



STAFF REPORT ACTION REQUIRED

Toronto-York Spadina Subway Extension Pre-Approval on Claim Settlements

Date:	July 29, 2015
To:	TTC Board
From:	Chief Executive Officer

Summary

The purpose of this report is to advise the Board that TYSSE Project Management will follow an expedited approval process as required, per TTC policy “Authorization for Expenditures and Other Commitments Policy” to process timely resolutions and settlements of early claims as a part of the project reset.

Recommendations

It is recommended that the Board:

1. Approve the pre-approval process for TYSSE claim settlements on an exception basis where the terms of the negotiated settlement are time sensitive and approval cannot await the Board’s decision at the next scheduled meeting.

Financial Summary

The project budget is \$2.784B as approved by the Board as of March 26, 2015 and by Council as of March 31, 2015. To date, this project has committed to \$2.533B and \$1.950B has been spent.

Total estimated claims costs will be reported to the Board by the end of 2015. In the meantime, project staff are able to resolve some claims as part of the project reset approved by the Board and City Council in March, thereby ensuring work progresses to meet the end of 2017 schedule. Pre-approval on resolution of any claims by staff will remain within the approved project budget.

Accessibility/Equity Matters

There are no accessibility or equity issues.

Decision History

The TTC is constructing an 8.6 km subway extension from the existing Downsview Station located in the City of Toronto, to the proposed Vaughan Corporate Centre located in the City of Vaughan, Region of York. The Toronto-York Spadina Subway Extension (TYSSE) will be an important part of both the TTC network and regional transit, improving transit in Toronto and the GTA.

In March 2015, the Board authorized retaining a third party project management firm to deliver the project by the end of 2017 through a project reset. The project reset included re-establishing the baseline schedule to support the end of 2017 line opening, re-establishing cost, including the estimate on claims and reporting back to the Board by the end of 2015 and re-establishing contractor relationships by resolving some claims early and advancing the payment.

[4.1 Toronto-York Spadina Subway Extension – Schedule and Budget Change \(This report with confidential attachment contain information that is subject to solicitor-client privilege\) \(For Action\) \(revised to include Appendices F-G\)](#)

Issue Background

To date, the majority of claims received are for change events or schedule delay and require analysis of entitlement for costs or extensions of time. The historic response of the Project has generally been to defer claims or proceed through a dispute process. Although the dispute process has been used in many of the contracts, there remains a large number of outstanding issues/claims. As a result, the work performance has suffered and collaboration toward the successful delivery of the Project has been hampered, leaving all of the station contractors in the position of submitting requests for additional compensation and time.

Under the reset approach, claims submitted by Contractors are currently being assessed by Project Management staff and external forensic scheduling consultants. However, project work may be delayed when claim settlements are not approved in a timely fashion in accordance with negotiated terms of settlement. In an effort to move forward in a co-operative and expeditious manner, where possible, claims are being negotiated for settlement as the project moves forward rather than at the end. Prompt approval and payment will further that objective. This may require the need for pre-approval of some settlements which cannot wait for Board approval.

Comments

In order to ensure that the Project claims are addressed and finalized in a timely manner and recognizing that the Board meetings do not coincide with negotiations, staff will seek approval to settle claims in accordance with the Authorization for Expenditures and Other Commitments Policy (Attachment 1). The Policy states that “The Board delegates authority to the Chair, Vice-Chair and CEO to authorize items that would normally be authorized by the Board when the approval is required prior to the next Board meeting. If the Chair and/or the Vice-Chair are not available, authority will be deemed to be delegated to any two (2) Board members and the CEO. These authorizations are to be followed up by a notice of settlement Board report that is to be submitted to the next scheduled Board meeting for information.” This process will only be utilized in extenuating circumstances where approval cannot be postponed until the next scheduled Board meeting.

Other approvals by a funding partner or the Executive Task Force will also be obtained, if required.

Two notice of settlement reports are before the Board for information arising from the application of the policy in June. These reports required pre-approval for the settlement of claims for Sheppard West Station and Southern Tunnels, Contract A35-25 and for Vaughan Corporate Centre Station, Contract A37-1.

Staff will report to the Board by the end of 2015 on the total estimated claims cost for the project.

Contact

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Attachment

Attachment 1 - TTC Policy 6.5.0 Authorization for Expenditures and Other Commitments

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6.5.0 Authorization for Expenditures and Other Commitments

1.0 RESPONSIBILITY

Head of Finance

Head of Materials and Procurement (M&P)

2.0 PURPOSE

To establish the guidelines and requirements for the classification and control of expenditures and other commitments which require either Board approval or Chief Executive Officer (CEO) approval at various dollar value limits.

The approval of invoices for payment is separate and distinct from the authorization for expenditures. The approval of invoices for payment only involves the approval to make payments (based on receipt of satisfactory goods and services at agreed prices). The authorization for expenditures deals with authority to make purchases or commitments on behalf of the TTC. Please refer to the Delegation of Invoice Approval Authority Policy for further guidance.

3.0 DELEGATION

3.1 The authorization for expenditures and other commitments covers both budgeted and unbudgeted items as outlined in Table 1 below. Budgeted items are comprised of: acquisition of goods and services; contract amendments; leasing, realty and concession agreements; utilities, statutory payments and agencies limits including City of Toronto contracts and other operating agreements. Purchase authorization and contract amendment authority can be delegated for budgeted items and unbudgeted items, however unbudgeted items cannot be delegated below a department head level.

For leasing, realty and concession agreements, the limits also apply to the ability to enter into revenue generating agreements.

For Purchasing Cards, the limit shall be as identified in the Procurement Policy. Reference the Petty Cash Policy for petty cash expenditures.

3.2 The signing authority of the CEO may be delegated in writing, as the CEO deems appropriate. (Refer to Delegation of Management Authority Policy).

3.3 Authorization for expenditures and other commitments are established up to the following limits, noting that these represent total contractual values including applicable taxes per commitment request, unless noted otherwise:

Commencing Projects/Authorizing Contracts and Commitments (Table 1)				
APPROVER	UNBUDGETED ITEMS	BUDGETED ITEMS		
		Goods & Services	Contract Changes / Amendments	Leasing Realty & Concession (per annum)
Board	\$500,000+	\$5.0 million+ * (Exceptions \$500,000+)	\$2.5 million+	\$200,000+
Chief Executive Officer	\$500,000	\$5.0 million	\$2.5 million	\$200,000

* Exceptions: Board approval is also required for:

- (a) Sole source requirements greater than \$500,000 in accordance with the Procurement Policy:
and
- (b) Requirements greater than \$500,000 where the recommended company is not: (1) the lowest priced compliant bid: or (2) the best qualified and either lowest priced or acceptable priced proposal. These exceptions will also require the review and approval of the Legal Department regardless of the value.

3.4 Items which normally would not require Board approval may be brought to the Board at the discretion of the CEO.

3.5 The Board delegates authority to the Chair, Vice-Chair and CEO to authorize items that would normally be authorized by the Board when the approval is required prior to the next Board meeting. If the Chair and/or the Vice-Chair are not available, authority will be deemed to be delegated to any two (2) Board members and the CEO. These authorizations are to be followed up by a notice of award Board report that is to be submitted to the next scheduled Board meeting for information.

3.6 Exception to Contract Changes / Amendments in Table 1 "Re-allocation of Funds Amendments" – In the event an authorized procurement involves contract awards to multiple companies, who are awarded contracts with the same scope and nature, the Board delegates amendment authority to the CEO, to re-allocate funds amongst the companies as needed provided the originally approved total aggregate amount, including any subsequent authorized amendments, is not exceeded.

3.7 Notes:

3.7.1 Any authority levels delegated below the CEO including department head level requires the written approval of the CEO.

Any authority levels delegated below a department head level requires the written approval of a department head. A department head must identify all positions in his/her department and corresponding authorization limits and contract amendment authority on the Authorized Signatures Listing.

3.7.2 Each level of management must delegate their full authority during periods of absence in accordance with the Delegation of Management Authority Policy.

3.7.3 The Head of Legal Department has authorization delegated by the Board specifically related to legal issues and claims settlements which are subject to the procedures outlined under the Engagement of Outside Counsel and Settlement of Claims Policies.

3.7.4 An information report outlining amounts written off will be submitted to the Audit Committee on an annual basis. Specific authority to approve write-offs will be delegated by the CEO (e.g., tangible property is issued but no money is received, such as lost fare media) for decisions undertaken in the normal exercise of duties.

3.7.5 For unbudgeted project activity or procurement items, any original amount plus amendments that cumulatively total more than \$500,000 requires Board approval.

For requests up to \$500,000, the CEO may authorize proceeding with an Unbudgeted Item providing that the expenditure can be accommodated within existing budgets. If as a result of a required amendment(s) the cumulative value of the Unbudgeted Item will exceed the CEO's limit, then the appropriate higher level of approval will be required prior to proceeding with the amendment(s).

3.7.6 If all or any part of the work associated with a new contract or a change to a contract that must commence immediately for reasons of safety, security, critical schedule requirements or to avoid delay claims, and authorization for such work cannot be obtained in a timely manner, then designated staff may authorize such work to commence on an interim basis up to their level of authority. Approval for the full value of such work should be obtained before expenses incurred exceed the interim authorization or such further interim authorization that may be subsequently obtained by a higher authority; otherwise the work on the change should be stopped until appropriate authorization is obtained. For safety critical requirements, work should proceed and appropriate authority must be sought at the earliest opportunity.

Inappropriate use of this process may result in a reduction of authority limits.

3.7.7 Where the value of an original contract for the purchase of goods / services is less than \$5 million, prior to the point where the aggregate of the original purchase plus subsequent approved and planned amendments will exceed \$7.5 million, then Board approval of an amendment will be required even if the value of such amendment is less than \$2.5 million. Once the Board authorizes an amendment, normal authorizations will resume as delegated for any additional amendments.

3.7.8 The authorization levels shown are for individual contract amendments and apply to the increases in the contract value for an addition to the scope of work, however, where multiple amendments relate to the same scope of work the cumulative change value for all "same scope work" should be considered as the authorization level required. The authorization levels do not apply to the following: reductions in scope which do not conflict with Board approved design objectives; direct substitutions for work within the scope which do not represent a change to the intent of the scope of work; increases or decreases due to changes in the rate or applicability of a tax or duty; the value of a cash allowance or escalation costs included in a contract; closeout of the remaining unspent value of upset limit contracts; or a no cost time extension that otherwise includes no change to the scope of the existing upset limit contract.

3.7.9 Leasing, realty, and concession contracts having a term over ten years (including all renewal options) require Board approval regardless of the amount. For leasing contracts having a term up to ten years the authorization level contained in Table 1 denotes the guaranteed annual value.

3.7.10 Utilities, statutory payments and other agencies payments and commitments (including municipal payments) not covered by a specific contract, are deemed authorized within the approved budget authority (expenditures or revenues) and may be approved by staff with the appropriate delegated authority related to the following: utilities, taxes, permits, employee related deductions and payments, continuation of operating service and use of facility agreements with other agencies (new agreements will require Board approval) and municipal payments such as city staff Legal and Facility & Real Estate, Special Project and Transportation Planning resource requirements for work performed directly on TTC approved budget activities.

3.7.11 City of Toronto contracts for work undertaken on behalf of the TTC and for which City contracts will be issued to third parties will be approved within staff's delegated approval with the exception that the CEO will have unlimited authority.

4.0 REFERENCE SOURCES

- Authorized Signatures Listing
- City of Toronto Municipal Code, Chapter 279, Article 2
- Delegation of Management Authority Policy
- Engagement of Outside Counsel Policy
- Executive & Department Head Authorization Listing
- Petty Cash Policy
- Procurement Policy
- Settlement of Claims Policy