

Executive Summary

Merit Canada has two recommendations for the 2017 Federal Budget.

First, we recommend that the Government eliminate closed tendering for any projects using federal funds. There is a growing body of evidence demonstrating that the lack of competition in a closed system is driving up costs and wasting taxpayer money that should instead be invested in additional infrastructure projects. Open tendering would address this, maximizing competition, reducing costs and greatly increasing the number of infrastructure projects that could be funded.

Second, Merit Canada strongly recommends that the Government abandon its plans to reinstate the *Fair Wages Act*, or some version of it. Doing so would significantly increase the cost to taxpayers of federal projects and have a severe negative impact on competition in the construction sector.

Neither recommendation costs money. In fact, they should save taxpayers and improve productivity and efficiency in the economy as a whole. In addition, for the 900,000 Canadians working in the open shop construction sector, these measures will ensure fairness in the construction industry and for its workers.

Introduction

Merit Canada appreciates the opportunity to take part in the 2017 Pre-Budget consultation and offers two recommendations to the Committee. First, Merit Canada recommends open tendering for all projects using federal funds. Second, we recommend the Government abandon its plans to reinstate the *Fair Wages Act*.

These recommendations are designed to ensure optimum competition on federally funded infrastructure projects, the efficient spending of taxpayer dollars, and fairness for all workers.

About Merit Canada

Merit Canada is the national voice of Canada's eight provincial Open Shop construction associations. The term "open shop" simply describes a workplace where membership or non-membership in a union is not a condition of employment.

Merit Canada represents the companies and workers who 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.

Therefore, the health of the open shop sector is closely linked to Canada's overall economic performance. A strong economy is good for our sector and the growth of our sector has multiplier effects that contribute to Canada's continued growth and prosperity.

Competitive Challenges

Parliamentarians may be surprised to know that there exist numerous competitive and market-distorting challenges to the open shop sector. It is important to note that Merit Canada does not view unionized contractors as adversaries, but rather competitors. However, for that competition to be fair there has to be a level playing field. That does not currently exist with much public tendering and it would be made even worse with the reintroduction of the *Fair Wages Act*. Both issues also have implications for taxpayers and the efficient spending of scarce dollars.

Open Tendering

Merit Canada welcomes the Government's commitment to invest \$120 billion over the next decade in badly needed infrastructure. However, to maximize the potential of that investment, the money should be allocated efficiently, with projects subject to a competitive bidding process that is open to all companies.

Merit Canada members believe in a business environment in which construction contracts are awarded on the basis of corporate merit. Unfortunately, in too many jurisdictions, not all Canadians are allowed to bid on federally funded projects; instead, bidding access is restricted to

specific unionized contractors affiliated with the building trades. As a result, the approximately 7 out of 10 Canadian construction workers in the open shop sector are excluded from employment on such projects.

To make things even less competitive, specific unions also have privileged access to these contracts over other unions, thereby further shrinking the pool of competition. When 70% or more of the competition is shut out from competing, the outcome is predictable: quality goes down and costs go up.

A study conducted by the City of Montreal found closed tendering inflated project costs anywhere from 30-85%. The City of Hamilton estimated closed tendering was inflating the prices of its construction projects by up to 40%. According to a Cardus study, Ontarians are paying 20-30% more for construction projects that are subject to closed tendering.

Getting back to the Federal level, the stakes are extraordinarily high for taxpayers given the plan to invest \$120 billion in infrastructure over the next decade. Using the 20-30% rate of inflated costs from closed tendering noted in the Cardus study, that means that between \$24-36 billion in the New Building Canada Plan could be wasted in inflated costs if all projects funded out of it were subject to closed tendering. Looking at that from another perspective, if that money is used more productively as a result of competition, more projects get funded and more Canadians are put to work, as you can build a lot of infrastructure with an extra \$24-36 billion.

There is also a fairness aspect to this issue. Since the money in the New Building Canada Plan comes from taxes paid by all Canadians and is meant to create lasting infrastructure projects for the benefit of Canada's entire economy, all Canadians should have equal access to these job opportunities. It is unjust that companies that pay federal taxes are prevented from bidding on contracts, paid for with their tax dollars, because they do not belong to the right union.

Closing competition to important national infrastructure projects unnecessarily increases costs to taxpayers, wastes money that could be spent on additional infrastructure, unfairly penalizes open shop contractors and undermines the long-term recovery of the Canadian economy.

Recommendation #1: At a time of fiscal deficits, slow economic growth and crumbling infrastructure, implementing open tendering would allow for real competition, and that is the only way to ensure respect for taxpayers and the optimal utilization of infrastructure dollars. Therefore, all projects that use any federal funds must be tendered openly, and that policy should apply to all infrastructure agreements, Crown corporations and any other federal mechanisms used to fund infrastructure.

Fair Wages Act

The *Fair Wages and Hours of Labour Act* was created in the 1930s to regulate the wages and hours of labour for construction workers engaged in projects funded by the Government of Canada. At the time of its introduction, there were few – if any – laws and regulations at the provincial or federal level protecting the legitimate interests of construction workers.

Today, with strict labour codes at the provincial and territorial levels, such measures are outdated, create unnecessary administrative costs for the Federal Government, infringe on the jurisdiction of the Provinces and Territories, and significantly increase the cost burden on taxpayers without providing commensurate benefit.

Recognizing this, the Federal Government repealed the Act in 2012. As a result, wages and working conditions are determined directly between employers and employees or through the collective bargaining process, as freely chosen by the parties and within the boundaries of the law.

Repealing the *Fair Wages and Hours of Labour Act* was one of the most important measures to enhance competition, increase efficiency and reduce costs on federally funded projects. However, the Federal Government has now committed to “implement a modern Fair Wages Policy,” as listed in the mandate letter of the Minister of Public Services and Procurement, which would undermine all these benefits.

To reduce administrative redundancies and respect Provincial and Territorial jurisdiction, Federal laws and regulations pertaining to labour should be limited to federally regulated industries. All provinces and territories already have laws and regulations pertaining to employment standards, working conditions, labour relations, wages and hours of labour for non-federally-regulated industries.

Merit Canada believes that the Federal Government should continue to respect the legitimate authority of Provincial and Territorial Legislatures to regulate the construction industry in their jurisdiction without interference by the Federal Government.

Since regulating wage rates at the Federal level duplicates work already done at the Provincial/Territorial level, the Act created unnecessary costs for the taxpayer. If the Act is restored and a Federal Fair Wage Schedule is set higher than rates in provincial rules, costs to the Canadian taxpayer for federally-funded projects are unnecessarily inflated. As labour costs often amount to as much as 40% of the cost of a construction project, anything that forces those costs up means more money spent on labour and less on actual infrastructure – an important consideration given the infrastructure needs in Canada.

In addition, regulated minimum wages generally have a negative impact on employment opportunities for young workers with little experience. Since minimum wage regulations increase the marginal cost of labour, employers are discouraged from hiring additional workers, even during times of peak demand. While this is beneficial to those workers who are already employed, particularly the highly skilled with significant on-the-job experience, it reduces opportunities for job seekers, particularly young people with little experience.

Finally, the burden of complying with the red tape associated with the Act was a powerful disincentive for many smaller construction companies to bid on federal work, resulting in less competition and higher costs.

Recommendation #2: the Government should abandon its commitment to restore the *Fair Wages Act*. There is no justification for doing so as conditions have obviously changed dramatically over the past 80 years with strict labour codes in place in all provinces and territories. Restoring the Act will only increase costs and regulatory burdens while lessening competition.

Conclusion

Merit Canada's recommendations cost the taxpayer nothing. Moreover, open tendering will save the Government money on much needed infrastructure investments, thereby allowing more projects to get built. The same applies with abandoning plans to reinstate the *Fair Wages Act*, which will only lessen competition and increase costs.