Executive Summary

Merit Canada is seeking Federal Government action to address two market distorting practices that negatively impact workers in the open shop construction sector and the economy as a whole. First, we recommend that the Federal Government eliminate closed tendering for any projects using federal funds since 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.

Second, Merit Canada recommends a Government and Parliamentary examination of job targeting funds, which are union-controlled monies used to undermine the competitive bidding process to favour unionized workers and employers. The use of these funds raises serious public policy questions that need to be addressed to determine if further action is needed.

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

Both recommendations made here should be included as commitments in Budget 2015.

Introduction

Merit Canada appreciates the opportunity to take part in the 2015 Pre-Budget consultation process and offers two recommendations to the Committee. First, in an effort to ensure that taxpayer spending on infrastructure is spent as efficiently as possible, Merit Canada recommends open tendering for all projects using federal funds. Second, to ensure a level playing field in the construction sector, Merit Canada recommends the Committee launch a study of the market-distorting impact of "job targeting funds" to determine what action, if any, is needed.

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 and for the two issues discussed in this submission, that simply does not exist in Canada. Worse still, both of these market-distorting practices have implications for taxpayers and the efficient spending of scare dollars.

Closed Tendering vs Open Tendering

Merit Canada members believe in a business environment where 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 soon to be released Cardus study previewed in the *National Post*, Ontarians are paying 20-30% more for construction projects that are subject to closed tendering. Toronto City Councillor Karen Stintz has put the price of restrictive union rules for the City at $100 million a year.

That said, the offensive nature of closed tendering for taxpayers is best showcased in specific, relatable examples. Therefore, consider the case of a simple brick public washroom in Kitchener, for which the lowest bid came in at $564,744 – 40% more than budgeted and 150% more than the average cost to build a house in the City (and keeping in mind the land would have been free for this public washroom). In another case, the City of Waterloo was forced to appeal to the Ontario Labour Board in its effort to open a public tender for a $140 million sewage treatment plants to 27 contractors rather than only two. Then there are all the cases from the Toronto District School Board, ranging from $143 to install a pencil sharpener, to $857 to hang three pictures on the wall (including 24 hours of time), to $2670 to replace burnt out light bulbs in the lunch room.

Getting back to the Federal level, the stakes are extraordinarily high for taxpayers. Under the Building Canada Fund, the Federal Government is investing $14 billion in infrastructure, including $4 billion for the National Infrastructure Component, which provides funding for projects of national significance.

Using the 20-30% rate of inflated costs from closed tendering noted in the Cardus study, that means that between $2.8-4.2 billion of the Building Canada Fund 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. You can build a lot of infrastructure with an extra $4 billion.

There is also a fairness aspect to this issue. Since the money in the Building Canada Fund 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 massive fiscal deficits 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.

This recommendation meets at least three of the themes in the Pre-Budget consultation document. First, open tendering will improve fiscal performance and prevent unnecessarily inflated costs for infrastructure. Second, it helps ensure prosperous and secure communities since the cost savings will allow more infrastructure projects to be built. Finally, open tendering ensures all Canadians in the construction sector have the opportunity to benefit from infrastructure spending – not just the privileged few covered by a local union monopoly.

Job Targeting Funds

The second market-distorting factor our members face are the little-known pools of union-controlled money known as job targeting funds (JTFs) or market enhancement recovery funds (MERFs). These funds are used by unions and unionized employers to disadvantage non-unionized workers and employers when competing for work on projects.

In short, JTFs are super funds managed by union bosses that are built through mandatory contributions from members of a union or their employer. A typical JTF works as follows:

1. A JTF is established by a particular union local;

2. The JTF may be funded by a special levy or assessment on working members of the particular union local (a "Member JTF"), which may be calculated as a percentage of wages or may be set at a specific amount per hour;

3. Alternatively, the JTF may be funded by contributions required to be made by particular employers in accordance with agreements between the union and the employer's bargaining agent (an "Employer JTF");

4. Both the Member JTF and the Employer JTF are administered by the union local; and

5. Payments are made by the union local out of the JTF, in response to employer applications, to a particular employer in order to subsidize the wages to be paid by that employer to workers in respect of a specific contract or job for which that employer may be competing against a non-unionized employer.

In simple terms, these massive JTF funds are used to cross-subsidize workers on jobs where unionized employers have to compete against non-unionized employers for work. It is indisputable that these funds give unionized workers and employers an unfair market advantage. Merit Canada believes that the use of JTFs raises a number of public policy concerns, including:

- Is this practice a violation of the *Competition Act*?

- Should unionized employers and workers be given a leg up on non-unionized employers and workers when bidding on projects as a result of union bosses subsidizing wages via a JTF?
- Should taxpayer dollars be used as part of this practice, since contributions to JTFs are tax exempt as union dues for the people and companies making the contributions (as well as the people receiving them)?
- Should unionized workers and unionized employers be forced to subsidize the salaries of other workers via mandatory contributions to these funds?
- Are JTFs having an impact on public infrastructure costs through the collection of levies on workers or employers?

Recommendation #2: Given these important public policy questions, Merit Canada recommends that the Federal Government and Parliament examine the use of JTFs and their implications in the marketplace. The Government can ask the Commissioner of Competition to review JTFs for compliance with the *Competition Act,* and can ask the Canada Revenue Agency for its views on whether contributions to JTFs meet the requirements for a reduction under the *Income Tax Act*. Meanwhile, Parliament should scrutinize JTFs by holding committee hearings on their implications for the construction sector.

We believe this recommendation is consistent with the pre-budget theme of maximizing the number and types of jobs for Canadians. The Federal Government needs to ensure that the market is operating freely and its policies are being property enforced.

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. Meanwhile, a Parliamentary examination of job targeting funds will help assess their market-distorting impact and determine if a public policy response is needed to restore fairness. Action on both fronts will help the open shop construction industry reach its full potential, with all the benefits to the economy as a whole that flow from such a large and important sector.