

August 8, 2023

Supply Chain Policy and Oversight Division
222 Jarvis Street, 8th Floor
Toronto ON M7A 0B6

Re. ACEC-Ontario Response to Proposal Number 23-TBS002 (Proposed Approach for Regulations under the Building Ontario Businesses Initiative Act, 2022)

On behalf of the Association of Consulting Engineering Companies-Ontario (ACEC-Ontario), and its 140-plus member firms operating across the province, we are writing to provide a response to the government's proposed approach to making regulations to prescribe the circumstances in which public sector entities are required to give preference to Ontario businesses.

Our association has concerns and questions about certain aspects of the proposal. For example, requiring consulting engineering firms to have 50% of their employees in Ontario, when the expertise for a project is located elsewhere, or the deliverables are generated elsewhere, will create bottlenecks and inefficiencies. As such, ACEC-Ontario offers the following preliminary feedback for the government's review and consideration.

Defining "Ontario business" for the purpose of the Act

In our view, items such as "percentage of full-time employees in Ontario", "percentage of salaries, or fees to employees or contractors located in Ontario", "produces majority value of goods and services in Ontario" are not reasonable indicators or measures of an "Ontario business" and could have a negative impact on otherwise qualified companies. For example, national or multi-national companies who may have a strong presence in Ontario may not meet the threshold due to their size nationally/globally.

For professional services, an alternative consideration could be to identify a threshold or percentage of work that will be carried out by professionals in the province, as opposed to out of province. This would allow national or multi-national companies that have a strong local presence, and that will be delivering the work using local resources, to take part in the procurement process, thereby ensuring that local jobs are created to the province's overall economic and social benefit.

Setting an arbitrary threshold or measure for an "Ontario business" may result in unintended consequences. For instance, the talent pool for certain goods or services may already be limited. Putting in place additional restrictions would further limit this talent pool, leading to fewer bidders, and higher costs.

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ACEC-Ontario also has a number of questions regarding the proposed criteria to determine if a business has a permanent presence in Ontario:

- Would businesses have to satisfy all three of the criteria or is just one sufficient?
- In terms of paying over 50% of the wages, salaries or fees to employees or contractors located in the jurisdiction, how would companies prove this? What would be required to submit as part of a tender to establish having met these criteria? There could be concerns with being required to provide sensitive / confidential business and personal information.
- What does “produces the majority of the value of a good or service in the jurisdiction” mean? It is not clear how or if this would apply to a consultant or contractor. For example, does this mean the design has to be produced in Ontario?
- Often, teams for procurements are led by a single proponent. How would the location of the business be determined, for instance where the “lead” is not in the jurisdiction, but other team members (subcontractors) are located locally?
- How does the Act consider organizations that are seeking to establish a permanent presence in Ontario? For example, teams may bid on a project with the intention of creating a local presence should they be awarded the contract. This can also apply on an individual level whereby an international professional is incentivized to co-locate and seek permanent residence in Ontario for the purposes of executing a project.

Prescribing goods and services and prescribing the corresponding threshold amounts for the purpose of giving preference

We suggest that goods and services that require a large talent pool (where there is already a limited supply locally) or where the province could benefit from national or international expertise and know-how, should be excluded.

Further, this section of the proposal states that “a public sector entity will be required to give preference to Ontario businesses when procuring goods and services of value below the specified threshold.” Does this mean that this will not be required when procuring goods of value above the threshold? As well, in the table on pages three and four, what is meant by “construction”? Would a service provider like consulting engineers be considered “construction” or “services” especially where they perform on site construction oversight services? Further, for the proposed thresholds, it is not clear how these criteria have been derived. Of primary importance is to enable the government to proceed with the infrastructure projects which are needed to support economic growth and population influx into the province.

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Specifying the manner in which preference is to be given to Ontario businesses

For this part of the proposal, ACEC-Ontario recommends that procuring entities should have flexibility in instances where services or goods procured could benefit from the awarding of contracts to companies that can leverage the expertise, experience and lessons learned gained from outside of the province. Benefits could include the use of cutting-edge technologies and new business approaches, as well as lower costs for the province.

Other input sought

To reiterate, the government should consider exceptions for national or multi-national companies that have a local presence and will be delivering a significant number of services using local skillsets. A national or multi-national company that would use mostly local Ontario staff to deliver services would provide the same economic recovery value, as a business that solely operates in Ontario, as these individuals are also consumers and taxpayers in the province.

For the reasons above, it is therefore important that the government further consult with stakeholders on this matter.

Should the government have any questions regarding the points raised above, or would like further information, please contact Doug DeRabbie, ACEC-Ontario's Director of Government and Stakeholder Relations at dderabbie@acecontario.ca. We look forward to working with the government on this important matter.