Project Manager 2's employment was terminated in June 2024 on the basis of similar behaviour on non-TAU projects. Project Manager 1 continued to be employed by Duron after the internal review. Duron also advised KPMG that a third unnamed project assistant's employment was terminated in 2022 for altering and/or falsifying subcontractors' quotes prior to submission to Arcadis.
- Of note, on June 22, 2022, Arcadis sent a letter to Duron identifying the inconsistencies in the Supplier's documentation provided by Project Manager 1 and asked that this individual be removed from the TAU projects. Duron did not action this request..
- Following the Meeting on August 1, 2024, at KPMG's request, Duron provided its own calculation of the overbilling. It was asked to and did provide KPMG with documentation supporting Duron's own calculation that the City had been overbilled by \$161,804 (excluding tax). Since that time, KPMG has been attempting to reconcile some inconsistencies in the documentation provided to date by Duron and is still trying to understand all of the details of Duron's own internal evaluation. KPMG has requested supporting documentation and

supplementary information, which was provided by Duron in batches of documents in November, December and January. Nonetheless, there is no dispute that Duron overbilled the City in the amount of at least \$161,804 (excluding tax).

In conclusion, while KPMG has reviewed documentation submitted by Duron to date and is continuing to engage with Duron to obtain additional information (as the City is entitled to do pursuant to the terms of the contract entitling it to audit Duron's records), it is staff's view that the currently available information is sufficient to justify the recommended suspension. At a minimum, there is no dispute that the City has been overbilled in excess of \$161,000 and Duron lacked appropriate internal contract management controls.

Recommendation for Maximum Allowable Permanent Suspension

The City of Toronto's Supplier Code of Conduct clearly states that the Supplier shall not over-bill, double bill, retain a known over-payment, fail to notify the City of an over-payment or duplicate payment within a reasonable time, submit misleading information to the City, submit false or exaggerated claims to the City, bill for goods and services not supplied, or commit any professional misconduct that adversely reflects on the commercial integrity of the Supplier. Given the information uncovered by KPMG and at Duron's own admission, these principles have clearly been violated.

Additional items that should be noted:

- KPMG sampled only 10% of the change orders on the TAU Group 10 and 11 projects. Due to limitations in the documentation made available, not all of the items sampled could be assessed for irregularities. Of that sample, sufficient irregularities were found to establish a substantial concern that a significant number of irregularities may exist in the remaining 90% of as-yet unaudited change orders. As a result, the amount that Duron overbilled the City for the TAU projects may be much higher than has been calculated to date. Uncertainty remains in terms of how much has been overbilled at this point.
- Duron admitted to overbilling the City by \$161,804 (excluding tax), which includes most of the instances of overbilling identified by KPMG in their Report, but only in response to the KPMG audit. It had not previously disclosed its internal investigation or its findings from that investigation to the City, and it has not yet shared all of the documentation upon which it based its findings so insufficient review has been done to assess if Duron's analysis is complete and accurate.
- Duron advised KPMG that two individual employees (and an unnamed project assistant) were responsible for the billing irregularities. City staff believe that there is no reason to accept that the behaviour is isolated to those individuals, and are concerned that it is indicative of a lack of appropriate oversight and control within Duron. Duron's decision to continue assigning one of the same employees who engaged in the overbilling to work on the City's TAU projects despite Arcadis's request (from June 2022) to have them removed from the TAU

projects, is very concerning. This has continued even after Duron confirmed that overbilling took place on the TAU project. As a result, it is the position of the City that this establishes a pattern of conduct that is not worthy of the City's trust.

- Since the Meeting, KPMG has repeatedly asked Duron for documentary proof to reconcile, support and test Duron's overbilling calculation for completeness, at different times and relating to different elements of the calculation. In response, Duron provided batches of documents to KPMG in November and December 2024, and in January 2025. Duron management also met with KPMG on December 13, 2024. KPMG continues to follow up.
- KPMG requested access to the altered copies of invoices and quotes that Duron identified, which are stored in shared folders on Duron's server. Duron was unwilling to comply with this request until January 31, 2025. KPMG is now taking steps to retrieve these documents from Duron.
- KPMG has repeatedly asked Duron for access to interview the individual who remains employed by Duron (Project Manager 1), who was one of the three individuals Duron claims engaged in the overbilling, two of whom are no longer employed by Duron. On January 31, 2025, Duron advised that it would permit KPMG to interview this employee. Duron has not yet told KPMG the name of one of the former employees who Duron claims participated in the overbilling, and this individual remains unidentified.
- A further request by KPMG for access to Duron's internal emails, including the mailboxes of three employees, has not been granted.
- The City is continuing to exercise its right of audit under the TAU contract through KPMG. While this audit has not yet been completed, in staff's view, the currently available information is sufficient to justify the proposed suspension.
- Once Arcadis identified the irregularities in 2022, the City instituted additional checkpoints and due diligence on all billing documentation submitted by Duron. Since that time, no irregularities have been identified. As of the date of this report, the TAU projects have achieved substantial completion and are in the warranty period.

The City has enforced its indemnity under the TAU contract with Duron and is withholding \$1,000,000 to guarantee full recovery the admitted-to overpayment monies as well as the entirety of the audit costs.

In light of the documented breaches of the Supplier Code of Conduct found by Arcadis and KPMG, staff from CREM and PMMD, in consultation with Legal Services, recommend that Duron be suspended from being eligible to bid on any City of Toronto contracts for a period of five (5) years commencing upon the date of approval of this report. This is the maximum allowable suspension period under the Procurement Bylaw, and this decision is based on the findings that Duron breached the following provisions in the City's Supplier Code of Conduct:

- Duron over-billed, double billed, retained a known over-payment, and failed to notify the City of an over-payment or duplicate payment within a reasonable time,
- Duron submitted misleading information to the City;
- Duron submitted false or exaggerated claims to the City;
- Duron billed for goods and services not supplied; and
- Duron committed any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.

The Report from KPMG will be presented to the Auditor General, Audit Committee, and City Council, providing full transparency on the extent of the misconduct and the measures taken to address it.

In accordance with the City's Supplier Suspension Procedure, Duron was provided with advance notice of the staff's recommendation to proceed with a staff report recommending a 5-year suspension of Duron's eligibility to bid on all City procurement opportunities. Duron was also presented with multiple opportunities to provide the City with additional information and documentation in support of its position that the report should not proceed to the General Government Committee, including a meeting with City staff on January 31, 2025 and the submission of written responses for Duron objecting to the 5 year suspension on November 7, 8 and 19, 2024, and on February 6, 2025. The response materials from November 2024 were before the General Government Committee and Council when the four (4) month suspension was approved. In addition, Duron's legal counsel attended at the General Government Committee meeting on November 20 and made depositions. All of Duron's communications and the information it provided in its meetings with the City and to KPMG were considered by staff in the preparation of this Report. The most recent submission from Duron summarizes information that they have provided to staff, so it is provided as Attachment 1 to this Report. The lengthy exhibits referenced in the letter are not attached as they are voluminous and largely irrelevant to the issue of the proposed suspension.

Duron has objected to the imposition of a permanent 5-year suspension on the following grounds:

- i) the proposed 5-year term of the suspension is excessive;
- ii) the amount overbilled by Duron (\$161,804) was minor when compared to the price of the entire contract;
- iii) Duron provided information and documents in response to KPMG's requests;
- iv) the overbilling practices verified by KPMG were limited to a few individual employees, two of whom no longer work for Duron and one of whom "stopped any falsifications" and is "remorseful";
- v) new measures have been instituted by Duron through the engagement of a third party human resources consultant, including a Code of Ethics and a Code of Conduct, as well as a Formal Document Control Procedure,
- vi) the proposed suspension has adversely impacted Duron's revenue, its ability to obtain financing and affected corporate succession planning; and
- vii) Duron has offered to repay the overbilled funds and the costs of the audit.

Duron was engaged in two contracts with the City for Engineering & Construction Services and in Solid Waste Management. The project under Engineering & Construction Services contract has achieved substantial completion, and the project under the Solid Waste Management is in the warranty period. Divisions were made aware at the beginning of Phase 2 of the KPMG audit, and Duron's invoices for these contracts were closely monitored.

The City strives to uphold accountability and protect the integrity of public funds by enforcing the Supplier Code of Conduct and deterring similar misconduct by other suppliers. By adopting the recommendations in this report, City Council will clearly communicate to Duron and all City suppliers that the City will hold its suppliers to account for any contraventions of the City's Supplier Code of Conduct, and a lack of good faith in dealings with the City will not be tolerated on City of Toronto contracts.

The purpose of the proposed 5-year suspension is not to punish or penalize Duron; it is to ensure that Duron is held accountable for the actions of its employees on contracts involving public funds. In accordance with the Supplier Suspension Procedure, the recommendation has been based on a balanced review of whether Duron's conduct presents a risk to the City's valid commercial or business interests. By approving the recommended 5-year suspension, the City reinforces its commitment to responsible and fair procurement and contracting practices, protecting public trust, and ensuring taxpayer dollars are spent with integrity and accountability.

CONTACT

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ATTACHMENTS

Attachment 1: Correspondence from Duron (February 5, 2025)