

Submission to the House of Commons Standing Committee on Transport, Infrastructure and Communities

Regarding Tendering of Projects Receiving Federal Funding

About Merit Canada

Merit Canada is the national voice of Canada's eight provincial Open Shop construction associations. Open Shop companies and workers build more than 70% of the industrial, commercial/institutional, and residential construction projects coast-to-coast. As of June 2011, the Canadian construction sector employed 1.26 million Canadians with 900,000 working in the —open shop— sector. This represents almost 8.6% of Canada's total labour force, and 33% of the goods-manufacturing sector labour force.

Introduction

Given the current international economic situation and the financial pressures faced by governments, Canadians are more concerned than ever about the need to ensure that their tax dollars are spent wisely. As the Government of Canada is in the process of renewing federal infrastructure programs, Merit Canada and its members urge the Committee to recommend that the Government take action on the impact of restrictive provincial, territorial and municipal tendering rules have on the spending of Canadians' federal tax dollars on infrastructure projects.

The Issue:

While the federal government requires open and competitive bidding for its own infrastructure contracts, that is not true for all jurisdictions across the country. Instead of allowing open tendering processes for infrastructure projects, far too many jurisdictions have rules that are essentially pre-wired, allowing only certain companies, with agreements with pre-selected unions, to get all of the contracts. Non-union construction companies or companies with members of the wrong union, aren't even allowed to bid.

For example, in the City of Hamilton, of the approximately 260 registered contractors, only 17 contractors had workers registered with the proper union that city rules require for potential bidders.¹ So, the other 243 contractors - 94% of the available companies - aren't even allowed to

¹ <http://dcnonl.com/article/id29656>, August 1, 2008

bid on projects! In one case, Hamilton disqualified four out of seven bids for a multimillion-dollar construction contract because the bidders weren't affiliated with the proper union.²

It is surprising that in 2012, so many Canadian jurisdictions still have rules on the books that allow contracts to be bid on only by those affiliated with certain selected unions and all others are excluded. Cities like Toronto, Hamilton, London, Oshawa, Sault Ste. Marie, Thunder Bay, New Westminster, Burnaby and others all have special rules of one form or another that restrict open bidding. Similarly, provincial agencies, like Manitoba Hydro and Ontario's Hydro One and Ontario Power Generation and even the Greater Essex County District and Toronto District School Boards have rules in place that restrict open bidding.

As Penny Allen, the Greater Essex County District School Board superintendent of business and treasurer, argues: "It's not fair. All contractors pay taxes, but we, as a publicly funded body, can only put our tenders out to certain contractors that are unionized."³

The Costs:

Studies in both Canada and internationally have highlighted the increased costs that are imposed by such restrictive tendering rules.

In the United States, studies suggest that closed tendering rules increase the cost of construction between 12 and 18% when compared to similar projects not subject to such requirements. Other American studies have suggested the cost could be as much as 18-20% higher per square foot.⁴

In Australia, studies suggest that the costs have increased by 25 to 34% due to restricted bidding practices. For example, costs were 34 percent higher for the infrastructure for the 2006 Melbourne Commonwealth Games due to union only construction requirements.⁵ Similarly, the West Gate Bridge upgrade in 2009-10 saw a 25 percent increase in costs.⁶

² Hamilton Spectator, March 31, 2010

³ <http://dconl.com/article/id51635/--windsor-school-board-takes-ontario-labour-relations-board-unions-to-court-over-construction-employer-status>, August 27, 2012

⁴ http://www.abc.org/Government_Affairs/Issues/ABC_Priority_Issues/Project_Labor_Agreements/Union_Only_PLA_Studies.aspx

⁵ http://www.businessspectator.com.au/bs.nsf/Article/grocon-cfmeu-unions-construction-industry-industri-pd20120910-XZ5JX?OpenDocument&emcontent_spectators

⁶ http://www.businessspectator.com.au/bs.nsf/Article/Construction-contraction-code-unions-Victoria-IR-l-pd20111010-MH2LY?OpenDocument&emcontent_spectators

In Canada, the City of Hamilton estimates that restrictive bidding clauses inflate the prices of its construction projects by up to 40%.⁷ A City of Hamilton staff report estimated that being linked to one exclusive union could cost Hamilton an additional \$10 million on standard capital projects. Staff also estimated that Hamilton could face increases between \$440 million to \$1.1 billion over eight years for its water and wastewater projects.⁸

A City of Montreal report in 2004 stated that Montreal was "a closed market" when it came to construction, with public-works contracts going to the same handful of companies over and over again. According to the study: "It is always the same companies that share the work, which is likely to explain the high cost. In Montreal, the market is not considered to be very open and, in some cases, may even be quite closed." The study suggested that the city could cut down on costs by opening up the market to bidding. It said closed markets typically come with an inflated price tag of 30 to 40 per cent and it concluded that Montreal could save 20 to 30 percent with a more competitive bidding process.⁹

Testimony at the Charbonneau Commission has further highlighted the dangers of a closed tendering process. Quebecers are all too aware of the tales of collusion, kickbacks and corruption that have been revealed so far. Unfortunately, a closed labour environment with restricted tendering rules has helped to foster the conditions for these sordid situations to occur, including allegations of bid-ridding and colluding in the awarding of contracts. Recent testimony has included reports of lavish gifts and foreign trips being given out, with the implication being that it would help to secure construction contracts.¹⁰

Recent media reports on the Toronto District School Board's problems with repair and maintenance work show all too well the consequences of such restrictive bidding processes. Costs are inflated (\$143 to install a pencil sharpener, for example) and productivity is reduced (bills were inflated to cover workers who did not show up). Reports revealed that some of the work done by council members (plumbers, electricians, carpenters, groundskeepers and numerous other trades) is so inefficient that it is costing taxpayers millions of dollars more than would be charged at other school boards.¹¹ Taxpayers are the ones left paying the price.

⁷ Macintyre, Nicole. (2007). "Union Certification Nails City to the Wall". *The Hamilton Spectator*. Retrieved 06/04/2012, from <http://www.thespec.com/news/local/article/205942--union-certification-nails-city-to-the-wall>

⁸ <http://dconl.com/article/id29656>, August 1, 2008

⁹ Canadian Press, November 12, 2012, <http://www.ctvnews.ca/canada/montreal-warned-years-ago-about-closed-construction-market-1.1035503#ixzz2C6S6RIA1>

¹⁰ Globe and Mail, February 6, 2013

¹¹ Toronto Star, January 4, 2013, <http://www.thestar.com/news/canada/article/1310419--province-renews-tdsb-contract-with-expensive-maintenance-and-trades-workers>

Estimates suggest that Manitoba could face a 12 to 18% increase in the costs of its building projects due to restricted bidding rules.¹²

The costs of projects are being inflated by these restrictive tendering rules. By not holding open and competitive bidding processes, costs inevitably go up. Projects subject to these sorts of restrictions on bidding have seen costs rise inevitably, with resulting spending leading to far too many projects going over-budget. For example, sports stadiums in American cities like Cleveland and Indianapolis have seen huge cost overruns (\$61 million¹³ and \$75 million¹⁴ respectively), with taxpayers being forced to pay the bills. This serves as a stark warning for the people of Hamilton, as Infrastructure Ontario has said that the \$155 million Pan Am Games construction project at Ivor Wynne Stadium would be subject to these same types of tendering restrictions. As a result, it's expected that the price of this project will also be inflated by up to 40 per cent, costing taxpayers millions.

To take just one federal infrastructure fund as an example, under the Provincial-Territorial Base Fund alone, the Canadian Government is investing \$2.275 billion. Most of this money is for construction projects. Considering that labour costs can amount to as much as 40% of a construction project, and that open-shop contractors offer the same services at up to 10% lower costs, savings to Canadian taxpayers from this policy could amount to up to \$91 million - and that's just one infrastructure agreement. There are also several other federal infrastructure transfers – such as the Gas Tax Transfer Agreements (which is worth another \$2 billion annually), that have no requirement in place for open and competitive tendering of contracts and allow municipal tendering rules to supersede federal rules. For example, The Canada-Toronto Gas Tax Funding Agreement specifically allows Toronto's policies to take precedence over federal rules (Section 3.11). In fact, only a handful of provinces even require municipalities to reveal what these restricted bidding policies even are.¹⁵

A Cardus study shows restricted public tendering affects 25 per cent of Ontario taxpayers, putting significant pressure on municipal infrastructure deficits and raising costs. Labour monopolies affect over \$750 million worth of construction work in Ontario municipalities alone.¹⁶ According to Cardus, the City of Toronto has \$591 million in construction projects that

¹² Winnipeg Sun, December 5, 2012

¹³ <http://thetruthaboutplas.com/2012/02/16/minnesota-vikings-to-require-pla-on-upcoming-stadium-project/>

¹⁴ <http://www.plawatch.com/checked-out-of-wishard-no-nonunion-builders>

¹⁵ Only PEI, New Brunswick, Saskatchewan, and Yukon specifically require municipalities to provide a copy of the policies

¹⁶ <http://www.newswire.ca/en/story/1059335/media-advisory-labour-monopolies-cost-ontario-cities-millions>, October 25, 2012

are subject to restrictions due to construction labour monopolies, while Hamilton has \$147 million in projects and Sault Ste. Marie another \$8.7 million.¹⁷ Nationally, this represents billions of dollars of projects where taxpayers are paying the price for the inflated costs of these closed tendering processes.

As Hank Beekhuis, Ontario Director of the Christian Labour Association of Canada, argued, “Closed tendering is an out-dated policy that benefits vested interests at the expense of Ontario’s workers and taxpayers.”¹⁸

These restrictions also create problems for workers. If the companies they work for aren’t even allowed to bid on construction projects that their tax dollars are paying for, how can their companies compete and how can they stay employed?

As Christian Labour Association of Canada Manitoba director Geoff Dueck Thiessen has argued, these project labour agreements are a violation of workers’ rights because they exclude certain unions. “When a project owner enters into a project labour agreement with a union requiring workers to be members of that union as a condition of employment, that’s a violation of the act, as well as the Charter of Rights and Freedoms, which guarantees freedom of association.”¹⁹ He further argued: “If a contractor who has a collective agreement with us bids on work of this nature, their employees have to send dues to a different union and not to us ... It overrides their choice of which union they want,” said Dueck Thiessen. Dueck Thiessen said honouring union contracts instead of replacing them would allow for more competition between unions, potentially saving money.²⁰

In addition to the increased costs of projects, restricted bidding practices have other impacts as well. For example, with the Toronto District School Board, the lack of open bidding has allowed some workers to take advantage of the system, billing for their time while visiting Tim Hortons or pursuing their own private business interests.²¹ Restricted bidding also allows for some collective bargaining agreements that impose other conditions – such as requirements for

¹⁷ Cardus Construction Competitiveness Monitor: Ontario Municipal Construction Markets, October 25, 2012

¹⁸ http://www.clac.ca/news_posts/closed-tendering-costs-workers-and-taxpayers, July 23, 2012

¹⁹ <http://www.journalofcommerce.com/article/id52138/--clac-calls-for-level-playing-field-for-manitoba-projects>, October 3, 2012

²⁰ Winnipeg Sun, December 5, 2012

²¹ http://www.thestar.com/news/canada/2012/06/22/toronto_school_board_workers_paid_for_loafing_on_the_job.html, June 22, 2012

workers to be free to pursue labour movement actions²², call for the hiring of additional union members²³, and even dictate what floor employees will meet on.²⁴ Some collective bargaining agreements even include clauses to specifically raise costs when working on federal, provincial or municipal contracts.²⁵

Given the money that taxpayers are investing into infrastructure projects, such an increase in costs represents potentially hundreds of millions of dollars in taxpayers' money that could be far more efficiently and effectively spent. The current rules represent a waste of taxpayers' money and a waste of opportunities for Canadian workers and the Canadian economy.

Conclusion:

When local governments are deciding how to spend federal tax dollars, all Canadians should rightly be concerned with the process. While the federal government has put in place requirements in some infrastructure agreements to ensure open tendering, other federal infrastructure agreements allow local and provincial governments to come up with their own, closed bidding rules. When federal money is involved, the federal government should ensure that open and competitive tendering rules are followed.

Canadians know that allowing only one pre-selected bidder on every single construction contract is not the best way to go. No Canadian family would operate that way with their own home renovation projects. Opening up bidding allows for competition, leading to lower costs and higher productivity, benefiting taxpayers, who are the ones actually paying the bills. As Penny Allen of the Greater Essex County District School Board said, "The more contractors that can bid, usually the better pricing you can get."²⁶

By allowing provinces and municipalities to spend federal funds through their closed tendering processes, the costs of projects increase, fewer projects get funded and fewer jobs are created

In a time of limited government funds, we have a responsibility to hardworking Canadian taxpayers to ensure that every dollar the government spends goes as far as possible. Higher costs mean lost opportunities and wasted tax dollars. Providing equal opportunity for all contractors to submit their best bids will increase competition and ensure that Canadian taxpayers receive the

²² Section 110, <http://www.clra-bc.com/documents/IBEW%20Inside%20Wire.pdf>

²³ Article 6.04, <http://negotech.labour.gc.ca/eng/agreements/13/1326903a.pdf>

²⁴ Clause 28.01, <http://negotech.labour.gc.ca/eng/agreements/12/1204704a.pdf>

²⁵ Article 14, <http://negotech.labour.gc.ca/eng/agreements/13/1348102a.pdf>

²⁶ <http://blogs.windsorstar.com/2012/08/28/public-board-takes-labour-relations-board-to-court/>, August 28, 2012

best value for their money. That is why federal rules need to be put in place to ensure that local governments respect federal tendering rules while spending federal tax dollars.

Recommendation:

Merit Canada suggests that the Canadian Government mandate that all construction projects financed with federal funds must be tendered openly and competitively, without any precondition requiring contractors to be signatory to any union or abide by the terms of a specific collective agreement.

The Canada-Nova Scotia Building Canada Fund Communities Agreement could easily serve as a template. It states that: "The contract award process will be competitive, fair and transparent (eg. no sole-source contracts, no union-only processes)"²⁷

Our members and their employees could not agree more and we think this clause should be inserted in all agreements with the federal government. Providing equal opportunity for all contractors to submit their best bids will ensure that Canadian taxpayers receive the best value for their money.

²⁷ Schedule A, A.2.1 under "Mandatory Criteria"