

Action No. 1003 05560
Bankruptcy No.: 24-115359

Cow Harbour Construction Ltd.

FOURTH REPORT OF THE TRANSACTION FACILITATOR
AUGUST 20, 2010

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON**

**IN THE MATTER OF THE
BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
COW HARBOUR CONSTRUCTION LTD.**

**FOURTH REPORT TO THE COURT
SUBMITTED BY PRICEWATERHOUSECOOPERS INC.
IN ITS CAPACITY AS COURT ORDERED TRANSACTION FACILITATOR**

INTRODUCTION

1. On April 1, 2010, Cow Harbour Construction Ltd ("CHC" or the "Company") filed a Notice of Intention to File a Proposal under the *Bankruptcy and Insolvency Act*. These proceedings were subsequently taken up under the Companies' Creditors Arrangement Act ("CCAA").
2. On April 7, 2010, the Company made an application under the CCAA and an Initial Order was granted by the Honourable Justice K. D. Yamauchi of the Court of Queen's Bench of Alberta granting, *inter alia*, a stay of proceedings ("Stay") against the Company until and including May 3, 2010 and appointing Deloitte & Touche ("Deloitte") as monitor. Subsequent Orders of the Court have extended the Stay period to August 25, 2010.
3. On July 6, 2010, this Honourable Court issued an Order (the "Amended Initial Order") which, *inter alia*, appointed PricewaterhouseCoopers Inc. as Court Ordered Transaction Facilitator (the "Facilitator") in these proceedings to report on any progress with respect to effecting a transaction involving prospective purchasers.

4. On August 5, 2010, this Honourable Court issued an Order (the “August 5 Order”) which, *inter alia*, extended the powers of the Facilitator to execute and accept the letter of intent from a party identified as Bidder A (now, through an assignment to an affiliate, disclosed as Aecon Construction Group Inc. (“Aecon”)) (the “Aecon LOI”) on behalf of the Company, and authorized the Facilitator to continue to negotiate definitive documents and apply for such confirmation, sale and vesting Orders as are necessary to give effect to the Aecon LOI.
5. On August 10, 2010, the Facilitator submitted its Confidential Third Report to this Honourable Court as required by the August 5 Order, containing the Aecon LOI which was executed by the Facilitator.
6. This report is being submitted pursuant to the terms of the Amended Initial Order to report on progress and to seek sales approval and a vesting Order with Aecon.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Amended Initial Order or the Facilitator’s previous Reports.
8. The information contained in this Report has been obtained in part from the books and records, forecasts, and other unaudited financial information made available by the Company, and is based upon discussions with and representations made by the Company, the Monitor and their advisors. The accuracy and completeness of the financial information contained herein have not been audited or otherwise verified by the Facilitator, and the Facilitator does not express an opinion or provide any other form of assurance on the information presented herein. The Facilitator reserves the right to refine or amend its comments and findings as further information is obtained or brought to its attention subsequent to the date of this Report.

ACTIVITIES OF THE FACILITATOR

9. Since its Second Report, the activities of the Facilitator have included, *inter alia*, the following:
 - (a) Further meetings and discussions with each of Aecon and Bidder B on the terms of their respective letters of intent (each a “Bid”), and to provide feedback from the Lenders regarding their bids;

- (b) Dissemination of information prepared by the Bidders to the Lenders that have agreed to confidentiality terms with the Facilitator;
- (c) Correspondence and discussions with the Lenders regarding the bids from each of the Bidders, including the revised allocation proposed by Aecon as discussed further below;
- (d) Preparing revisions to the Allocation Analysis (discussed in the Facilitator's First Report) as additional relevant information has been received;
- (e) Negotiation and execution of a definitive Asset Purchase Agreement with Aecon, subject to Court approval and various Court Orders;
- (f) Circulation of lock-up agreements and other materials to the Lenders to confirm their support for the proposed transaction with Aecon; and
- (g) Numerous other conference calls with the Lenders and their counsel.

CONSIDERATION OF THE AECON OFFER

OVERVIEW

10. Aecon has offered to purchase certain assets of the Company, including certain capital assets, real estate, and contracts of the Company, in exchange for cash consideration. These assets include assets not specifically encumbered (but subject to the Company's general security agreement with Royal Bank of Canada ("RBC")), and other assets subject to the security of certain Lenders. Aecon had amended its LOI on July 20, 2010 which reflected an increased purchase price.

REVISED ALLOCATION OF VALUE BY AECON

11. As outlined in the Facilitator's Second Report, Aecon revised its proposal to incorporate its proposed allocation of value (the "Allocation"). This work has been based on information obtained during the Sales Process, certain materials provided by the Facilitator (with the approval of certain Lenders) on the details of the Allocation Analysis for those Lenders, as well as direct discussions between Aecon and the Lenders. The objective of this work was to determine the terms of a proposed allocation that would be acceptable to the widest possible group of Lenders.

12. On August 3, 2010, Aecon shared a draft of the Allocation with the Facilitator. This allocation was prepared on a lender-by-lender basis, rather than on an asset-by asset basis, to provide for each Lender an en-bloc proposed purchase price for the assets secured by that Lender.
13. The Facilitator contacted the Lenders beginning on August 3, 2010 to share the draft Allocation with the Lenders, and to seek their confirmation as to whether this allocation would be acceptable to those Lenders in order to support a transaction based on the Aecon LOI. As part of this process the Facilitator has encouraged discussions amongst the Lenders and Aecon on the rationale for the proposal they have made, and also facilitated further diligence by some Lenders on the equipment and the Ritchie Appraisal referred to in previous reports of the Facilitator. Some minor amendments to the draft Allocation have been made during this process.

EXECUTION OF APA AND LOCK-UP AGREEMENTS

14. The Aecon LOI has been executed by the Facilitator, and as noted above was filed confidentially with this Honourable Court on August 10, 2010.
15. Aecon and the Facilitator have proceeded to negotiate the definitive documents for the transaction, including an Asset Purchase Agreement (“APA”), an Approval and Vesting Order, and related ancillary documents and schedules (the “Definitive Documents”).

CURRENT STATUS

16. On August 19, 2010, the Facilitator circulated a form of lock-up agreement to the Lenders (the “Lock-up Agreement”) seeking their formal support for the Aecon APA and their proposed Allocation. The Facilitator is continuing to seek the return of these Lock-up Agreements and will inform the Court at the hearing on August 25, 2010 of its progress regarding same.
17. The Facilitator had previously sought informal feedback from the Lenders on the acceptability of the Allocation. As of the writing of this report, a majority in number of lenders representing in excess of 75% of the value of equipment lessors and/or secured creditors have confirmed their support for the Allocation. The Facilitator is currently seeking the formal confirmation of this support from the Lenders through the execution of Lock-up Agreements with the Lenders.

18. The Facilitator understands that Aecon is continuing to discuss the Allocation with those Lenders who have not yet confirmed their support.
19. The Facilitator understands that Aecon is pursuing the resolution of the remaining conditions to closing transaction, including documentation, regulatory approvals, obtaining the approval of Syncrude to permit the assignment of their contract with the Company, and other matters.
20. Overall, we consider that significant progress has been made by all parties to conclude a transaction with Aecon. We anticipate that discussions between Aecon and certain of the Lenders will continue over the next few days to resolve the remaining concerns of those Lenders.
21. The Definitive Documents will concurrently be filed with this Court. These documents contemplate a closing process for this transaction whereby:
 - (a) The RBC application Receivership Order is granted appointing the Facilitator as Receiver over the assets of the Company.
 - (b) An Order amending and augmenting the Receivership Order directing that the Receiver is authorized to execute and complete the transaction with Aecon;
 - (c) A Vesting Order is granted providing, *inter alia*, that the Purchased Assets (as defined in the Definitive Documents) shall be acquired by Aecon free and clear of all claims and that the sales proceeds will stand in the place of the Purchased Assets; and
 - (d) Closing of the transaction will occur on August 26, 2010, or such other date as Aecon and the Receiver may mutually determine. The intention of the parties is to close the transaction as soon as possible following the granting of the Receivership Order and the Vesting Order.

CONSIDERATION OF BID B

OVERVIEW

22. Bid B is an offer to purchase certain assets of the Company in exchange for the assumption of certain equipment leases and financing by a new limited partnership

formed by Bidder B. Bid B also contemplates certain financial investment and support from Bidder B and its partners in the proposed transaction. As outlined in the Facilitator's First Report, an Amended Bid B was submitted on July 20, 2010.

23. Based on the initial discussions amongst the Company and the Lenders included on the Sales Committee, Bid B was not considered to be an acceptable offer as presented and so was not made the primary focus of the Lenders or the Facilitator to pursue a transaction.
24. The Facilitator and Bidder B spoke on a number of occasions prior to August 4, 2010 to discuss the concerns that the Lenders had with Bid B, and to hear Bidder B's views on potential further amendments that could be made to their offer to address the gating issues that the Lenders identified in their bid.
25. On August 4, 2010, Bidder B contacted the Facilitator to express its concern about the responses it had received from the Lenders generally on Bid B. They indicated that the issues that had been expressed with Bid B were not ones that Bidder B was in a position to address or resolve at this time. They did not express a willingness to further extend the expiry date of Bid B, and the offer lapsed on August 5, 2010.
26. While some Lenders had indicated a willingness to continue to consider Bid B, this did not constitute the majority of the Lender group. The Facilitator is of the view that the Lenders remain focused on completing a transaction with Aecon, but that they may wish to revisit Bid B in the event such a transaction cannot be completed. However, it remains clear that significant changes to Bid B would still be required in order for it to be acceptable to the Lenders.

RECOMMENDATIONS OF THE FACILITATOR

27. As outlined above, the transaction based on the Aecon LOI and APA will be brought before this Honourable Court on August 25, 2010 for approval. The Facilitator is continuing to receive the Lock-up Agreements from the Lenders and will advise of the status of these agreements at the hearing on that date.
28. The Facilitator supports the approval of the Aecon LOI and APA and the issuance of the necessary Court Order to effect this transaction for various reasons including:

- (a) the proceeds from the sale of the Purchased Assets is likely greater than expected from a liquidation sale;
 - (b) the Aecon LOI and APA likely represent the best, and likely last, opportunity to effect a sale on a going concern basis;
 - (c) the Aecon LOI and resulting Allocation have the support of the majority of Affected Creditors;
 - (d) a going concern sale provides a maximum opportunity for the continued, uninterrupted employment for CHC's employees;
 - (e) a going concern sale provides minimum interruption to CHC's primary client's ongoing operations; and
 - (f) the Purchased Assets and the CHC business have been significantly marketed through the CCAA Proceeding.
29. The Facilitator is of the view that all parties in this matter are working in good faith and with due diligence. The Facilitator understands that Aecon is intent to close this transaction at the earliest opportunity.
30. The Facilitator will continue to exercise the duties as set out in previous Orders of this Court to pursue a transaction with Aecon, and will provide an updated report verbally to this Honourable Court at the hearing scheduled for August 25, 2010.

The Facilitator respectfully submits to the Court this, its Fourth Report.

Dated this 20th day of August, 2010.

PricewaterhouseCoopers Inc.
In its capacity as Court Ordered Transaction Facilitator of
Cow Harbour Construction Ltd.



Donald MacLean / Mica Arlette
Senior Vice President / Vice President

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