OPEN TENDERING

ENSURING BEST VALUE FOR FEDERAL INFRASTRUCTURE INVESTMENT

Briefing Note—May 2013

CARDUS

OPEN TENDERING: ENSURING BEST VALUE FOR FEDERAL INFRASTRUCTURE INVESTMENT

Open tendering is about fairness. In a free and democratic society, there should be no restrictions which limit otherwise qualified companies from bidding on publicly funded work because of the private affiliations of their employees.

EXECUTIVE SUMMARY:

The federal government contributes billions of dollars to infrastructure projects across the country. Over the next few years, the federal government will contribute $21 billion to the construction of transmission lines, generating stations, highways, water treatment plants, airports, arenas and community centres across Canada.

But the federal government does not always get the best value for its investments. Studies show that in many jurisdictions in Canada, labour monopolies add an additional 10-40% onto the costs of construction. Two high-profile projects—Union Station in Toronto and the Pan Am Games Stadium in Hamilton—illustrate these inflated costs. The federal government paid $20-80 million dollars *more* for these projects than it would have if these projects' tenders were open to all construction providers. Given that the federal government contributes funding for hundreds of projects across the country, the potential savings are huge.

A move towards open tendering would have both positive economic benefits, as well as positive political benefits. Petitions for increased funding for Canadian municipalities are an annual part of the news cycle. While the Federal government already contributes billions of dollars per year towards infrastructure, the challenges facing municipal infrastructure means those calls will only become louder. Open tendering will provide the federal government with a tool to ensure that municipalities are accountable for making those federal funds stretch to the furthest extent possible. It contributes to an economic culture driven by competition among multiple labour pools chosen by workers—exactly the type of culture which leads to innovations which will increase value. Open tendering makes both economic and democratic sense.

THE ISSUE:

Labour relations codes and acts in various provinces contain provisions which allow for certain parties – often traditional building trades unions – to control work on public construction projects. These provisions effectively bar vast swathes of the construction industry from bidding and working on projects which their tax dollars pay for. Take three provinces by way of example:

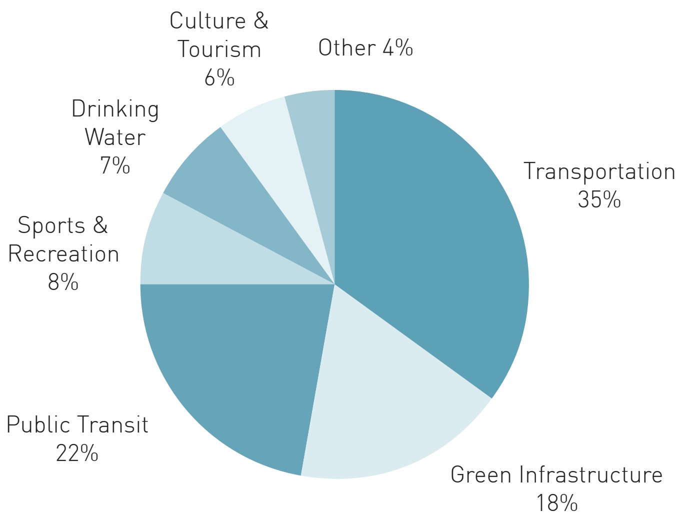
BRITISH COLUMBIA – Section 55.15 of the *BC Labour Relations Code* allows unions "to apply to the minister for the right to bargain collectively and enter into a project collective agreement for the duration of [major construction projects]." This effectively allows a given union to petition the minister for exclusive rights on major projects. While project agreements are not currently in place on public projects in BC, the potential for government to restrict competitive bidding on public projects remain, especially in situations where the government has obligations to given unions.

MANITOBA – Similar project labour agreements exist in Manitoba. The Red River Floodway Expansion Project and the East Side Road Project are subject to project labour agreements with certain unions which effectively bar companies affiliated with other unions and non-union companies from bidding on public infrastructure projects under the labour relations model chosen by their employees. These projects have drawn, and still draw, significant amounts of federal funds, including over $300 million which have already been invested.

ONTARIO – Ontario's Labour Relations Act allows municipalities and crown corporations to be organized as if they were a private contractor.[1] Given Ontario's legislated province-wide collective bargaining regime, this effectively bars 70% of the industry[2] from working on publicly owned and publicly funded projects. The labour regime in Ontario allows companies affiliated with a small set of various unions to effectively control 100% of construction work owned by certain municipal or crown corporations.

ECONOMIC IMPLICATIONS:

The Federal government contributes billions of dollars to provinces and municipalities for infrastructure through its Provincial-Territorial Base, Building Canada, Gas Tax and other funds. These funds are used to build roads, water treatment plants, airports, arenas, bridges and other infrastructure needed for Canadian's well-being and economic development.[3]



Taking the cost savings derived from *Cardus Construction Competitiveness Monitor: Ontario's Municipal Construction Markets*, which provides a range of 10-40% cost inflation due to closed-tendering, and applying them to Ontario alone, we estimate increased costs as follows:

Recipient	Federal Funds Subject to Restrictions	Savings (at 10%)	Savings (at 40%)
Ontario	$263,144,845	$26,314,485	$105,257,938

Given the heavy investment in Manitoba's floodway infrastructure - $324 million and counting – the potential savings from two provinces alone are significant.

These numbers will likely rise as much of the infrastructure needed to keep Canada's economy and its communities safe, prosperous and competitive on a global scale, are aging. Reed Construction Data notes that the bulk of Canada's infrastructure – roads,

1. For more information on the competitiveness of Ontario's labour markets, see: Dijkema, Brian. (2012). *Cardus Construction Competitiveness Monitor: Ontario Municipal Construction Markets.* (Hamilton: Cardus).

2. Uppal, Sharanjit. (2011). *Unionization 2011*. (Ottawa: Statistics Canada) Retrieved 16/11/2012, from http://www.statcan.gc.ca/pub/75-001-x/2011004/article/11579-eng.pdf

3. Infrastructure Canada. (2012). *Building a Better Canada Together*. Retrieved 16/11/2012, from http://www.infrastructure.gc.ca/alt-format/pdf/FCM_2012-eng.pdf

bridges, tunnels, waste water and sewage treatment plants – are beyond middle age.[4] Costs for repairing, replacing and refurbishing this infrastructure will be enormous, and it would be prudent to act now to ensure that construction costs associated with these projects are as competitive as possible.

A QUESTION OF FAIRNESS:

A move toward open-tendering is a prudent action taken by a government concerned with getting value for its dollar, but also with ensuring that *all qualified* Canadians can access public works. Open tendering is fair and transparent, and makes all parties accountable.

It is a basic tenet of a fair and open society that workers and corporations should not be prevented from earning a livelihood because of legitimate and lawful choices about their private affiliations. Open tendering is not a union vs. non-union debate. There are numerous instances where closed tendering restricts *unionized* workers from work. This is a debate out whether all Canadians – who are free to choose which union they want to join or not join – should have access to a livelihood.

Members of Parliament who live and work in communities affected by closed tendering have an opportunity to stand up not only for sound and prudent expenditure of taxpayers' dollars, but for the ability of their constituents to earn those tax dollars back through their effort and industry.

4. Reed Construction Data. (2012). *Canadian Construction Overview*. Retrieved 26/10/2012, from http://www.cca-acc.com/pdfs/en/conference/CanConstructionOverviewReedData.pdf

JURISDICTION:

Labour law falls under provincial jurisdiction. There is, therefore, no way for the Federal government to compel provinces to remove unfair restrictions. However, the government is able to use the leverage it does have to move provinces in the direction of greater openness. The federal government provides billions of dollars to provinces and municipalities for infrastructure. These funds are dispersed through three major federal funds including the Building Canada Fund, the Provincial-Territorial Base Fund and the Gas Tax Fund, as well as other funds and rebates. The federal government already places limits and restrictions on how these funds will be spent – either via time limits, or project incrementality, or any other number of criteria. It also routinely sets out schedules of eligible and ineligible costs which shape how provinces or municipalities spend federal dollars.[5]

More importantly, In Budget 2011 and Economic Action Plan 2012, the Government of Canada committed to working with partners and stakeholders to develop a long-term plan for public infrastructure that extends beyond the expiry of the Building Canada plan in 2014. Budget 2013 committed 47 billion over the next ten years for provincial, territorial and local infrastructure and outlined a plan to meet the challenges of Canada's infrastructure deficit. The creation of this plan provides a unique opportunity for the federal government to ensure that all future expenditures will be open to all Canadians via limitations and eligibility requirements similar to those it has previously used in other infrastructure spending.

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5. See, for instance: Government of Canada & Government of Ontario. (2008). *Infrastructure Stimulus Fund Guidelines for Ontario*, points 4-7. Retrieved 28/11/2012, from http://www.bcfontario.ca/english/ISF/guide.html#7