

Amend The Ontario Labour Relations Act To Enable Fair And Open Tendering For Public Infrastructure Projects

Authored by the Sault Ste. Marie Chamber of Commerce.....

Issue

The current Labour Relations Act is preventing some municipalities and public entities from openly tendering and procuring construction projects, which reduces competition and increases construction costs. Should a Municipality or School Board challenge their designation as a “business” the process is expensive, cumbersome and lengthy.

Background

Language in the Labour Relations Act allows municipalities and school boards to become certified “construction employers,” which ties all of the municipalities’ construction work to a particular union (or small group of unions) and its bound contractors. As a result, up to 70 percent of the industry is unable to compete for work on publicly owned and publicly funded projects, inflating construction costs by as much as 30 percent. In 2012, approximately \$942 million worth of municipal construction work in Ontario was subject to restricted tendering.

The economic and budgetary implications for the public sector as a result of restricted tendering practices are substantial. According to comparative analysis from countries around the world on major infrastructure projects, the potential cost savings from an open tendering process indicates that construction costs fell by an average of 20 to 25 percent as the number of bidders increased from two to fifteen. A recently released academic study by Cardus¹ modeled the impact of a closed tendering environment in the City of Hamilton by projecting that:

- The gap between the winning bid and the next highest bid in Hamilton (restricted since 2005) was more than twice – 105% — as wide as that in neighbouring municipalities (like Halton or Brant) that had open tendering.
- Comparing the gap between the winning bid and the average (mean) bid in open and closed municipalities, the difference was 114% wider; the gap for the highest bid was also wider: 155%.
- The Participation of vendors in the newly restricted environment shrunk by over 83%.

Therefore, a change to the Ontario Labour Relations Act would improve the value and impact of provincial and federal infrastructure investments. To achieve these objectives, the government of Ontario must modernize the labour law to ensure fair and open tendering of public infrastructure projects throughout Ontario. A fairer tendering process, encourages competition, decreases costs and supports fiscally responsible infrastructure investment.

Furthermore with the implementation of Bill 148 municipal costs are rising across many of the operational costs centers. There has been increasing pressure on Municipal budgets top pass these costs on to property owners. In many communities, such as Sault Ste. Marie, economic conditions are

¹ “Up, Up, And Away: The impact of Restrictive Tendering”. Cardus (2017)
<https://www.cardus.ca/research/workandeconomics/publications/5163/up-up-and-away/>

challenged, demographics are shifting, populations are shrinking and property assessment in some sectors are declining threatening their ability to maintain competitive tax burdens.

Adding to the challenges Municipalities are limited by the Municipal Act in their ability to generate revenue to offset the costs of delivering services to the tax payer. This by its own should be of substantial consideration when assessing whether a municipality is to be defined as a business, which is defined by risk taking, market forces, competing for capital and generating a return on investment that can be distributed to owners and/or shareholders, as well as reinvested in capital investment to support growth and sustainability.

There are several municipalities in the Province of Ontario that are currently impacted by closed tendering rules, including but not limited to Sault Ste. Marie, Hamilton, Kitchener Waterloo, Toronto and Mississauga.

Recommendation

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Immediately amend the Ontario Labour Relations Act to clarify that municipalities and school boards are not construction employers.