



Ontario Association of Architects

Standing Committee on Finance and Economic Affairs
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Toronto, ON M7A 1A2

[sent via email]

January 24, 2020

Dear Chair and Members of the Standing Committee,

The Ontario Association of Architects (OAA) is the self-regulating body for the profession of architecture in Ontario and has been in existence for more than 125 years. Established under the *Architects Act*, its primary object is to govern the practice of architecture in the province and administer the *Act* “in order that the public interest may be served and protected.”

The OAA currently boasts more than 7,200 members. While this number may appear small relative to other regulated professions, a 2018 independent report by Altus Group found that the profession’s “contribution to the Ontario economy cannot be overlooked.” The report suggests that the architectural industry is responsible for 14 per cent of Ontario’s GDP, or approximately \$128 billion. Moreover, it points out that the industry supports approximately one million jobs, ranging from construction to tourism. According to 2018 statistics, architecture directly produces \$2.2 billion in annual economic activity.

The reality is that architecture plays a significant role in the Ontario economy, and the OAA welcomes the opportunity to submit recommendations for this year’s pre-budget consultation.

1. Fix Ontario’s Site Plan Approval Process

The OAA remains concerned over a recent Ministry of Municipal Affairs and Housing (MMAH) consultation on *Transforming and Modernizing the Delivery of Ontario’s Building Code Services*—specifically, the proposal to implement a Certified Professional program similar to what exists in British Columbia. This has been presented by the development industry as a way to get people “into their homes sooner and safer.”

The OAA struggles to understand why the Certified Professional program—if it is truly the panacea it is being marketed as—has had almost no uptake in British Columbia despite being a mechanism available to municipalities for decades. The Certified Professional model is only being used in Vancouver, Surrey, and a few municipalities seemingly too small to warrant being individually named in any of the literature the OAA consulted.

A City of Vancouver list of “Architects Who Are Currently Practising as Certified Professionals” returns only 33 results despite there being more than 2,100 architects in the province. It remains unclear whether architects would be interested in taking on the work of building officials, but the very limited uptake in British Columbia gives us some indication as to how this may unfold in Ontario.

The reality is that the OAA sees a probable increase to the cost of obtaining a building permit under the Certified Professional model. While the work could theoretically be externalized from municipalities following significant legislative and regulatory changes, the cost would simply be transferred rather than eliminated. Similarly, the responsibilities, risks, and liabilities that building officials have related to the issuance of a building permit could theoretically be externalized from municipalities, but they would simply be transferred rather than reduced or eliminated. Other jurisdictions in British Columbia, such as the City of Richmond, considered—and subsequently passed on—implementing a Certified Professional program. One of the red flags for the City of Richmond was a potential “net increase in direct overall costs for the owner and eventually the consumer through a CP program.”ⁱ

In the end, implementing a Certified Professional program serves to do little more than create red tape and a more complicated process that is not in the public interest, and does not help to accomplish any of the government’s priorities. If the government genuinely wants to cut red tape and make the building approval process more efficient to get buildings delivered faster, then fixing the province’s broken Site Plan Approval (SPA) process—not building permits—must be the objective. Fixing SPA would help make life more affordable, create a more competitive business environment, connect people to places, build better communities, and enable municipal governments to be smarter and more efficient.

The OAA has been pushing for changes to the SPA process for almost a decade. In that time, the Association has commissioned two reports (one in 2013 and a follow up in 2018) to quantify the economic impact of the delays that result from this broken process. Both have received widespread attention from the public, media, industry, government, and parts of the planning profession.

The OAA applauds the government’s earlier leadership in proposing changes to SPA via Bill 66 (*Restoring Ontario’s Competitiveness Act, 2018*). The now-removed Schedule 10 had attempted to alter the conditions that may be imposed, subject to the passing of an open-for-business planning by-law. For unrelated reasons, Schedule 10 was removed from the legislation prior to its passage and nothing else has been introduced in its place. If and when the government does so, SPA changes must be made across the board—not just under a narrow set of circumstances.

The 2018 report, [Site Plan Delay Analysis](#), attempted to quantify the effects of site plan delay, concluding that these delays cost the province a staggering \$100 million per month, or upward of \$900 million annually. Given the conservative modelling undertaken in the report, the OAA anticipates the cost to the province likely exceeds \$1 billion annually. These costs are borne by homeowners, businesses, industry, and the government itself.

As highlighted in the 2013 report, [A Review of the Site Plan Approval Process in Ontario](#), in a 100-unit condominium development, each month spent in SPA is estimated to cost the homebuyer \$2,375 per unit. For all stakeholders involved in a single project—including the government due to lost tax revenue—the total cost per month spent in SPA can be almost \$500,000.

Moreover, the World Bank's [*Doing Business 2020*](#) report ranks Canada (based on data from Ontario) 64th on the ease of dealing with construction permits—far behind Japan (18th), the United States (24th), and Germany (30th). Canada (specifically Ontario) has more steps and is slower than our contemporaries, yet achieves no better building quality for it.

The provincial government must intervene to fix the SPA process in Ontario. Through SPA reform, this government can effectively reduce red tape by reducing inefficiencies in housing development, contribute to the creation of a sustainable housing market, and recover a billion dollars in lost revenue for the government, the people, and the businesses of Ontario.

In order to improve the SPA process, the government should:

- *Restore Section 41 exclusions of the Planning Act so that planners can focus on technical issues related to the public realm.* This not only reduces costs, but also encourages investment on the residential, commercial, and industrial side. It also speeds up the review process by freeing up more of a planner's time to review site plan applications. Existing mechanisms such as Design Review Panels and urban design guidelines are the appropriate mechanisms for municipalities to engage with design.
- *Set and enforce a new timeline that requires municipalities to issue an approval or refusal of an application before the 30th day of its review.* Currently, municipalities are compelled to issue a decision on a site plan application within 30 days under Section 41(12) of the *Planning Act*, but this deadline is widely disregarded. Language in the Ontario Building Code suggests that in the event that a municipality fails to render a decision, the application is deemed approved. Based on this, the OAA believes that a failure to approve or refuse an application will result in the application being approved.
- *Implement independent adjudication of resubmitted applications in cases where a municipality has advised, in writing, that the applicant has failed to resolve the deficiencies identified in the first submission.* In this case, the *Planning Act* should be amended to allow for an appeal to be made before the LPAT and also before an independent adjudicator—the cost of which should be borne by the applicant, unless a determination is made in the applicant's favour.
- *Increase accountability to the public by giving municipalities the statutory authority, through the Planning Act, to require architectural recognition as a condition of SPA.* Since 2011, in the City of Toronto, there has been a requirement that architectural recognition be affixed near the main entrance or prominent façade of the structure of any building over a certain size threshold. The OAA supported architectural recognition at the time this was introduced and continues to support it now. The Association believes architectural recognition is important not only to further the public dialogue about architecture, but also to enhance accountability to the public for the legacy that architects leave behind on our built environment. To mitigate any confusion about whether municipalities have the statutory authority to require this

as a condition of SPA, the OAA believes it should be formally integrated into the *Planning Act*.

2. Adopt Quality-Based Selection

For more than a decade, the OAA has advocated for governments at all levels to adopt Quality-Based Selection (QBS) as their method for procuring architectural services. The OAA has been joined by the Royal Architectural Institute of Canada (RAIC), Professional Engineers of Ontario (PEO), Consulting Engineers of Ontario (CEO), Engineers Canada, and other professional organizations representing hundreds of thousands of professionals for the built environment in recommending QBS.

Adopting QBS creates a more competitive business environment by bringing firms back to bidding on public sector work, builds healthier and safer communities through hiring the most innovative and most qualified firms, and makes government smarter through a more efficient procurement process that saves administrative time and cost while delivering the high quality which provides value for money at the total optimal lifecycle cost.

The OAA is pleased to note that significant progress is starting to be made at the federal level, with a pilot program underway and still showing promise. The pilot was expanded into Public Services and Procurement Canada's (PSPC's) Ontario Region. QBS has been on the federal radar since at least as early as 2006 when the Government of Canada, National Research Council (NRC), and Federation of Canadian Municipalities (FCM) jointly released an edition of the *National Guide to Sustainable Municipal Infrastructure*, entitled "Selecting a Professional Consultant."

This report found that low-bid procurement "is not appropriate for professional consulting services,"ⁱⁱⁱ arguing that the "recommended best practice" is "a competitive qualifications-based process."ⁱⁱⁱ The report noted that design typically represents only "1 to 2 percent of the overall lifecycle cost of a project," yet its "impact on both construction costs and operations/maintenance costs is significant."^{iv} In fact, our data suggests that the ratio is well below one per cent. The report found that a small investment of an additional \$40,000 in design costs on an \$11.2 million project would "return savings in a ratio of 11:1" (or \$450,000 over the lifecycle of the asset)^v.

The report shows that any requirement "to bid fees in a proposal call does not achieve the expected outcomes," focusing the consultant on "how to minimize fees to win the assignment" instead of "how to deliver a service that will add the most value for the client." The report flags this as "a serious problem, as it minimizes or even eliminates the 'value-added' services that an owner should be seeking in all professional consulting assignments."^{vi} The report concludes QBS "raises the quality of consulting services and helps ... identify long-term, cost-effective solutions." Ultimately, this will allow government to "reap the benefits of well-defined projects that take advantage of innovations and technical advice that will minimize lifecycle costs."^{vii}

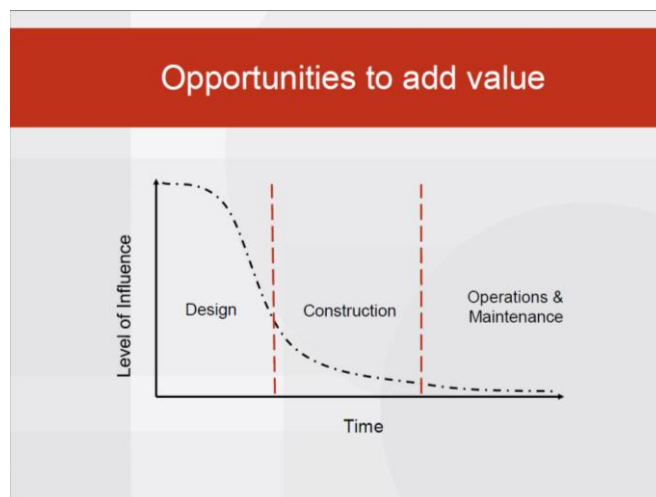
In 2009, the House of Commons Standing Committee on Government Operations and Estimates undertook a "study on the access to federal procurements by small and medium

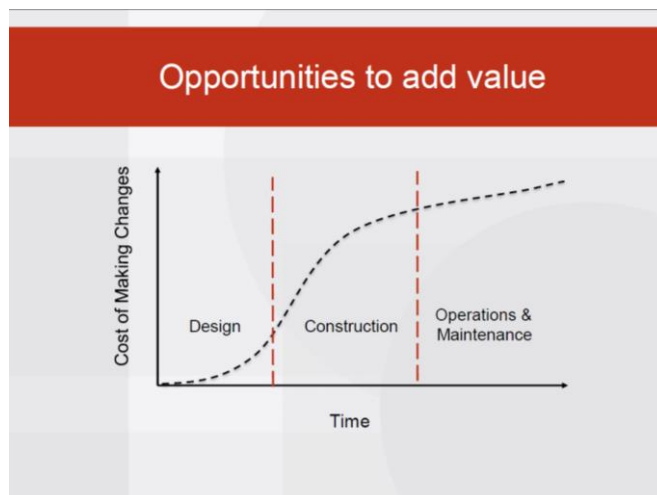
enterprises.” Following hearings, the Standing Committee issued a report recommending that the federal government ensure innovation and quality are key determinants in the evaluation of bids and the awarding of contracts by “consider[ing] the merits of legislating the use of QBS as the required procurement process.”^{viii} Following the Standing Committee recommendation, the government adjusted the weighting of the price component and committed to refocusing procurement processes on qualifications and innovation, but unfortunately did not commit to a legislated approach to QBS.

The concept of QBS is not revolutionary, having been enshrined as the mandatory method of procuring architectural and engineering services in the United States since the enactment of the *Brooks Act* in 1973. Forty-six states have QBS (“mini-Brooks”) laws, with agencies in three others (IA, VT and WI) adhering to a QBS procurement process. Hundreds of U.S. municipalities have also adopted QBS.^{ix}

But QBS also exists closer to home. The Province of Quebec requires QBS for the procurement of architectural and engineering services. Some municipalities across the country utilize QBS. While Ontario has continued to be one of the most resistant jurisdictions in adopting this best practice for procuring architectural (and engineering) services, QBS is not even foreign to government. The provincial agency Metrolinx has used QBS in its procurement and we have a number of public sector organizations coming online.

Perhaps front and centre to adopting QBS has been a political perception that it somehow drives up the price of architectural services. As detailed above, this is false when considered in combination with the initial and lifecycle costs of the project, not to mention that the design component represents a very small percentage of the overall cost (potentially less than one per cent). Any savings are best realized through the construction, operation, and maintenance on a project where QBS can allow innovative design to create significant cost reductions on what constitutes 98 to 99 per cent of the total budget.





There is also a misperception that QBS does not meet policy requirements for considering price in public sector procurement, but Quality-Based Selection does not preclude negotiations on price. Once the most qualified bidder has been identified, a negotiation over fees takes place. If the government and proponent cannot reach an agreement, the government is free to end negotiations with the most-qualified respondent and begin negotiations with the second most-qualified respondent. If that falls through, then the government can begin negotiations with the third most-qualified respondent, and so on.

Further research supports the point that QBS saves money as opposed to adding cost. The OAA funded an independent report authored by Ben Shelton and edited by Cal Harrison, entitled *Qualifications-Based Selection (QBS): Best Practice for Architecture, Engineering and Construction Management/General Contractor Procurement in Canada*. This report found that “For design-build projects, QBS has a project cost growth of 0.92%, which is one-tenth of that of the 9.82% cost growth of low-bid, and almost one-third of the 2.47% cost growth of best value procurement (BVP).”^x The report found that “For design-build projects, the unit cost of projects procured with QBS is comparable to low-bid and is 44% lower than BVP.” The report also found that “QBS has a faster construction speed than either BVP (by 23%) or low-bid (by 6%) for design-building projects,” further saving money.

This report delved into the impact of low-bid or BVP procurement on consultants. The report discusses a particular example whereby a small \$50,000 fee RFP may have created “almost one million dollars in proposal writing waste”—an excessive level of red tape for businesses in Ontario. Cal Harrison, in a September 2017 presentation to PSPC, suggested that “excessive proposal writing costs are a five-billion-dollar problem in Canada.”^{xi} The report argues in multiple places that “these additional expenses are ultimately passed on to the taxpayer.”^{xii} QBS is argued to significantly reduce pursuit costs for bidders while simultaneously saving money for the government and people of Ontario.

With the federal pilot, the widespread adoption of QBS in other jurisdictions, and public sector entities soon to bring it online, Ontario must adopt Quality-Based Selection as the method of procurement for architectural services by government Ministries and Agencies as well as across all broader public sector organizations in order to maintain similar quality outcomes as other jurisdictions. At a minimum, the government should commit to commencing a well-structured pilot project across a number of RFPs—similar to the current process undertaken by the federal government.

There is still an opportunity for the government to be a champion for businesses, for better buildings, and for better procurement. To quote the Deputy Commissioner of the New York State Office of General Services, “QBS is an invaluable tool for us. It consistently delivers high-quality, on-time infrastructure projects for the citizens of New York.”^{xiii}

Next Steps

Having been in existence for more than 125 years, the OAA has enjoyed a long-standing and collaborative relationship with the provincial government. I look forward to continued work with you on this year’s budget and other important issues. To discuss any of the aforementioned recommendations in more detail, please be in touch at your convenience.

Sincerely,



Kathleen Kurtin
OAA, FRAIC
President

cc. The Honourable Steve Clark



Citations

- ⁱ City of Richmond, “Report to Committee: Certified Professional Program”, November 29, 1999.
https://www.richmond.ca/_shared/assets/011000_item18966.pdf
- ⁱⁱ InfraGuide, “Selecting a Professional Consultant, Pg. 9.
https://fcm.ca/Documents/reports/Infraguide/Selecting_a_Professional_Consultant_EN.pdf
- ⁱⁱⁱ Ibid, Pg. 10.
- ^{iv} Ibid, Pg. 20.
- ^v Ibid.
- ^{vi} Ibid, Pg 22.
- ^{vii} Ibid, Pg. 33.
- ^{viii} “In Pursuit of Balance: Assisting Small and Medium Enterprises in Accessing Federal Procurement”. Report of the Standing Committee on Government Operations and Estimates, June 2009.
<http://www.ourcommons.ca/DocumentViewer/en/40-2/OGGO/report-7/page-45#goal5>
- ^{ix} Mark Steiner, ACEC presentation to PSPC, DCC and others, September 18, 2017.
- ^x Ben Shelton, “Qualifications-Based Selection (QBS): Best Practice for Architecture, Engineering and Construction Management/General Contractor Procurement in Canada”, August 2018. Pg. 4.
http://www.oaa.on.ca/oaamedia/bloaags/text/final_qbs_report_sep_1_2018.pdf
- ^{xi} Cal Harrison, “Qualifications-Based Selection” presentation to PSPC, DCC, and others, September 18, 2017.
- ^{xii} Shelton, Pg. 28.
- ^{xiii} Excerpt from Mark Steiner, ACEC presentation to PSPC, DCC and others, September 18, 2017.

