



STAFF REPORT ACTION REQUIRED with Confidential Attachment

Bombardier Streetcars: Claims Update

Date:	July 11, 2016
To:	TTC Board
From:	Chief Executive Officer
Reason for Confidential Information:	This report contains advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Summary

At the October 28, 2015 Board Meeting, the Board authorized TTC General Counsel to immediately commence a claim or legal action against Bombardier for all damages sustained by the TTC relating to or arising from the schedule delays in the delivery of the streetcars and any other non-performance related issues.

In accordance with the contractual requirements of the TTC's contract with Bombardier Transportation Canada Inc. ("Bombardier") for the design and supply of 204 streetcars, a formal dispute process was established which provides a mechanism to address disputes arising out of the contract. The formal dispute process involves an escalation process for resolving any disputes, including the issuance of a Notice of Dispute, settlement discussions and finally the establishment of a 3 person dispute hearing panel.

TTC issued a Notice of Dispute claiming liquidated damages as against Bombardier in February 2016. The issuance of the Notice of Dispute formally commenced the dispute review process as set out in the contract.

As noted in previous reports, Bombardier has previously issued its own Notices of Disputes relating to two issues (accessible ramp and seat configuration). Both of these issues also remain in dispute.

This report provides an update on the current submitted Notices of Dispute and also provides a legal opinion on other potential legal options that may be available to the TTC.

Recommendations

It is recommended that the Board:

1. Receive the information as set out in the report and the Confidential Attachment;
2. Authorize that the information provided in the confidential attachment is to remain confidential in its entirety as it contains information that is subject to solicitor-client privilege.

Financial Summary

Due to delay to the vehicle delivery schedule established in the contract, cashflows have been adjusted to reflect the schedule changes.

The Estimated Final Cost (EFC) of the Project remains unchanged at \$1,186,503,000.

The Chief Financial & Administration Officer has reviewed this report and agrees with the financial summary.

Accessibility/Equity Matters

As *raison d'être* for the new streetcar project, accessibility is the guiding principle in the vehicle and system interface design to ensure that the system meets not only the applicable standards and exceeds the prevalent industrial practices, but also to the extent possible meets the expectation of the stakeholders.

Beginning with specification development, extensive consultation with the public and the Design Review Subcommittee of the Advisory Committee on Accessibility Transit (ACAT) has taken place. In summary, four (4) public consultation open house sessions took place between June 14 and July 31, 2007. An interactive website was created – 300,000 visits and over 10,000 people filled out survey forms. Two fully furnished low floor LRV mock-ups (Bombardier and Siemens) were on display at the Canadian National Exhibition between August 17 and September 3, 2007.

ACAT Design Review Sub-committee members participated in the Preliminary Design Review (PDR) of the soft vehicle mock-up that was true to scale in all aspects and interior furniture made of wood and foam board in Thunder Bay in June 2010. Current design of the on-board two-stage accessibility ramp was a culmination of collaboration between ACAT and the TTC, from “walking through” a hard vehicle mock-up to demonstrating ramp operations and iteratively functionality improvements. Other accessibility features on the vehicle such as optical sensing of door obstruction, audible and visible warnings of door closing, flip-down seats, passenger assistance intercom/alarms, audio and visual station stop announcements, and interior and exterior

ramp/stop request buttons, additional exterior lighting etc. reflect the collaborative effort between ACAT and the TTC.

Decision History

At its April 27, 2009 meeting, the TTC Board approved a staff recommendation to award the contract to Bombardier for the supply of streetcars to replace the aging fleet and accommodate marginal future growth. Toronto City Council's approval of the Contract was, amongst other conditions, subject to a commitment of funding from the Province of Ontario. Refer to the Board Highlights item 1 in the following link:

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2009/Apr_27_2009/Highlights/index.jsp

On June 22, 2015, a status update report was provided to the Board outlining the current status of the delivery of the new streetcars. At the June 22nd meeting, the Board requested that staff report back to the July 29th, 2015 Board meeting (the report was subsequently deferred to October 2015) with respect to a range of options available to the TTC based on Bombardier poor performance to deliver the streetcars within the time specified in the Contract Schedule.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/June_22/Reports/Board_Report_with_Confidential_Attachment_New_Streetcar.pdf

On October 28, 2015, a further report was provided to the Board reviewing options to exclude Bombardier from future bidding. At the October 28th, 2015 meeting, the Board adopted staff's recommendation to commence a claim for liquidated damages against Bombardier. In addition, the Board adopted a number of other motions relating to Bombardier.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/October_28/Reports/Board_Request_Staff_Review_of_Options_to_Exclude_Bombardier_.pdf

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/June_22/Reports/Board_Report_with_Confidential_Attachment_New_Streetcar.pdf

At its meeting of March 23, 2016, the Board approved the overhaul of 30 Canadian Light Rail Vehicles (CLRVs) required as a result of the delay in the delivery of the new streetcars.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/March_23/Reports/Overhaul_of_30_Canadian_Light_Rail_Vehicles_%28CLRV%29_and_Maint.pdf

Issue Background

At the October 28, 2015 Board Meeting, the Board authorized TTC General Counsel to immediately commence a claim or legal action against Bombardier for all damages sustained by the TTC relating to or arising from the schedule delays in the delivery of the streetcars and any other non-performance related issues. A formal Notice of Dispute was provided to Bombardier in February 2016. The issuance of the Notice of Dispute commenced the dispute review process as set out in the contract, which includes a negotiation period and if required, the establishment of a 3 member hearing panel.

In addition to the Notice of Dispute, staff has also examined additional legal options which may be available for the TTC to pursue, which options are set out in the Confidential Attachment.

Comments

In April 2016, Bombardier publicly announced a revised proposed delivery schedule for the new streetcars. The April 2016 proposal reduced the number of streetcars to be delivered in 2016 to a total of 16. This represents a reduction in the number of vehicles being delivered in 2016 by 24 (40 vs. 16) as compared to the previous proposed schedules submitted by Bombardier in early 2016. Bombardier also announced that it was in the process of making necessary adjustments for added manufacturing capacity and to significantly accelerate production for the duration of the project and re-stated its commitment that all 204 vehicles will be delivered by the end of 2019.

Staff has requested further information from Bombardier in order to ensure that the current planned delivery schedule is achievable and that it is also not being understated.

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Attachments

Attachment – Confidential Attachment