



**For Action
with Confidential Attachment**

Toronto-York Spadina Subway Extension – Litigation Status Update

Date: February 10, 2022

To: TTC Board

From: General Counsel

Reason for Confidential Information

This report is about litigation or potential litigation, including matters before administrative tribunals.

This report contains advice or communications that are subject to solicitor-client privilege, including communications necessary for that purpose.

Summary

On June 20, 2011, Bondfield was awarded the contract for Toronto-York Spadina Subway Extension Finch West Station, Contract A27-1 in the amount of \$125.63 million. The final approved value is approximately \$154.387 million (inclusive of HST).

On September 22, 2011, Walsh was awarded the contract for the Steeles West Station, (renamed to Pioneer Village Station), Contract A31-1 in the amount of \$165.925 million. The final approved value of the Contract is approximately \$223.207 million (inclusive of HST).

This report includes recommendations and requests the Board's approval of funds to provide resolution related Finch West Station and to increase the upset limit of the TYSSE project controls contract to support ongoing claims. This report also includes an update on the litigation related to Steeles West Station.

Recommendations

It is recommended that the Board:

1. Approve a contract amendment to Contract A85-70 Project Control Services, increasing the upset limit amount by \$400,000.00 (including taxes), bringing the total upset limit amount to \$63.235 million (including taxes) and extending the contract expiry from March 31, 2022 to December 31, 2022.
2. Approve the recommendation outlined in the confidential attachment; and
3. Authorize the information contained in the confidential attachment to remain confidential as it contains advice that is subject to solicitor-client privilege and is

about litigation or potential litigation, including matters before administrative tribunals.

Financial Summary

Funds for this expenditure are included in the TTC's 2022 – 2031 Capital Budget and Plan under the Toronto - York Spadina Subway Extension (TYSSE) Project which was approved by the TTC Board at its meeting on December 20, 2021 and will be before City Council for consideration on February 17, 2022. The total TYSSE Project cost is \$3.184 billion.

Additional financial information is included in the Confidential Attachment.

The Chief Financial Officer has reviewed this report and agrees with the financial impact 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 our customers. This is supported through the TYSSE project which went into service at the end of 2017. The TYSSE project connected the City of Toronto and York Region, which allowed for greater mobility and connectivity across regions for riders.

Ensuring barrier-free access is a priority and all TYSSE stations have extensive facilities (including elevators, escalators, tactile markings, etc.) that are in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)*. Further, the service that the TYSSE provides improves access to jobs, education, and other opportunities, for a large number of residents of Toronto and York Region, including students at York University.

Decision History

On October 23, 2008, the Board approved awarding contracts for the design of Steeles West Station (renamed Pioneer Village Station) and Finch West Station as part of the TYSSE Project to The Spadina Group Associates.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2008/October-23/Supplementary_Reports/Subway_Station_Desig.pdf

On May 11, 2011, the Board approved awarding Bondfield Construction Company Limited (Bondfield) the contract for the Toronto-York Spadina Subway Extension Finch West Station, Contract A27-1, in the amount of \$125.63 million.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2011/May-11/Reports/Toronto-York_Spadina.pdf?rev=10be2443c00345d9b7517f88141cab76&hash=FD036A6ED8FEAB6F854BF78FBE16CEB7

On October 19, 2011, the Board approved awarding Walsh Construction Company Canada (Walsh) the contract for the Toronto-York Spadina Subway Extension Steeles West Station (renamed to Pioneer Village Station), Contract A31-1, in the amount of \$165.925 million.

[https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2011/October-19/Reports/TYSSE Steeles West S.pdf?rev=540f96e0527b4c488b46d7c215e387a4&hash=1405332DEB505F517011EBCF34AD3D8E](https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2011/October-19/Reports/TYSSE_Steeles_West_S.pdf?rev=540f96e0527b4c488b46d7c215e387a4&hash=1405332DEB505F517011EBCF34AD3D8E)

On January 21, 2016 as part of the TYSSE Project reset, a revised budget of \$3.184 billion was established.

[https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/January-21/Reports/Board_Report_TYSSE Schedule and Budget Reset 2016-01-21_fina.pdf?rev=e194397c55bf46e3be247921dd6a4164&hash=3DDC9E6A3C18C0DE84ACE422A5F5228E](https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/January-21/Reports/Board_Report_TYSSE_Schedule_and_Budget_Reset_2016-01-21_fina.pdf?rev=e194397c55bf46e3be247921dd6a4164&hash=3DDC9E6A3C18C0DE84ACE422A5F5228E)

At its meeting on February 25, 2016, the Board approved recommended contract amendments of various consultant contracts to continue with support services required to complete the project.

[https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/February-25/Reports/POAA for Various Consultant Contracts.pdf?rev=6063a2ad8ae442c1b2db37fd5447aff7&hash=5A1896E706F36993F37124AD8F6E2FC8](https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/February-25/Reports/POAA_for_Various_Consultant_Contracts.pdf?rev=6063a2ad8ae442c1b2db37fd5447aff7&hash=5A1896E706F36993F37124AD8F6E2FC8)

At its meeting on March 22, 2017, the Board approved a recommended contract amendment to continue with the services under Contract A85-70, Project Controls Services, required to complete the project.

[https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2017/March-22/6_TYSSE_POAA for Contract A85 70 Project Controls Services.pdf?rev=7b54dc18f8bf4a94af455e40aadbc9a8&hash=713F4C7F91C50BB6511BCD2EBCF42AC5](https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2017/March-22/6_TYSSE_POAA_for_Contract_A85_70_Project_Controls_Services.pdf?rev=7b54dc18f8bf4a94af455e40aadbc9a8&hash=713F4C7F91C50BB6511BCD2EBCF42AC5)

Issue Background

On March 12, 2008, Contract A85-70 Project Control Services was awarded to Stantec Consulting Ltd. The scope of work for the contract was to provide project controls services for the TYSSE.

As part of the TYSSE Project, on October 24, 2008, the TTC awarded design contracts for both Finch West Station and Steeles West Station to a joint venture known as The Spadina Group Associates (Contracts A85-75A and A85-75B).

During the execution of the work as part of Contract A27-1, delays were encountered in the construction of the station resulting in claims from Bondfield. This report provides recommendations for the full and final resolution of all claims related to the design and construction of Finch West Station.

During the execution of the work as part of Contract A31-1, delays were encountered in the construction of the station resulting in claims from Walsh. This report provides an update of the status of the litigation related to the design and construction of Steeles West Station.

Comments

The confidential attachment to this report provides advice, subject to both solicitor-client privilege and litigation privilege, relating to potential resolution of claims relating to the design and construction of Finch West Station and the ongoing litigation relating to the design and construction of Steeles West Station.

On March 12, 2008, Contract A85-70 Project Control Services was awarded to Stantec Consulting Ltd. To date, there have been 17 contract amendments which are summarized in Schedule A.

The TYSSE project is currently focused on resolving commercial claims and property claims along with ongoing reporting required to the Executive Task Force (ETF). In addition to the two station contractor claims described herein, there are eight property/business loss claims that remain outstanding. Accordingly, project control services contract A85-70 requires an amendment to continue to provide the required services including:

- Performing various accounting function, including budgeting, cost control analysis and reporting, including reporting to the ETF; and
- Supporting property claims and commercial claims with historical information, preparation of affidavits and pre-trial reports and providing witnesses for the trial;

Contact

Samantha Ambrozy, Solicitor
416-397-8818; samantha.ambrozy@ttc.ca

Tony Baik, Deputy Chief Project Manager – TYSSE
416-590-6489; tony.baik@ttc.ca

Signature



Michael Atlas
General Counsel

Attachments

Confidential Attachment 1

Schedule A

Summary of Contract Amendments to Contract A85-70 Project Control Services

Item	Description	Amount
Original Contract Price		\$30,000,000.00
Contract Amendment No. 1	Add Superintendent – Contract Administration	\$0.00
Contract Amendment No. 2	Add Property and Agreements - Coordinator	\$568,503.00
Contract Amendment No. 3	Revise the term of the Contract from “March 12, 2008 to March 11, 2015” to “March 12, 2008 to December 31, 2016”	\$9,000,000.00
Contract Amendment No. 4	Revise the term of the Contract from “March 12, 2008 to December 31, 2016” to “March 12, 2008 to December 31, 2017”	\$10,400,000.00
Contract Amendment No. 5	Revise the Upset Limit Contract Price to adjust taxes that were paid at 5% GST at Contract onset with the current 13% HST currently being paid. (Decrease)	(\$329,429.00)
Contract Amendment No. 6	Add Technical Coordinator – Planning and Approvals	\$0.00
Contract Amendment No. 7	Add the Technical Coordinator – Commissioning	\$0.00
Contract Amendment No. 8	Revise Document 00800 – SUPPLEMENTARY CONDITIONS SC4 – CALCULATION OF FEES AND EXPENSES to allow for the adjustments to the basic hourly rate of the approved individuals of the Consultant Staff from the “anniversary date of the Notification of Award” to “January 1 st of every year” beginning January 1, 2017, as per the attached.	\$0.00
Contract Amendment No. 9	Add funds to the Contract Upset Limit for the completion of current tasks (Approved at Board March 22, 2017 BR No. 6). Additionally revise the term of the Contract from “March 12, 2008 to December 31, 2017” to “March 12, 2008 to April 30, 2018”	\$4,000,000.00
Contract Amendment No. 10	Add funds to the Contract Upset Limit for the completion of current tasks and to revise the term of the Contract from “March 12, 2008 to April 30, 2018” to “March 12, 2008 to December 31, 2018”	\$2,330,000.00

Item	Description	Amount
Contract Amendment No. 11	Funds to the contract upset limit for the completion of current tasks.	\$2,000,000.00
Contract Amendment No. 12	The term of the contract from "March 12, 2008 to December 31, 2018" to "March 12, 2008 to December 31, 2019"	\$0.00
Contract Amendment No. 13	Funds to the Upset Limit Contract Price to cover increased costs to December 31, 2019.	\$2,000,000.00
Contract Amendment No. 14	Funds to the Upset Limit Contract Price to cover increased costs to December 31, 2020.	\$2,000,000.00
Contract Amendment No. 15	Funds to the Upset Limit Contract Price to cover costs for work performed for the Relief Line South and Yonge Subway Extension projects.	\$345,661.00
Contract Amendment No. 16	Extend contract expiry to December 31, 2021 from December 31, 2020 and increase contract amount by \$520,000.00.	\$520,000.00
Contract Amendment No.17	Extend contract expiry to March 31, 2022 on an interim basis.	\$0.00
	Current Total Upset Limit Contract Price	\$62,834,735.00