



**TORONTO AND AREA
ROAD BUILDERS ASSOCIATION**

365 Brunel Road, Unit 4
Mississauga, Ontario L4Z 1Z5

Phone (905) 507-4899
Fax (905) 507-3709

April 8, 2015

Michael Pacholok
Director, Purchasing & Materials Management Division
City of Toronto
100 Queen Street West, 18th Floor West Tower
Toronto, ON M5H 2N2

Sent via email: mpachol@toronto.ca

Dear Michael:

Re: City of Toronto and Contractor Performance Evaluation

On behalf of the members of the Toronto Area Road Builders Association, we respectfully request an immediate moratorium on the suspension of a contractor's ability to bid on City contracts based on what we feel is an unfair and imbalanced review process.

The severely punitive decisions currently being made by city staff through the Contractor Performance Evaluation (CPE) are based entirely on the opinion of the City authority and at this time, there is no mechanism for a contractor to refute a negative evaluation or an avenue to appeal. Moreover, the CPE tool is based upon the review of an individual project which in no way reflects the overall performance of a contractor as a whole. Finally, we feel that the exclusion of contractors from the bidding process will constrict bidding opportunities and have a significant financial impact on the City over the long term.

Members of the Broader Construction Association Consulting Group (BCACG) which includes TARBA, the Ontario Road Builders Association (ORBA) and the Ontario Sewer and Watermain Construction Association (OSWCA) have identified contractor performance as a major issue with the City of Toronto. However, having only been formed recently, that group has not yet had the opportunity to discuss the CPE and its challenges in any detail.

In February, the Ministry of Transportation made an announcement it was removing the litigation provision in the exclusionary clause of provincial government contracts in an effort to ensure a more fair and transparent process. We are attaching correspondence from the MTO on the matter and encourage the City of Toronto to adopt a more balanced approach to its Contractor Performance Evaluation.

We appreciate your immediate attention to this matter and would be pleased to meet with you on the issue at any time as the livelihood of reputable local contractors is at stake.

Sincerely,

Doug Duke
Executive Director

cc. Michael D'Andrea, Joanne Kehoe

Ministry of Transportation
Office of the Deputy Minister

3rd Floor, Ferguson Block
77 Wellesley Street West
Toronto ON M7A 1Z8
Tel.: 416-327-9162
Fax: 416-327-9185

Ministère des Transports
Bureau de la Sous-ministre

Édifice Ferguson, 3^e étage
77, rue Wellesley Ouest
Toronto ON M7A 1Z8
Tél. : 416-327-9162
Télééc. : 416-327-9185



February 12, 2015

Geoff Wilkinson
Executive Director
Ontario Road Builders' Association
The Road House
365 Brunel Road, Unit 1
Mississauga, Ontario
L4Z 1Z5

Dear Mr. Wilkinson:

For the past three years, ORBA and the Ministry of Transportation have been working together to address the recommendations of the Corporate Financial Assurance Audit Service Team (CFAAST) Review.

Following the announcement made at the ORBA Transportation Infrastructure Day by Minister Steven Del Duca, I would like to update you on the final steps the ministry will take over the next few months to conclude work on this important file.

I would like to start by thanking you and your members for providing ORBA's perspective on the ministry's response to the review. Your Association's work on this file has provided the ministry with a better understanding of your members' issues, along with many suggestions to improve our administrative processes.

In addition to the recommendations and response provided in the CFAAST report, the ministry was urged to take a holistic approach in considering those recommendations so that the system-wide impacts are adequately considered. The report also noted that increases to process fairness have an associated cost, and in practice the cost of increased fairness may sometimes exceed the associated benefits. In keeping with those principles, work has progressed and resulted in the ministry adopting a considerable number of the suggestions and requests of ORBA.

I have asked Gerry Chaput, Assistant Deputy Minister of Provincial Highways Management to provide you with the final details related to this review, but for now, please note that the ministry will be proceeding with:

- Implementing a new Dispute Resolution Process (DRP) that affords the option for either party to early Alternative Dispute Resolution (ADR) through a Referee process;
- Publishing new Qualification Committee Operating and Infraction process documents;

G. Wilkinson
Page 2

- Removing Legal Proceedings from the Exclusion Provision included in the Qualification Procedures; and
- Consulting with ORBA as part of MTO's review and future updates to the Contractor Performance Rating (CPR) system.

Once again, I thank you and your members for working with the ministry on this important file.

Sincerely,

Carol Layton
Deputy Minister

c. Gerry Chaput, Assistant Deputy Minister