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## **Toward the Timely and Effective Implementation of TILMA in the Procurement of Consulting Engineering Services**

A Discussion Paper by the  
Consulting Engineers of British Columbia

For many years, Canadian public policy analysts have decried the absence of a true common market for goods and services in this country. Various provincial governments have been inclined to erect barriers favouring the local supply of goods and services, impeding the free flow of capital, and reducing competition – particularly from out-of-province entities. In a world characterized by globalization, transnational corporations, and free trade agreements, it is often suggested that Canada thereby handicaps its own productivity, efficiency and competitiveness.

TILMA, an agreement reached between two of the more competitive-minded governments in Canada, Alberta and British Columbia, is designed to wipe out such barriers as may exist between them, across a broad base of goods, services, investments and labour.

Engineering services are one such service to which TILMA will now apply.

The provisions of TILMA that govern the procurement of engineering services by government entities (including municipalities, regional districts, crown corporations and government itself) will come into effect 1<sup>st</sup> April, 2009. Depending on current procurement practices in effect, these new TILMA provisions may require such entities to change the way in which they engage consulting engineering firms for any project with engineering fees in excess of \$75,000.

The Consulting Engineers of British Columbia, working with its sister organization, the Consulting Engineers of Alberta, have adopted the goal of ensuring the effective implementation of TILMA. While drafters of this agreement believe these new rules will expand choice and competition and stimulate greater value and higher efficiencies, consulting engineers have an obligation to ensure that such goals are indeed realized. It is important that negative consequences such as declining efficiencies or reduced value are not the outcome.

## **Combined Impact of AIT and TILMA**

Purchasers of engineering service in British Columbia and Alberta should be aware of the combined impact of two agreements: AIT and TILMA. AIT was an earlier attempt, lead by the Government of Canada, to facilitate interprovincial trade.

**The Agreement on Internal Trade (AIT)** between the Canadian government, provinces and territories is designed to reduce and eliminate barriers to the free movement of persons, goods, services and investments within Canada. It has been in existence since 1995, and has been modified from time to time. AIT specifically excludes engineering services from its provisions on procurement. One may view the AIT document at [http://strategis.ic.gc.ca/epic/site/ait-aci.nsf/en/h\\_il00034e.html](http://strategis.ic.gc.ca/epic/site/ait-aci.nsf/en/h_il00034e.html)

**The Trade, Investment and Labour Mobility Agreement (TILMA)** between British Columbia and Alberta is intended to strengthen AIT by providing wider coverage, greater clarity and improved dispute resolution. It was executed in April, 2006. Under TILMA the exclusion of engineering from the procurement provisions of AIT is removed. However, professional services provided by engineers are identified by TILMA as transitional. This means that, unless TILMA is amended, engineering services will become subject to the full provisions of both TILMA and AIT on April 1, 2009. One may view the TILMA document at <http://www.tilma.ca/>

TILMA, when read in conjunction with Article 506 of AIT prescribes specific procurement procedures, with the purpose of removing regional bias in the procurement selection process. It specifies the new procurement regime that impacts consulting engineers and purchasers of consulting engineering services. For the remainder of this discussion paper the acronym TILMA will be used to refer to the combined effect of TILMA read in conjunction with AIT.

Three areas deserve special comment: (1.) the qualifying of engineering organizations; (2.) notification and advertising of engineering contracts, and (3.) source selection and the cost of compliance for government organizations and others procuring engineering services.

### **1. The Qualifying of Engineering Organizations**

The media from time to time report the tragic consequences which can accrue through poor engineering design and insufficient construction supervision. Collapsing bridges and parking garages do occur occasionally, and geotechnical failures are more common than they should be – but these are merely the most visible manifestation of selecting the wrong engineer for the wrong job. More common outcomes of the failure to select engineering firms on the basis of quality, qualifications and capacity are a reduction in innovative design, and an increase in the lifecycle cost of construction and maintenance. In this day of specialization not all engineers are qualified to do all engineering work -- although some service providers may be reluctant to concede that point.

In other words, having “P.Eng.” appended to one’s name, does not guarantee competence, quality and innovation in all things. Screening and qualification are therefore required.

The professional colleges of engineering registration in these two provinces, as elsewhere, have as a primary goal the protection of the public. Recently, the Association of Professional Engineers and Geoscientists of B.C. (APEGBC) commenced requiring every registrant to annually attest to practicing only in fields in which he or she is competent. CEBC vigorously supports this requirement.

CEBC also advocates the procurement of engineering services in the manner prescribed by the National Guide to Sustainable Municipal Infrastructure (InfraGuide) Best Practice document entitled “Selecting a Professional Consultant”, published in 2006. This independently produced Guide recommends qualifications-based competition for selection of engineering services, requiring clients to select the engineering firm for an assignment, based on the firm’s expertise, before entering fee negotiations. Qualifications-based competition for government-funded engineering services is mandated by law in 47 states in the United States, and most recently by legislations in the Province of Quebec, because it has been demonstrated to provide the best ultimate value to the taxpayer over the life-cycle of a public facility.

## **2. Notification and Advertising of Engineering Contracts**

An important goal of the TILMA agreement is to broaden the dissemination of information about what engineering contracts are available. Achievement of this goal depends on the *process* of procurement.

With the exception of dollar thresholds, TILMA does not differentiate between the procurement of professional services and the procurement of any standard commodity, such as road salt or diesel fuel. Under TILMA, any firm in BC and Alberta must be given the opportunity to respond to any “call for tenders” over \$75,000 in value for which it is qualified. If and when TILMA is adopted by additional provinces -- as appears possible -- this opportunity must be extended to any firm in those additional provinces too.

In CEBC’s opinion, this TILMA stipulation leaves procurement officials with three main options when engaging professional engineering consultants:

- a) Advertise each engineering assignment over \$75,000 in a manner accessible to all BC and Alberta firms, and accept an unlimited number of Proposals.

CEBC advises strongly against this approach, which at the extreme might create a deluge of applications, particularly to smaller organizations advertising smaller jobs. In our view, such an outcome would be the antithesis of the National Guide to Sustainable Municipal Infrastructure (InfraGuide) in their “Best Practice for Selecting a Professional Consultant” as referenced above. This scenario could sometimes lead to more money being spent on the preparation and the evaluation of a multitude of Proposals, than the actual value of the engineering assignment itself, which could thwart the higher efficiency, higher value philosophy espoused.

- b) Advertise each assignment in a manner accessible to all BC and Alberta firms, and accept an unlimited number of Expressions of Interest. Then prepare a shortlist of the best qualified firms (we would suggest three 3 firms) from which to invite a detailed Proposal.
- c) Advertise annually in a manner accessible to all BC and Alberta firms, and compile a database of firms that are, in your judgment, qualified for various types of work. Then, for each assignment, invite only qualified firms to submit Expressions of Interest, then prepare a short-list, and invite Proposals.

CEBC is also of the view that the purchaser of engineering services is under no obligation to engage in correspondence or any detailed explanation with unsuccessful bidders, beyond a simple notification. However, files should be kept in anticipation of possible audits and complaints under TILMA – and we would suggest for 7-10 years similar to other legislative requirements.

### **3. Source Selection and Cost of Compliance**

CEBC has engaged in discussions with the BC government representatives responsible for TILMA who have declared that a “rotational” system of contract awards, or even to invoke previous relationships, must not in and of themselves be used to select a firm or prepare a short-list. They have, however, indicated that familiarity with the project site and history might be acceptable as selection criteria, provided the motivation is not simply to grant preference to local firms.

Nothing in TILMA prevents the evaluation of Proposals using, among other criteria, competence or experience. Neither does TILMA mandate or prohibit the use of price as a differentiator. Nevertheless, TILMA severely limits the ways in which you can disqualify or differentiate between responding firms. In particular, you may not use any differentiator that relates to the geographic location of the firm.

In addition, purchasers may not bias technical specifications, the specification of quantities or delivery schedules, or the timing of events in such a way as to favour a particular supplier of services, or group of suppliers. However, this does not mean that one cannot specify deadlines or schedules to be followed.

Whichever option (or combination of options (a.), (b.) or (c.) as cited above) that one chooses to pursue, the selection process must be transparent, documented, and made clear in advance to bidders. This is a necessary precaution in the event of an appeal against any procurement decision, under the provisions of TILMA.

If sufficient interest is expressed, then CEBC and the Master Municipal Contract Documents Association (MMCD) may develop a standard, legally vetted, procurement practice code. Notification of vendors of one’s adherence to such a suggested code may be one efficient means (for smaller procurement entities in particular) to efficiently spell out the ground rules followed.

## **Possible Implications of Adopting TILMA**

CEBC concludes that among the possible implications of adopting TILMA may be the following:

- The adoption of TILMA rules will require thoughtful consideration by procurement entities. Unless careful and transparent rules for procurement are adopted, it is possible that public sector entities such as Municipalities and Regional Districts could find themselves expending more resources and effort, with higher costs and requiring more lead time, in comparison with the status quo. This would not be consistent with TILMA objectives.
- The focus of engineering expertise may shift somewhat. Local engineering firms could conceivably find the volume of their strictly local engineering work may decline, as non-local services are procured with greater frequency. Some engineering firms may be less inclined to maintain branch offices in smaller communities.
- A short term consequence could conceivably be the consulting industry as a whole preparing more Expressions of Interest and Proposals to win the same amount of work. This would have the twin effect of a greater demand on the public sector clients' administrative resources, and higher consulting firm costs being passed on to the clients. Such costs would have to be traded off against the hoped-for increases in value and decreases in project life-cycle costs resulting from more competition.

## **Recommendations**

CEBC would like feedback from public sector clients and the Union of B.C. Municipalities (UBCM) concerning their views on this preliminary discussion paper.

The effective implementation of TILMA will best be accomplished by the consulting engineering industry working with public sector clients and the UBCM to find optimal ways to achieve TILMA compliance, while employing procurement procedures that are cost effective, practical and produce the best value – all the while ensuring public safety and the public interest.

CEBC proposes to develop suggested standard codes of practice, for the implementation of TILMA, for the guidance of public sector engineering service purchasers. Some approaches which we have considered could include:

- Jointly developing standard templates for Expressions of Interest and Requests for Proposals, and documenting simple, transparent procedures for selection of engineering consultants;
- Maintaining contact with the BC and Alberta governments as TILMA implementation proceeds and suggesting modifications as experience may dictate.

It has become clear that, on its own, CEBC is unlikely to be able to devise optimal ways and means of implementing TILMA. A cooperative approach is required. That is why this discussion paper is being circulated. CEBC would like to hear from you.

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