



**For Action
with Confidential Attachment**

Liquidated Damages for the Supply of Additional Streetcars from Bombardier Transportation Canada Ltd.

Date: February 10, 2021
To: TTC Board
From: Chief Vehicles Officer

Reason for Confidential Information

This report contains information about a position, plan, procedure, criteria or instruction to be applied to negotiations carried on or to be carried on by or on behalf of the TTC.

Summary

At its meeting on October 22, 2020, the TTC Board approved the TTC Fleet Procurement Strategy and Plan report. This approval included the adoption of staff recommendations to issue a contract change with Bombardier Transportation Canada Inc. (Bombardier) for the supply of additional streetcars.

As part of the approval, the TTC Board directed staff to negotiate liquidated damages (LDs) to mitigate the risk of late vehicle deliveries on the additional streetcar order with Bombardier.

This report recommends terms and conditions relating to LDs based on industry benchmark comparisons and are confirmed to be among the strictest in North America.

Note: As of January 29, 2021, Alstom SA has acquired Bombardier Transportation Canada Inc.

Recommendations

It is recommended that the TTC Board:

1. Approve the terms and conditions relating to the liquidated damages for the additional streetcars as set out in the Confidential Attachment; and
2. Direct staff to make public the terms and conditions relating to liquidated damages as set out in the Confidential Attachment following the successful negotiation and execution of an agreement.

Financial Summary

Since the introduction of the TTC's 15-Year Capital Investment Plan presented in January 2019, staff identified the need for additional streetcars required to address projected increases in population, employment and travel time due to traffic congestion post-2023. Although the timeline for a post-COVID recovery is unclear, the Toronto Office of Recovery and Rebuild's (TORR) COVID-19: Impacts and Opportunities report, released in September 2020, states that various governments recognized that investments in infrastructure, including transit, will be critical for Toronto's and Canada's recovery. It also states that maintaining and increasing investment in addressing the operating and capital needs for public transit are critical to the short- and long-term vitality and livability of Toronto and the surrounding interconnected region.

Funding of approximately \$140 million for the procurement of additional streetcars are included in the TTC's 2021-2030 Capital Budget and Plan that was approved by the TTC Board at its meeting on December 21, 2020 and will be before City Council for consideration on February 18, 2021.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial summary information.

Equity/Accessibility Matters

A cornerstone of the TTC's Corporate Plan 2018-2022 is accessibility, and as a proud leader in providing accessible public transit in the city of Toronto, we are committed to ensuring reliable, safe and inclusive transit services for all of our customers.

All vehicles procured by the TTC are accessible and meet or preferably exceed requirements of the Accessibility for Ontarians with Disabilities Act (AODA). The accessibility features of the 204 streetcars will be included as part of the additional vehicle order, including a fully low-floor design, priority blue seating and both audible and visual stop announcements that are internal and external to the vehicle.

Decision History

At its meeting on April 27, 2009, the TTC Board approved the staff recommendation to award to Bombardier the contract 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 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 19, 2009, the Province of Ontario announced funding of up to \$416.3 million towards one third of the Eligible Costs for the TTC's procurement of the new low-floor streetcar fleet. Subsequently, in a special meeting on June 26, 2009, Toronto City Council approved the funds required to complete the purchase of 204 low-floor streetcars. The TTC and Bombardier executed the Contract on June 30, 2009 for a total

Contract price of \$993 million, inclusive of taxes, but before foreign exchange. Subsequent Contract Amendment costs have not been included. The procurement documents were structured to reflect a minimum award of 204 vehicles and included an option to purchase up to 400 additional vehicles for use by the TTC for future growth requirements and in any approved Transit City projects. Subsequently, 300 option vehicles were assigned to Metrolinx based on Board authority at the May 6, 2010 Board meeting. Refer to Item 8 in the following link:

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2010/June 2 2010/Minutes/index.jsp](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2010/June%202010/Minutes/index.jsp)

On May 8, 2018, the TTC Board adopted the recommendations by TTC staff to settle the outstanding dispute with Bombardier relating to liquidated damages for the late delivery of streetcars.

Report:

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2018/May 8/Reports/4 Negotiation with Bombardier on Liquidated Damages due to D.pdf](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2018/May%208/Reports/4%20Negotiation%20with%20Bombardier%20on%20Liquidated%20Damages%20due%20to%20D.pdf)

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At its meeting on January 27, 2020, the TTC Board approved the amended 2020-2029 Capital Budget and Plan of \$11.924 billion, which included \$4.23 billion in net new funding made available through the dedicated City Building Fund and one-time Federal Gas Tax. This provided the TTC with an additional funding of \$3.09 billion for subway infrastructure (SOGR and Service Improvements) plus \$1.14 billion towards the replacement of existing vehicles and related systems.

Report:

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2020/January 27/Reports/10 TTCs 2020 2029 Key Capital Investment Priorities Subway I.pdf](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2020/January%2027/Reports/10%20TTCs%202020%202029%20Key%20Capital%20Investment%20Priorities%20Subway%20I.pdf)

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At the October 22, 2020 Board meeting, the Board received the TTC's Fleet Procurement Strategy and Plan. The Board approved a Contract change, which includes options, with Bombardier Transportation Canada Inc. for the supply of up to 60 streetcars. The Board also requested partnership funding from other orders of government to fully fund the program.

Report:

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2020/October 22/Reports/5 TTC Fleet Procurement Strategy and Plan.pdf](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2020/October%2022/Reports/5%20TTC%20Fleet%20Procurement%20Strategy%20and%20Plan.pdf)

Decision:

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2020/October 22/Reports/Decisions/2047 5 TTC Fleet Procurement Strategy and Plan Decision.pdf](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2020/October%2022/Reports/Decisions/2047%205%20TTC%20Fleet%20Procurement%20Strategy%20and%20Plan%20Decision.pdf)

Issue Background

On October 22, 2020, the TTC Board approved the 2020-2029 Fleet Procurement Strategy and Plan report. This approval included the adoption of staff recommendations to issue a contract change with Bombardier Transportation Canada Inc. (Bombardier) for the supply of an additional streetcars.

As part of the approval, the TTC Board passed the following motions to mitigate historical poor performance by Bombardier:

- 2a. The CEO be requested to negotiate strong contractual penalties and terms to ensure on time delivery to avoid unacceptable and irresponsible delays;
- 2b. Such penalties and terms required to ensure on time delivery be presented to the TTC Board for final approval; and
- 2c. Such terms to be made public to reassure the public of Bombardier's and the TTC Board's commitment to on-time delivery.

This report provides the recommended terms and conditions of the LD provision to address motions 2a and 2b.

Comments

Proposed LD Terms for Supply of Additional Streetcars

TTC staff proposed to increase the LD Cap for Late Delivery of Vehicles, the associated daily LD Amount and the aggregate total LD Cap as set out in the Confidential Attachment.

Industry Benchmark Comparisons

TTC staff engaged Hatch LTK as an independent advisor during contract negotiations with Bombardier. Based on industry benchmark comparisons, Hatch LTK confirmed that the LD terms proposed by TTC staff for the supply of additional streetcars, as set out in the Confidential Attachment, are among the strictest in North America.

Next Steps

With Board approval of the recommendations in this report, staff will work to finalize the contract and issue Notice to Proceed prior to expiry of the current offer on March 1, 2021. At this point, Bombardier would be contracted to supply 13 additional streetcars to be delivered no later than March 31, 2024.

Following execution of an agreement, the TTC CEO will publicly report the contracted LD terms and final pricing.

Contact

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Signature

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Attachments

Confidential Attachment 1