



ASSOCIATION OF CONSULTING
ENGINEERING COMPANIES | CANADA

ASSOCIATION DES FIRMES
DE GÉNIE-CONSEIL | CANADA

“PN-48R2 Updated policy on official languages and contracting”

Public Services and Procurement Canada

ACEC-Canada (ACEC) is the national voice of over 400 companies that provide engineering and other professional services to both public and private sector clients across Canada and the world. Our members, who range from employee-owned small businesses to some of the largest engineering companies in the world, collectively employ over 60,000 Canadians. Consulting engineering firms serve as Canada’s trusted advisors, leading efforts to design and build a more prosperous and sustainable future for the nation.

Visit www.acec.ca or contact us at president@acec.ca to learn more.

Background

PN-48R2 is a policy notification update regarding the requirements for the federal Acquisition Program (AP) following revisions due to the application of the **Official Languages Act**. This proposal replaces PN-48R1, created under the department's previous guidance in 2023.

ACEC fully supports the principle that all parties should have the ability to participate in the federal procurement process in the official language of their choice as it aligns with Canada's commitment to bilingualism. However, the reality of implementing PN-48R2 creates a paradox: while the policy aims to increase accessibility, it will, in practice, exclude hundreds of firms, particularly small and regional firms, from procurement opportunities and delay projects vital to the security, cost of living, and Canadians' quality of life.

The most relevant clarifications from PN-48R2 are:

1. The proposal requires that all procurement solicitations (along with all related supporting materials) published by any federal department or agency ("client" departments) must be published in both official languages.
2. All responses received from the public to federal procurement solicitations must be translated into both official languages before they can be published online by any federal department or agency. This means documents prepared by consultants must ultimately be made available in both official languages.
3. Sealed documents included in a procurement solicitation or a published bid are to be translated, where allowed by professional regulation. Those regulators that allow translation—the engineering regulators in BC, NB, NL, ON, and PEI—all seem to require, in practice, that a bilingual member take responsibility for the translation.
4. In jurisdictions where translation of sealed documents is not permitted, there is a mechanism for unilingual documents to be provided by the client department or agency to "pre-qualified vendor lists" whereby vendors will be informed that documents will only be available in one language and that the documents will be provided directly to the vendors (thereby not being published to a government website).

ACEC is pleased that PN-48R2 recognizes that engineering firms cannot be compelled to offer documents in both languages in order to participate in the federal procurement process. This directive confirms that client departments within the federal government are the actors responsible for fulfilling language requirements of PN-48R2 and the Act.

Those distinctions aside, ACEC continues to be very concerned that the potential challenges arising from PN-48R2 will delay desperately needed infrastructure, and create significant challenges for engineering, architectural and geoscience firms, and regulated professions more broadly.

Our concerns and recommendations are as follows.

The Federal Government Lacks the Capacity to Comply

Our members are concerned that the federal government does not have the appropriately qualified translation capacity to meet the volume of services required under PN-48R2. With our understanding of the engineering marketplace, ACEC questions whether such capacity for technical translation that complies with professional regulation exists in the engineering profession in Canada, at large.

The federal government cannot move forward with regulatory changes for which it does not have the capacity to comply. The foreseeable outcomes include significant delays in vital public procurement projects and a potential inability for the federal government to meet its policy commitments.

The Private Sector Lacks the Capacity to Support the Federal Government

A disproportionate number of professional engineers that have both the necessary linguistic and technical skills to translate professionally sealed documents are employees of the federal government. If the federal government does not have the in-house capacity to respond to PN-48R2, they should not expect that the necessary capacity exists in the private sector. An independent third-party study determined that 70% of ACEC member firms do not have the ability and/or capacity to translate engineering and architectural documents in a manner that complies with professional regulation, if at all. Capacity is further constrained in areas that require specific expertise and specialization. In addition to the requisite technical expertise to translate procurement documents, many departments require that those viewing sensitive plans hold security clearances. Gaining a security clearance is an onerous and time-consuming process that must be repeated for each relevant department (e.g., a separate process for DND, the RCMP, Corrections Canada, etc.).

Further, the industry will not be able to meet the increasing volume of translation services they may be called on to perform.

PN-48R2 will have negative implications for bilingual engineers and their firms, whose resources would be tied up in translation services rather than professional engineering services.

PN-48R2 Will Result in Critical Delays

As the federal government lacks the capacity to translate documents in-house at the scale required, the consequences are foreseeable. The public procurement process in Canada, already challenged by inefficiencies, will see projects delayed further as client departments scramble to have detailed technical documents translated – in competition with all other client departments. Delays are inevitable and will impact not just infrastructure, but also building repairs, environmental remediation, and the host of other services procured by the federal government that require licensed professionals.

Prior to PN-48R2, most ACEC members were already facing project backlogs and delays ranging from between six months and two years. Any additional delays threaten the federal government's ability to deliver capital projects and fulfil its policy commitments. ACEC also continues to be concerned that our member firms will ultimately see the PN-48R2 requirements be placed on them as part of a work scope.

Public Safety Implications of Translation by Non-Professionals

Since the beginning of the PN-48R1 process, ACEC and our members have been concerned about the safety implications of the translation of stamped or technical documents by anyone who is not a licensed engineer, architect, or geoscientist operating within their licensed jurisdiction. We continue to be opposed to the practice and are very concerned that the impact PN-48R2 will make the demand for lay-translation of technical documents more widespread.

Licensed professionals' regulatory bodies have the best insight into how to keep the public safe, and they have prevented the practice of translation in most provinces. ACEC requests that the government review PN-48R2 through a safety lens and consult the provincial regulatory bodies on why they do not allow the practice.

Provincial Regulations will Require PN-48R2 to be Applied Differently Across the Country

Professional regulations vary significantly on whether stamped technical documents may be translated, and by whom. There are even variations between professions within the provinces. The differences in provincial and professional regulations can result in different requirements, liabilities, and duties of care for different professionals *working on the same project*.

The federal government could be effectively establishing different procurement systems across the country based on provincial regulations.

Bilingual Requirements Disproportionately Restricts Small Businesses

Notwithstanding the changes from PN-48R1 to PN-48R2, ACEC continues to be concerned that the language requirements will disproportionately impact small and regional firms, which may lack translation capacity and/or bilingual staff – and are particularly impacted by project delays. Many of these firms have highly specialized qualifications and expertise that is key for government to deliver projects and fulfil its policy commitments.

Recommendations

Liability for Translated Documents Must Fall on Federal Government

The safety of having translated parallel plans for each federal project has not received sufficient consideration.

Translating such detailed and technical documents comes with significant professional and commercial liability exposure. ACEC requests that, as this is a federal mandate, each client department should explicitly assume the commercial liability associated with creating two sets of plans for each project. This liability should not be passed back to firms via contract.

However, even this does not address the issue that professional liability cannot be contractually relieved of professional liabilities that arise from having two sets of “equally reliable” documents.

Indigenous Communities Should Decide the Language of Procurement

PN4-8R2 contains no consideration of how the changes will impact Indigenous communities and federal procurement processes on reserves.

Infrastructure work in Indigenous communities is some of the most vital work undertaken by the federal government and it is unacceptable that the delivery of these projects may be delayed, or processes made more difficult to participate in, due to language barriers. Indigenous communities should be free to determine their own language policies for procurement on their lands – such is the case in Nunavut which has four official languages.

ACEC requests that procurement documents related to projects on reserves be provided to the public in the language(s) requested by the relevant Indigenous authority.

Leverage Translation Capacity Where it will Make a Difference

ACEC supports the previous practice of requiring bilingual documents in circumstances where the demand for the documents in each official language could be reasonably anticipated by the nature, scale, or location of the work – and translations could still be requested if required during the procurement period. This was the pragmatic approach of the PN48 for over fifteen years.

While the pan-Canadian requirements of PN-48R2 are noble, they are unworkable and will tie up the limited capacity within the country with producing many documents which will likely never be read or used. The finite capacity in the country should be applied where it will in fact make a difference in making procurement more accessible.

Canada should return to a model that would provide bilingual documents for projects in the National Capital Region and other regions with bilingual populations, as well as projects likely to attract nation-wide interest. ACEC also supports the previous practice whereby the federal government would provide parties with translated documents at any time when requested by one of the bidding parties.

This can be accomplished, while complying with PN-48R2, by using a combination of prequalified supplier lists and the use of third-party plan rooms.

ACEC would also find it prudent to periodically and regularly review the criteria by which it is determined documents need to be provided in both official languages, in order to realistically reflect project volumes, demographic changes, and capacity changes with both the public and private sectors.

Efficient Use of the Prequalified Supplier Lists

Prequalified supplier lists are currently an efficient means of soliciting bids and conducting the federal procurement process. ACEC supports an expanded role for them moving forward and believes they could be an important method of communicating efficiently with suppliers.

However, Annex B has the potential to greatly limit the usefulness of using prequalified vendor lists. Annex B, Legal text 2:

~~Where a solicitation includes a Sealed document, and applicable provincial or territorial professional regulations do not permit its translation, the Sealed document forms part of a solicitation, it will be provided only in the language in which it was created.~~

Annex B is limited to unilingual sealed documents where “applicable provincial or territorial professional regulations do not permit its translation”, suggesting that in any jurisdiction where the regulations do allow translation, bilingual sealed documents must be provided by the client department. Those regulators that allow translation—the engineering regulators in BC, NB, NL, ON, and PEI—all seem to require, in practice, that a bilingual engineer take responsibility for the translation. This effectively means that bilingual documents will still need to be provided in most of the country.

We note that Annex B appears to give optionality to Contracting Officers of whether to apply the legal text:

~~This clause may be used when establishing a pre-qualified supplier list for requirements that contain technical documents (e.g. drawings, specifications and reports) available in only one official language, in either English or French, and have been professionally sealed by a provincially or territorially regulated professional, including but not limited to architects, engineers and geoscientists.~~

The use of “may” and the flexibility offered is encouraging, particularly given the requirements already present for Contracting Officers. Section 4.20.2.2 (b)(i) requires Contracting Officers check the language preferences of members of pre-qualified supplier lists:

- b. This applies in cases where bid solicitations are sent to suppliers on pre-qualified lists (e.g. through a supply arrangement or a request for qualification).
 - i. When the contracting officer knows that all suppliers on the pre-qualified list indicated a common language preference, (i.e. all suppliers on the pre-qualified list indicated a preference for English, or all suppliers on the pre-qualified list indicated a preference for French), documents which meet with that language preference may be provided directly to those suppliers, and do not need to be bilingual.

ACEC requests clarification of this interpretation and confirmation that unilingual pre-qualified supplier lists only need receive documents in the corresponding language.

Publish “Non-Standard” Documents to Third-Party Plan Rooms

ACEC recommends publishing non-standard solicitation documents prepared by consultants using third-party Plan Rooms. As PN-48R2 applies to communications made through federal government sites, allowing third parties to publish non-standard procurement documents prepared by consultants (such as reports, drawings, and specifications) would be an efficient means to move procurement forward.

Plan rooms have been used in construction tenders for decades. Plan rooms are facilities hosted by organizations within the design and construction sector which could either be a physical space where interested bidders could view the relevant technical documents for a project, or a website from which plans could be downloaded. The capacity currently exists since

many firms and organizations within the design and construction sector already host plan rooms. This approach would support flexibility and the ability to view documents virtually, making it much more accessible to everyone. This would be an efficient and cost-effective solution as facilities and the infrastructure already exist.

BGIS, which is under its contract to the federal government, already effectively serves as a plan room by publishing non-standard consultant documents to its procurement website, thus exempting these documents from the impractical aspects of PN-48R2.

ACEC supports the promotion of bilingualism and the flourishing of both official languages in Canada. We have always been in support of the spirit and intent of PN-48 by having the federal government provide documents in both official languages during the procurement process when warranted by the nature of the project, or whenever requested by a bidder. Translated documents should continue to be provided in these instances, even when employing pre-qualified supplier lists or plan rooms.

ACEC would be pleased to work with the federal government and industry stakeholders to ensure that the resources available for the translation of professionally sealed documents are deployed effectively and efficiently to the greatest benefit of Canadians.

ACEC thanks Public Services and Procurement Canada for the opportunity to comment on PN-48R2 and requests that it consider all of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Gamble', with a long horizontal flourish extending to the right.

John Gamble, CET, P.Eng.
President and CEO, ACEC-Canada