



August 28, 2018

WITHOUT PREJUDICE

Mac MacGillivray, CET, M.M.P, Facilities & Energy Manager
 City of Peterborough
 500 George Street North
 Peterborough, Ontario
 K9H 3R9

**Re: Peterborough Operations Centre
 Peterborough, Ontario
RFCO Soil Conditions/Contamination**

Dear Sir:

Objective

The objective of this report is to summarize the events of the past, dating back to the Fall of 2017 with regards to soil impact on this project. The general contractor, JR Certus (JRC), has submitted claims for soil conditions, including contamination, which were encountered by them through the construction period. These claims are in the form of RFCO's. Although there have been some that have been resolved, there are seven (7) remaining RFCO's- 001B, 007, 034, 036, 037, 038, and 040R1 which remain outstanding. The total claim for all of these RFCO's is \$1,080,496.01. It is our objective to provide commentary on the remaining RFCO's and provide recommendations to assist in resolving these claims.

RFCO- 001B -	\$554,467.75
RFCO 007 -	\$70,224.18
RFCO 034 -	\$88,518.62
RFCO 036 -	\$76,800.29
RFCO 037 -	\$102,983.07
RFCO 038 -	\$134,305.82
RFCO 040R1-	\$53,196.28

Total (JRC)- \$1,080,496.01

Historical Background

As construction was on-going through the Fall 2017, the contractor encountered a number of soil conditions and concerns at the time. The contractor, with consultation with GHD, the geotech testing and inspection firm, worked through these concerns.

It was discovered later, through issuance of RFCO's on Saturday, March 3/18, that claims for in excess of \$1.6M were being submitted by JRC. Prior to that date, there were no formal submissions of costs for approval and no notification with regards to possible magnitude of costs in this range, other than discussing a facility near Cornwall, Ontario, which was later discarded.

To date, we have resolved some of the RFCO's and particularly the one (RFCO-001A) related to contaminated soil. This has now been paid by the City of Peterborough and thus the total amount of claims is the amount stated above, an amount lower than the original claims.

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This process continued for months, with several letters being exchanged by JRC and GHD. The letters and responses occurred between March 2018 and June 2018, following the first issuance of the RFCO's. On June 25 and 26, meetings were held between JRC, GHD, RRL and the City of Peterborough to review the positions of all parties to date.

During and after those meetings, further information was requested by RRL based on the statements made by both parties. RRL wanted this additional information to review and supplement the claims and impact of the statements made during these meetings. To date, and after several attempts to request it, GHD has submitted the required information but JRC did not. Therefore, our recommendations at this time are solely based on information we have been provided to date, without the benefit of the requested information sought by RRL after the last meetings.

Summary of Discussions/Findings

As a general summary of the discussions and findings of these claims, we can conclude that the claims being submitted, are not being accepted primarily due to interpretation of the contract documents.

As a general statement, we acknowledge that the work was done and are not questioning that aspect.

The disagreement with the acceptance of the claims relate to the interpretation of what should have been included in the contract documents and what was not. Included. JRC has presented items which we deem to be part of the contract. Further, the quantities of topsoil and silty sand removed off site is unknown to date.

GHD, as the geotechnical testing and inspection company, who have provided on-going inspection services, have completed many letters and a recent report. The findings of GHD are used as important information to justify the claims. They were the original firm to produce the geotechnical report so they have an inherent knowledge of this site, coupled with regular inspections through the entire construction process. RRL has relied heavily on their analysis as an independent 3rd party inspection and testing agency, paid through the cash allowance of the construction contract. They have also issued another report following discussions of the June 25/26 meetings. Their latest summary has revised and increased the amount they have justified to JRC.

Based on the claims, it is our position that we must be fair and reasonable - in doing so this does not imply that due to soil problems it is automatically a justifiable unforeseen extra, as we commonly include as a barometer to any soil situation. In this case, there is no doubt that this was not a straightforward site, evidenced by the original geotechnical and environmental studies done and included in the tender documents. On the other hand, it does not imply that the contractor is responsible for every soil situation arising, solely as a result of the knowledge that it was not a straightforward site.

In the end, we must recognize what is fair and reasonable, what was and should have been expected, that it could have been properly assessed and quantified during tender vs. what was not foreseen or the extent was not predictable or identifiable.

We believe GHD has taken a "strict" viewpoint on these extra claims. They have established themselves what they believe should have been expected based on the geotechnical and environmental studies provided during tender, which is all they can do with the information obtained and provided during tender. We believe their position could be qualified as the most stringent position of evaluation of extras. We understand the position they have taken.

In their most recent report, dated August 28, 2018, GHD has approved the following amounts:

RFKO- 001B -	\$41,210.16
RFKO 007 -	\$8,442.94
RFKO 034 -	\$2,330.64
RFKO 036 -	\$7,402.15
RFKO 037 -	\$0
RFKO 038 -	\$9,972.60

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RFCO 040R1- \$3,253.18

Total (GHD) - \$72,611.67

RFCO Discussion

Detailed discussion of the RFCO's following the meetings on June 25 and 26 can be found in GHD's updated report dated August 28, 2018.

In the absence of further information requested but not received by JRC, we have considered all previous discussions and the meetings of June 25/26.

RFCO 001B

During the meetings of June 25/26, it was discovered that the interpretation of the contract requirements were different than what we expected of the contract.

GHD has reviewed the quantities and responses from JRC. They have given approval to a portion of the claim. A large portion of this claim relates to topsoil and organic material, to which quantities are unknown due to lack of information (by JRC). We note that the City of Peterborough has paid for the contaminated soil claim and this aspect is not in question (RFCO01A).

RFCO 007

After discussions at the June 25/26 meetings, GHD revised their earlier comments and provided an approval on a portion of the claim. As previously mentioned in this report, RRL believes that there is an entitlement to the contractor where the soil condition dictates a lower footing elevation than that called for on the drawings, regardless of the awareness of the overall site conditions.

There is a disagreement between JRC and GHD on the impact of peat on water seepage, which is part of the reason for this claim.

RFCO 034

After discussions at the June 25/26 meetings, GHD revised their earlier comments and provided an approval on a portion of the claim. As previously mentioned in this report, RRL believes that there is an entitlement to the contractor where the soil condition dictates a lower acceptable elevation than that called for on the drawings, regardless of the awareness of the overall site conditions.

There is a difference of opinion between JRC and GHD on what should have been expected.

RFCO 036

JRC's claim is related to the impact of water seepage on the soil compared to what was expected. There is a disagreement between JRC and GHD on the impact of peat on water seepage. GHD has approved a portion of this claim.

RFCO 037

JRC has claimed there was water and lower founding footing elevations. GHD's position is that there was enough information at the time of tender to make provisions for the water. GHD does not agree that the footing elevation went lower, but in fact higher, based on a Oct 25,17 inspection report. GHD has not approved any claim for extra.

RFCO 038

After discussions at the June 25/26 meetings, GHD revised their earlier comments and provided an approval on a portion of the claim.

RFCO 040/040R1

After discussions at the June 25/26 meetings, JRC reduced the amount of the claim and created RFCO 040R1. GHD has reviewed the R1 version and has agreed to a portion of the claim.

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Recommendations

In reviewing the claims by JRC and the report by GHD, we offer the following comments and recommendations.

There are significant differences between JRC and GHD with regards to the claim for extras. A large majority relate to two items- (1) lack of information provided by JRC to confirm volumes quoted, (2) interpretation of the geotechnical information provided during tender and impact to potential costs. As to the first, many requests to JRC were made after the June 25/26 meetings for this information- nothing was submitted.

We believe the significant difference could be attributable to volumes for the topsoil and for the silty sand brought off site which to date are unconfirmed.

We note that although not all information was submitted by JRC, we believe there is some merit in what they have claimed. We are aware that quantities not provided could justifiably be accounted for in favour of JRC. Further we are aware that the opinions expressed by GHD is their interpretation of the geotechnical information provided during tender phase. We recognize that we are evaluating claims based on interpretation of the geotechnical information provided at the time of tender which are based on a fixed number of sample boreholes.

Soil expectations are not an exact science and to be fair and reasonable one must consider all aspects arising out of the conditions which arise during construction. There is no doubt this site was not straightforward from a soil perspective and we acknowledge this.

In consideration of the claims by JRC, their responses and the responses of GHD, we recommend an amount of \$200,000.00 for the outstanding soil related RFCO's quoted above. We understand this is more than that approved by GHD, but it is also significantly less than the amount claimed by JRC. We believe it is a fair offer, given the circumstances arising out of these claims and the subsequent positions of both JRC and GHD, including the lack of information not provided by JRC.

Our recommendations must be read in conjunction with the updated report issued by GHD, dated August 28, 2018. The details of their position have been updated based on the June 25/26 meetings. Their report covers much greater detail of their position as well as their quantified calculations of volumes (something we were hoping to get from JRC as well.)

We believe our recommendation addresses a fair and reasonable position to the situation for all parties based on the information we have received to date.

Should you have any questions, please let us know.

Sincerely,
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Steve Law, P. Eng., MBA
Head of Engineering

cc Andy Fawcett, GHD
David Aquino, JRC
Frank Aquino, JRC
Joseph Aquino, JRC

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