



Association of Consulting Engineering Companies-Canada  
L'Association des firmes d'ingénieurs-conseils-Canada

February 19, 2010

Marc Beaudoin  
Director  
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## Re: Requirement Posting of Bilingual Documents on MERX

Dear Mr. Beaudoin:

The recent direction from the Government of Canada that all documents prepared for the federal government and posted on MERX must be provided in both official languages will have significant implications on the consulting engineering sector.

The Association of Consulting Engineering Companies – Canada (ACEC) appreciates the spirit and intent of this direction. However, consultation within our membership and with other engineering organizations suggests that there is insufficient capacity within or available to the industry (or the profession in general) to comply with this requirement. Scarcity of capacity will likely drive up costs and delay project delivery. We anticipate that many firms will consequently opt not to offer these services and decline opportunities to work for the federal government.

We understand that your department has been in touch with our provincial and territorial organizations as well as the licencing bodies across the country.

In response to your specific questions, we offer the following responses:

### **What is the capacity of the professional industry for producing bilingual documents?**

Outside of Québec, New Brunswick and the National Capital Region in-house capacity is estimated to be less than 5% and non-existent in some regions. We also understand that even within parts of Québec, New Brunswick and the National Capital Region there is very little surplus capacity that could be redeployed.

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**Are there restrictions on how firms seal and sign documents in both of Canada's official languages?**

Professional engineering is regulated at the provincial level and there are subsequently minor differences between the licencing statutes. However, as a general rule, a professional engineer is expected to take responsibility for any document that he or she signs or seals regardless of language. Consequently, an engineer would not likely be willing to seal a document in a language in which the engineer is not sufficiently fluent. In fact, an engineer who seals a document that he or she cannot read or understand could presumably be guilty of professional misconduct.

Since only a licenced professional engineer may seal and take responsibility for engineering documents, translated documents cannot be sealed unless the translator is also a professional engineer and is prepared to assume responsibility for the documents. Some provincial statutes go further and suggest that a document may only be sealed by an engineer who has overseen the preparation of the documents.

**How many firms have capacity to produce bilingual documents?**

We estimate approximately 10% of ACEC member firms have some capacity to produce bilingual documents. Note that this does not necessarily mean that the firm can deliver all of its projects in both official languages. Again, the firms with at least some capacity would be concentrated in Québec, New Brunswick and the National Capital Region. In some geographical regions of the country there is currently no capacity.

**How would the industry adapt to this requirement? What strategy would it employ?**

Firms will likely need to either sub-contract or partner with firms that currently have in-house capability. However, with finite capacity available, market demand will likely create a significant premium on bilingual engineering fees as well as delays in project delivery. Other firms will simply not be able to participate in federal government projects because of limited capacity. The availability of professional engineering services to the federal government is expected to decline significantly.

### **How long would this requirement add to the document development schedule?**

Firms that currently do not have in-house capacity to produce bilingual documents have estimated anywhere from a 50% to an 80% increase in the schedule for document production. This assumes the unlikely situation that the required bilingual engineering expertise will be readily available to industry to allow the preparation of bilingual documents. We note that even in the case of firms that currently do have in-house ability to produce bilingual documents estimate, the production of bilingual documents adds up to 15% to the schedule for document production.

### **How will this impact the professional fees?**

Firms with in-house expertise estimate that the production of bilingual documents typically adds up to 15% in additional fees depending on complexity. Firms currently without in-house expertise expect fees to increase by 50% to 80%. Again, as a result of limited bilingual expertise available to the industry, fees may increase even more dramatically in both cases.

### **How long will the industry take to be in a position to offer bilingual documentation service?**

The time required for the industry to fully meet this requirement is largely dependent on whether enough students entering engineering programs or recent graduates entering the industry will be sufficiently bilingual. Consequently the time required for the industry to comply may be generational.

Note that many firms will simply opt not to offer these services and decline opportunities to work for the federal government.

### **What do you foresee are the major risks? Any suggestions of mitigation?**

The most significant risk is the federal government's ability to deliver projects due to the lack of capacity within engineering sector (as well as others in the broader construction sector). Projects that do proceed will likely become more expensive and are more likely to be subject to delays as the market services adjusts to the new requirements.

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While capacity in the industry is adjusting, there is greater risk of errors and omissions in the documents until capacity is fully established. As a result, we anticipate many firms will either decline to participate in federal government projects, or price their services to compensate for the additional risk.

Commercial risks could potentially be mitigated by designating which documents have precedent in the event of a conflict and providing some level of indemnification to the consultant for costs related to budget and schedule escalation due to the lack of available capacity. *However, while commercial risk can be mitigated, firms and their engineers will be unable to contract out of their professional liabilities as defined by provincial statutes.* Consequently, many firms are unlikely to undertake these projects.

The federal government could treat the translation services as a project disbursement but this would be subjected to the same capacity issues across the country.

The federal government could also perform the translation services and assume commercial liability - but again this would be subjected to the same capacity issues across the country. There may also be some implication for the sealing of documents as indicated previously.

### **Do you see other stakeholders who may be impacted?**

All services provided to the government in context of the delivery and construction of projects will face similar issues. These issues will be particularly acute to other professional services (e.g. architects, geoscientists) where there are the additional issues of professional liability under other statutes.

The expected impacts on costs and schedules will likely cascade down the supply chain (e.g. sub-contractors and sub-consultants, manufacturers, suppliers) and will likely impact approvals and permitting requirements.

Most importantly, the ultimate end-users of the facilities and taxpayers will be impacted through higher costs and delays – and perhaps even the inability to deliver assets as planned.

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**Will this have an impact on professional liability?**

Yes.

**Other concerns or recommendations?**

If the requirement for documents to be provided in both official languages is triggered by need for posting on MERX to be bilingual, it may be possible to circumvent MERX by utilizing the network of construction plan rooms across the country.

Contractual documents (including agreements, RFPs, general conditions) can be reviewed and amended to mitigate resultant commercial risks to both the Crown and to its service providers.

Notwithstanding the noble intentions of the language requirements, ACEC believes that the challenges and complexities that will arise far outweigh the benefits. There is simply not enough bilingual capacity in the country to produce all engineering documents for the federal government in both official languages.

If the federal government cannot return to its pragmatic approach towards the requirement for bilingual documents, we will need to have some fundamental discussion on how the federal government can deliver its projects while fulfilling its mandate and providing value to Canadians.

Thank you for the opportunity to comment and we look forward to further discussions on this matter.

Yours truly,



John D. Gamble, CET, P.Eng.  
President

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