

June 14, 2019

Michael Pacholok  
Chief Purchasing Officer  
Purchasing and Materials Management  
100 Queen Street West, 18th Floor West Tower  
Toronto City Hall, ON M5H 2N2  
Email: mike.pacholok@toronto.ca  
VIA EMAIL

**RE: June 6, 2019 Executive Committee Meeting Item 2019 Ex. 6.3: Motion from Mayor John Tory to the Executive Committee**

Dear Michael:

Merit OpenShop Contractors Association of Ontario (“Merit Ontario”) is a member driven organization representing Ontario’s open shop construction sector. We represent general contractors, sub-contractors and specialty subcontractors of various construction trades throughout Ontario and advocate for fair and open tendering in construction.

In response to the City of Toronto’s (“the City”) request regarding seeking further information to address the *June 6, 2019 Executive Committee Meeting Item 2019 Ex. 6.3: Motion from Mayor John Tory to the Executive Committee*, please find below information for your assistance:

**1. The importance of recognizing the City’s Pre-qualification Requirements within its Procurement Process Policy as a mechanism to protect the public interest**

Merit Ontario believes that the City has currently in place important safeguards such as its Pre-qualification requirements within the *City of Toronto’s Procurement Processes Policy, January 1, 2017*, which serve to protect the interests of the City, the public and the persons participating in the procurement process. It should be noted that not all city procurement is pre-qualified, however over the last few years, the City has become more rigorous in its tendering process and increasingly using the pre-qualification mechanism for City projects. The pre-qualification requirement is as follows:

**7.2.Pre-Qualification for Selective Solicitations**

**7.2.1 .Request for Supplier Qualification**

7.2.1.1.The Chief Purchasing Official is authorized to determine, in consultation with the division head initiating the solicitation, those suppliers meeting the minimum disclosed standards for technical qualifications and professional competence to respond to future related Solicitation(s).



7.2.1.2. The Purchasing and Materials Management Division shall use a request for supplier qualification (RFSQ) prior to a solicitation for tenders, quotations or proposals, where it is deemed that the nature and complexity of the work involved warrants the time and effort required to pre-select the most experienced and qualified bidders.

7.2.1.3. The Purchasing and Materials Management Division shall include language that disclaims any contractual commitment or other obligation of the City to call on any supplier to provide goods or services as a result of pre-qualification within the RFSQ.

Merit Ontario members are professional contractors which work on numerous Institutional, Commercial and Industrial (“ICI”) projects throughout Ontario and various other geographical markets in Canada, the United States and globally. Over 90 percent of member companies work in the ICI sector in Ontario where they have been in operation since the turn of the century beginning as small family owned/operated enterprises towards becoming large, sophisticated, leading edge and successful construction companies today.

The marketplace and the City’s pre-qualification requirements do not limit Merit Ontario member general contractor companies from bidding for City projects as member general contractors are able to work within this framework; however, **member general contractors are unable to self-perform work nor are they able to contract-out work to trusted open shop subcontractors with excellent safety records and/or reputations within the Ontario marketplace on City projects.** This represents an opportunity for savings for the City of Toronto which Bill 66: Schedule 9, in particular open tendering, looks to address.

## **2. Why a self-performing Open Shop General Contractor can assist the City with efficiency, cost savings, and adhering to high safety standards:**

Many Merit Ontario members are among the safest contractors in Ontario that do self-performing work successfully in other jurisdictions where the benefits are as follows:

### *1: Saving time allows for efficiencies*

- A self-performing contractor understands the work and is not bogged down by inefficient, inaccurate and unreliable scheduling from subcontractors.
- Should a subcontractor fall behind schedule, impacting the whole project, the ability to self-perform work provides an option to ensure the project is done safely and on time.
- Saving time will provide fixed overheads, contain costs for the time of the project manager(s), consultant(s) and site supervisor(s); and allows for logistical efficiencies such as the delivery and removal of heavy equipment, cranes, trailers, rental equipment, and information technology services.



- Subcontractors, such as union mechanical contractors, are subject to a supply of labour that performs on a four-day a week work schedule leading to inefficiencies on times for setup, delays on project completion, and by holding up other trades who may need to suspend their work until the mechanical trade has completed their scope of work (which can be difficult to manage given Toronto's size).

## *2: Saving money gives the City options*

- Grievances on jurisdictions of scopes of work can lead to duplication of work and materials as various unions claim various scopes of practice on the jobsite; self-performing the work generates a thorough knowledge of task-related labour necessities, material options and availability.
- During preconstruction, the lead contractor's self-perform knowledge provides owners and architects with accurate budget information for their designs.
- Savings can be achieved on bulk orders and by streamlining surcharges that can occur when subcontractors are added to a project (markups on materials).
- Offsite prefabrication of materials and products that meet the contractual specifications are often not allowed in the current closed system, this would save time, cost and much needed space (that on certain City projects is scarce).
- Synergy of multiple trades using the same equipment can lead to efficiency and cost savings when the work is self-performed. An example of this is a lull, where under the current City model the general contractor, a mechanical contractor, an electrical contractor all bring their own lull equipment onsite, where often only one machine is needed.

## *3. Quality control and ensuring safety*

- **Many Merit Ontario general contractors are COR Safety Certified and some exceed COR by adhering to international (ISO) safety standards.**
- Self-performing crews have concrete finishers, carpenters, formworkers, and millworkers on hand that have trained and worked together on numerous projects under a culture of safety.
- Within a culture of safety, experienced self-perform work crews adhere to the highest safety standards from the top down with proper company controls to enforce quality and safety on all aspects of the project.
- On projects, materials must meet the requirements mandated by the pre-qualification requirements of the project and contract; therefore, all union and non-union contractors would be required to use the same materials.
- Additional safeguards for procurement officials are also available such as the WSIB's Compass Web Tool <https://compass.wsib.on.ca/?lang=en>. This can help to research a business' workplace health and safety statistics in Ontario.



### 3. With a Fair Wage Policy in place – why are union wages still more expensive?

The City's Fair Wage policy in addition to mechanisms such as the pre-qualification requirements, does not allow for the system to be subject to a race-to-the-bottom scenario with respect to wages as argued by the unions.

Merit Ontario encourages a diverse workforce where members provide their employees with class leading benefits, pensions and in some cases the opportunity for profit sharing (extension of shares within the company). **Merit Ontario contractor members already pay at or above the prevailing wage in order to attract and retain talent for their various construction projects especially with the current skilled labour shortage.** In the case of City, this practice is in line with the City's Fair Wage Policy.

One of the starkest differences between open shop and union labour costs relates to the employer's hourly package price, specifically the amount of additional employer contributions that the unionized employer must pay the union in addition to the basic rate, pension, vacation, and health and welfare (this would be considered the standard package price). Examples of additional funds are union promotion funds, zone association funds, contingency funds and job target/stabilization funds as negotiated in various collective agreements. **These additional costs represent approximately 7.5% over and above the standard hourly package price, which is why total union wages are more expensive.**

Of note is the rationale for job targeting funds ("JTFs"), that are used by unions to subsidize wages for projects in municipalities outside of the City where union contractors would not be as competitive with their bids as many of these municipalities practice open tendering. These funds raise several public policy concerns:

- Should City taxpayer dollars be used as part of this practice?
- Should unionized workers, unionized employers and the City be forced and to subsidize the salaries of other workers via mandatory contributions to these funds?
- Should unionized employers and workers be given an advantage over non-unionized employers and workers when bidding on projects as a result of subsidizing wages via a JTF?

Merit Ontario believes that non-unionized employers and workers should be on a level playing field when competing for work with unionized employers and employees. Job targeting funds give unionized employees and employers an unfair advantage and by the City remaining closed, this practice will continue.



#### 4. A Culture of Safety and Training

Merit Ontario advocates for a proactive approach to safety training and education. Arguments that open shop contractors are unsafe and do not train their workers are simply false. **As employers on a construction project, whether union or non-union, it is the employer that is responsible for the competency of the worker in the performance of the task on the jobsite.**

In the case of a union contractor, when a union member is dispatched to a jobsite for a project, it is up to the union contractor to determine whether that employee can do the work competently and safely despite having all their training records in order. Measuring whether the worker can do the task competently and safely, as per the safety standards set by the employer, is the responsibility of the employer. Merit Ontario contractor members are no different.

In addition, similar to Merit Ontario contractor members, many union contractors employ staff directly and are responsible for providing any onsite, job specific and ongoing training required, where the union is not involved in this training.

##### 1. *Baseline training requirements*

Merit Ontario members offer the following baseline training on par with union local training centres. The following list shows baseline training requirements that a typical contractor in the ICI construction sector would need to adhere to whether union or non-union:

- Working at Heights, recertification/refresher training required every 3 years
- WHMIS training compliant with 2015 regulatory requirements, and refreshed annually
- Worker/Supervisor Awareness training, Ministry of Labour Program aimed at identifying the 4 or 5 steps respectively in the worker/supervisor's awareness of their responsibilities under the Occupational H&S Act
- Trade qualification, as per the Ontario College of Trades and Apprenticeship Act
- Each trade's scope of work is reviewed, and additional training requirements are identified for each individual worker, dependent on the analysis of that scope of work, including but not limited to:
  - Equipment operation training, i.e. Forklift, Elevated Work Platform, Heavy Equipment Operator competency, etc.
  - Confined Space Entry
  - Tunnel Rescue, etc.

Merit Ontario's members provide a proper safety procedure and processes standard that is mandatory amongst their employees, and in the case of general contractors, is extended to its subcontractors to follow.



## 2. Management training

In addition to baseline training that ICI Contractors conduct whether internally or through the union local training halls, Merit Ontario and its members offer construction management training, such as supervisor training, as soft skills are integral for team cohesiveness and productivity. On supervisor training, a member contractor would implement supervisory training over a period of time as individuals are identified as having leadership qualities and for being effective in their trade.

An example of this is accomplished through internal investments made in leadership and mentoring programs. Within various leadership programs, health and safety management, liability and due diligence for leadership are themes that are incorporated into training to ensure that employer leaders have the competency level to oversee and mitigate the risk and scope of their respective employer projects.

### **Conclusion:**

The notion that open shop general contractors are unsafe and use unsafe open shop sub-contractors is a fallacy. Mechanisms such as the pre-qualification process work to identify qualified general contractors and its subcontractors that will be invited to submit tenders. With cost increases due to duplicity of materials, equipment and duplicity of tasks on the jobsite, in addition to a much more expensive hourly package price per employee, **there are clear increases in costs that the City cannot ignore.**

If the City remains as a non-construction employer, the opportunity for additional bids could provide savings for the City. **In the attached chart**, and drawn from data available publicly, a look at the number of bids from a small sample size shows that on average, bids outside of the City for similar types of projects are much higher. These bids include both unionized and non-unionized construction firms.

The chart is over a four (4) year period and is a small sample size covering values of construction tenders that are under \$10M tendered (not below \$6M) and over \$10M (as high as \$120M). One key observation is that the City in comparison to similar types of projects outside the City, received 2 or 3 bids versus tenders from other municipalities with similar projects receiving 5 or 6 qualified bids. This is double the number of bids when compared to City of Toronto and should be noted that no bids outside the City received qualified bids between only 1 or 2 bids.

**There are many open shop contractors and employees, whom pay taxes to the City and are not given an opportunity to work in the community they work and live in. By practicing open tendering, the City has an opportunity to receive many more qualified bids, thus more options for all workers and taxpayers.**



Of course safety will always be argued as the main reason for not allowing more bids, we argue, that as the Chief Purchasing Official is mandated through the pre-qualification requirements to seek the best companies who meet the “disclosed standards for technical qualifications and professional competence” as per section 7.2.1.1 in the *City of Toronto’s Procurement Processes Policy, January 1, 2017*, they have an obligation to ensure that the contractors bidding on a project meet the minimum requirements regardless of whether or not the contractor uses union or non-union labour.

All companies that bid with the City are subject to:

- The Contractors Qualification Statement with supporting material
- References for past projects completed for the Public Sector
- A project description where the contractor can align its experience to the specific project requirements where it would need to disclose its experience on similar type projects
- Meet the criteria for the scope of work where the supply of labour, material, supervision and equipment is reviewed to deliver the project
- A requirement that the general contractor to be bondable
- The Fair Wage Schedule with the City of Toronto

**Merit Ontario recommends that the City of Toronto model change to one that accepts bids from all qualified bidders, regardless of union affiliation, as its available strong pre-qualification system and Fair Wage Policy ensure that the City receives the best bid for the best price with the best companies doing the work.**

We agree and applaud the May 29, 2019 EX6.3 Report from the City Manager to the City of Toronto Executive Committee on Schedule 9, Changes to the Labour Relations Act, 1995 – Restoring Ontario’s Competitiveness Act, 2019 where the City Manager recommends that “City Council take no action, thereby confirming the City of Toronto as a non-construction employer effective the day subsections 127 (1) to (4) of the Labour Relations Act, 1995 come into force.”

I thank you for the opportunity and look forward to working together with the City of Toronto on future initiatives. Should you require anything further, please do not hesitate to contact me at 416-483-3856 or via email at [mgallardo@meritontario.com](mailto:mgallardo@meritontario.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Gallardo', written over a light blue horizontal line.

Michael Gallardo  
Executive Director  
Encl.





**SOURCES:**

1. City of Toronto Procurement Processes Policy, January 1, 2017, <https://www.toronto.ca/wp-content/uploads/2017/08/9587-Procurement-Processes-Policy-January-1-2017.pdf>
2. EX6.3 City Manager Report to the City of Toronto Executive Committee, May 29, 2019 <https://www.toronto.ca/legdocs/mmis/2019/ex/bgrd/backgroundfile-133465.pdf>
3. City of Toronto Fair Wage Office and Policy Website, <https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/fair-wage-office-policy/>



		bidders (Toronto)										
		1	2	3	4	5	6	7	8	9	10	11
# of tenders			4	5	1	4	1					
60% of City of Toronto Tenders receive 2 or 3 bidders			27%	33%	7%	27%	7%					

<u>Region/City</u>	<u>Project</u>	<u>Value</u>	<u>Year</u>	<u>Prequalified</u>	<u>Number of Bidders</u>
Toronto	Ashbridges Bay TP - Phosphorus Removal Upgrades	Over \$10 Million	2016	YES	5
Toronto	Ashbridges Bay - Effluent Disinfection Sysytem	Over \$10 Million	2017	YES	3
Toronto	Ashbridges Bay Cleaning of Digesters 13 & 16	Over \$10 Million	2017	YES	5
Toronto	Ashbridges Bay TP - M & T Building Critical Repair Contract 2	Under \$10 Million	2016	YES	6
Toronto	Ashbridges Bay Treatment Plant IPS Site Preparation	Over \$10 Million	2017	NO	2
Toronto	Highland Creek TP - Liquid Train Upgrades	Over \$10 Million	2019	YES	4
Toronto	Humber Treatment Plant, Secondary Treatment Upgrades	Over \$10 Million	2016	YES	5
Toronto	Parkdale P.S	Under \$10 Million	2017	YES	3
Toronto	R.L CLARK WTP-FILTER 2 REHAB	Under \$10 Million	2019	NO	3
Toronto	R.C. Harris WTP Filter Upgrades	Over \$10 Million	2019	YES	3
Toronto	Rosehill Reservoir Rehab	Over \$10 Million	2017	YES	2
	Ashbridges Bay TP Process Air Header Rehabilitation	Under \$10 Million	2018	NO	2
Toronto	R L Clark Water Treatment Plant	Over \$10 Million	2017	YES	3
Toronto	Ashbridges Bay Treatment Plant Digesters 9-12 Refurbishment	Over \$10 Million	2018	YES	5
Toronto	Western Beaches Tunnel	Over \$10 Million	2018	YES	2

bidders (non Toronto)

# of tenders

1	2	3	4	5	6	7	8	9	10	11
		3	4	10	4		2		1	1
		12%	16%	40%	16%		8%		4%	4%

56% of other Owners receive between 5 or 6 bids per tender  
 84% of other Owners receive between 3 and 6 bids per tender

<u>Region/City</u>	<u>Project</u>	<u>Value</u>	<u>Year</u>	<u>Prequalified</u>	<u>Number of Bidders</u>
PEEL	G.E.BOOOTH - CONTRACT 1 A - INLET CONDUIT	Under \$10 Million	2019	NO	5
York Region	Bayview	Under \$10 Million	2018	NO	5
Halton	Beaufort Pumping Station and Reservoir	Over \$10 Million	2016	YES	3
Guelph	Burke Well Water Station Upgrades	Under \$10 Million	2017	YES	5
Durham	Corbett Creek WPCP	Over \$10 Million	2016	YES	5
Durham	Duffin Creek WPCP - SBT Restoration Project	Under \$10 Million	2018	NO	4
York	Duffin Creek WWTP Stage 1 & 2 Demolition & Removal	Under \$10 Million	2017	YES	3
Halton	Dundas East WW PS	Over \$10 Million	2016	YES	4
City of Quinte West	Dundas Street SPS Upgrades, Trenton	Over \$10 Million	2018	YES	5
Peel	G.E. Booth Primary Expansion and Misc Improvements	Over \$10 Million	2018	YES	5
Durham	Harmony Creek WPCP	Over \$10 Million	2017	YES	3
Town of Innisfil	Construction of New Pumping Station No. 2, Innisfil	Under \$10 Million	2018	YES	4
Durham	Jeffery St. Pumping Station & Whitby West Trunk Sewer	Over \$10 Million	2016	YES	5
Peel	Lakeview WTP Natural Gas Power Facility	Over \$10 Million	2018	NO	6
Peel	Lorne Park WTP Pumping Station Upgrades	Under \$10 Million	2018	YES	6
Peel	Lorne Park WTP Maintenance Program	Under \$10 Million	2017	NO	5
Town of Aurora	Ridge Road Booster P.S.	Under \$10 Million	2016	YES	8
The Regional Municipality of Niagara	Rosehill WTPU	Over \$10 Million	2017	YES	5
The Regional Municipality of Niagara	Seaway WWTP Secondary Clarifier Upgrades	Under \$10 Million	2018	NO	6
Peel	Silverthorn P.S	Under \$10 Million	2017	YES	6
The Corporation of the Town of Bradford West Gwillimbury	Bond Head SPS	Under \$10 Million	2017	NO	11
Peel	Replacement of the Original Ash Piping at The G.E. Box Wastewater Treatment Plant	Under \$10 Million	2018	NO	5
Peel	Silverthorn Pumping Station & Reservoir - Building Expansion Project	Over \$10 Million	2019	NO	10
City of Hamilton	Woodward Avenue MPS	Over \$10 Million	2017	YES	4
Municipality of Trent Hills	Campbellford Water Supply System Upgrades	Under \$10 Million	2017	NO	8