

July 10, 2023

Contract Management Office  
Ministry of Transportation

**Re. ACEC-Ontario Response to TCP number 000-0159 (Revisions to the Qualification Procedures for ESP's in the Foundation Engineering Category)**

On behalf of the Association of Consulting Engineering Companies-Ontario (ACEC-Ontario), and its 140 member firms operating across the province, we are writing to provide a response to the Ministry of Transportation's (MTO) on the proposed revisions to the prequalification criteria for specialties in the Foundation Engineering Category. This response represents feedback that ACEC-Ontario received from both very large and small firms providing foundation engineering services to MTO and other clients.

ACEC-Ontario is concerned that the proposed changes will reduce competition, inhibit innovation, add bureaucracy, and prevent additional well-qualified firms from participating in the Ontario marketplace.

**Concerns**

First and foremost, we are concerned with the requirement to have one individual in a firm with a minimum of 5, 10 or 15 years as a Designated Principal Foundations Contact for low, medium, and high complexity foundation engineering services. These minimum years as Principal Contact is impossible to achieve for firms other than those that already have been working with MTO for many years. And even though the requirements indicate that demonstrated experience from any jurisdiction similar to Ontario is acceptable, the key person must still have a minimum number of years of experience as a MTO Principal Contact, which they cannot attain unless they are working on MTO projects.

It should also be noted that there are only a relatively small number of individuals who hold such a role, particularly at medium or high complexity. When it comes to High Complexity, someone with 15 years experience serving as Principal Contact will be close to retirement age. For Low Complexity, it is not clear how someone will be approved given that the criteria is to have a key person that already has 5 years of experience as a Principal Contact.

Moreover, the proposal requiring Engineering Services Providers (ESPs) to be approved in medium complexity for a minimum of three years is excessive. It will reduce the number of qualified firms available to participate in any given procurement, thereby limiting marketplace competition. It will also limit the mobility of foundation engineers to join new firms as well as prevent additional otherwise established firms from participating in ministry procurements. Unintended consequences may include ESPs finding it difficult to recruit qualified staff if the firm itself is not qualified, and qualified



staff may feel trapped in their current employment situation if they are not able to participate in the same complexity of MTO projects elsewhere.

Indeed, the eligibility requirements should not include arbitrary timelines as each ESP would have different levels of qualified staff and experience. The evaluation should be based on the ESP's technical ability and capability to carry out the gamut of engineering work for MTO Foundations projects. An alternative to avoiding set timelines is to obtain the commitment of another ESP with high complexity Foundations designation to carry out peer reviews of the proponent's high complexity Foundations reports until the levels of MTO review comments are considered acceptable.

There are also concerns that the proposed new criteria will prevent firms from pursuing work with other clients that use MTO's RAQS as a qualification criterion. For example, Infrastructure Ontario (IO), Metrolinx and other agencies or jurisdictions refer to MTO RAQS requirements for geotechnical / foundation engineering and hydrogeology in conventional and alternate procurement contracts. The proposed changes would therefore limit the ability of firms to respond to these requirements, and either restrict competition or potentially limit opportunities for innovations that have been developed in other jurisdictions.

Additionally, MTO projects delivered through IO typically require proponents to have RAQS approval for Foundation Engineering – High Complexity. At the same time, IO requires exclusivity within their teams. The ongoing market consolidation trend has resulted in very few firms holding the Foundations – High Complexity credential. Given that the respective terms of reference for the Design-Build, Technical Advisory and Owner's Engineering mandates usually require proponents to have this qualification, all these firms typically are locked into project teams with exclusivity agreements well before RFPs are released. Consequently, the number of firms available to participate in any given opportunity is limited. Even if a potential proponent is willing to engage a qualified sub-consultant to assist with delivering the project, it is not able to.

Another concern relates to the requirement for firms to own a laboratory. This has been an on-going barrier for engineering firms with highly skilled and experienced foundation engineers from being qualified to undertake engineering assignments for the ministry. Laboratories require a significant investment of capital and operating cost, and the RAQS approval process for these facilities through the Engineering Material Testing category is based on the ministry's needs to provide quality assurance services, and not for Foundation Engineering. It would be much more practical to allow firms to sub-contract to a RAQS approved laboratory. As with any prime/sub relationship, the Foundation Engineer consultant would ultimately be responsible for the laboratory results, and RFP requirements for the engineer's presence during laboratory testing can address any further concerns.



Further, qualifications through RAQS should be considered as a first gate-check in determining an ESP's suitability to serve but should not act as a barrier to firms seeking to obtain qualification to successfully win the ability to undertake ministry assignments. Rather, more detailed criteria should be stipulated through RFPs to suit ministry needs on a project-by-project basis, or further opportunities need to be provided to allow more firms to qualify and help the industry thrive.

Finally, the new criteria as presented do not provide a means for practical and qualifications-based entry into the MTO Foundation Engineering market. In fact, they will likely serve only to perpetuate and reduce the small group of firms already providing these services for MTO. The criteria will also create a barrier for firms to attract suitably qualified staff. Qualified personnel will be limited in their mobility among firms as any such move will require a multi-year repeat of the qualification process. Qualified firms will find it difficult to manage a succession plan if their qualified personnel leave and will suddenly face re-qualifying as if they are new to the market, further shrinking the pool of eligible companies able to undertake ministry assignments.

## Recommendations

To promote competition, succession planning, and address the current industry workforce availability challenges, ACEC-Ontario proposes the following recommendations to MTO:

- Clearly state that appropriate experience gained through complex work completed for municipalities in Ontario or similar Ministry/Department of Transportation agencies in Canada or USA as acceptable medium or high complexity experience, and that qualifications are not based exclusively on MTO experience.
- Consider the experience gained in comparable international jurisdictions.
- Delete the requirement for experience as a MTO Principal Contact for High, Medium, and Low complexity approvals. Instead, allow senior level experience, perhaps combined with interviews of the key personnel.
- More accurately classify the complexity of ministry assignments. Currently, many projects classified as high complexity could more appropriately be classified as medium or low complexity. Doing so will enable firms to gain more low and medium complexity assignment experience, thereby broadening and deepening the pool of qualified consultants over time.
- Consider the experience of key personnel obtained while employed at other firms, thereby enabling a firm the ability to undertake high complexity assignments sooner.
- Consider eliminating the laboratory ownership requirement, as this is a significant barrier to doing business and forces firms to make unsustainable capital and operating investments for tests that are conducted on an infrequent basis.