



August 8, 2022

Subject: Follow-up to Meeting on July 13, 2022

Re: New Official Languages Requirements for Tender Documents

Email:

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Thank you for taking the time to meet with us on July 13, 2022 to provide clarification on the new language requirements for tender documents for all federal projects, following the issuance of Policy PN-48R1 on May 13, 2022. We very much appreciated our candid and constructive discussion. With your helpful clarifications, we are optimistic that we can work collaboratively with the federal government to comply with this new policy, while also resolving the concerns of the consulting engineering industry.

As we discussed, it is our understanding that these new requirements specifically apply to information and documentation that is published on the Public Services and Procurement Canada (PSPC) website. We further understand that neither the *Official Languages Act* (OLA) nor the resultant policy, in and of themselves, require Architecture and Engineering (A/E) firms to provide documents to the federal government in both official languages. Should such documents be published to a federal government procurement website, we understand that the federal government – and not the A/E firms – will be responsible for translating the documents for publication in both official languages.

However, throughout the early implementation of this new policy, it appears that federal government officials have in fact been asking private sector proponents to translate the documentation themselves to provide full sets of documentation in both official languages. Regrettably, requiring A/E firms to provide translation services, in addition to A/E services, will have the unintended consequence of precluding hundreds of otherwise highly qualified firms from A/E procurement opportunities with the federal government. As you can imagine, the capacity of the industry – particularly but not exclusively small- and medium-sized businesses – to fulfill this translation service is quite limited, and in some parts of the country, it simply does not exist. For businesses that do have this translation capacity, this requirement will likely result in a number of adverse effects, notably: higher project costs, extended delivery delays, and significant increases in commercial and professional liability for both proponents and the Crown. We also note that there are significant differences in how engineering regulators across the country would interpret “documents of equal quality” and how their respective regulatory regimes would address translated documents in general.

As you know, we fully support the principle and the policy objective of making federal procurement opportunities available to all firms in the official language of their choice. Our goal is to ensure that all qualified A/E firms continue to have the ability to participate in federal A/E procurement opportunities, while mitigating increased project costs, delays, and liability.

To that end, and as we discussed in our July 13<sup>th</sup> meeting, we have the following recommendations that we believe will help the government meet their requirements to fulfill its capital program, while respecting the new OLA directive:

1. We recommend separating the requirements for translation services from A/E services. These are completely different services that should be procured separately. Most A/E firms in this country simply do not have the capacity to do both. In situations where the federal government requires documents to be translated, this service could be procured separately, or completed in-house if capacity exists. This approach could also be applied to legacy documents currently in the possession of the government. Furthermore, it would provide the federal government more flexibility to navigate the different regulatory implications of translating A/E documents.
2. Since the language requirement is tied to what is published online, we propose that the procurement opportunities posted on government websites link to relevant documents prepared by A/E firms hosted online by other organizations. Alternatively, the individual A/E firms could house electronic documents in publicly accessible areas on their own company websites. This would allow the government to apply the same pragmatic and successful “as required” and “on demand” approach to “non-standard” documents previously allowed by Treasury Board, while still complying with the OLA’s new policy. We would welcome the opportunity to work with you to explore this option further.
3. Finally, we believe that further industry engagement is critical. Unfortunately, there is currently a great deal of anxiety and confusion regarding these new requirements for people working in the A/E industry. Engagement with engineering regulators across the country is also critical to understanding the implications for professional liability arising from the translation of documents. We would like to recommend that PSPC officials host information sessions over the coming weeks to answer questions and provide clarification for the A/E industry on this topic.

We trust this is your understanding from our July 13<sup>th</sup> meeting as well, and we appreciate your time in working with us to address the concerns voiced by consulting engineering firms across the country.

We believe that our recommendations will help the government navigate the complications arising from this new policy directive. These ideas are by no means exhaustive, and we would welcome the opportunity to collaborate further on generating additional solutions.

As trusted and reliable partners to the federal government, consulting engineering companies are committed to delivering on the federal government’s capital programs and other required A/E services required while also respecting the OLA. We look forward to working together so that we can ensure the smooth implementation of this new directive across our industry.

Sincerely,



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