



Ontario Association of Architects

The Honourable Vic Fedeli, MPP
Minister of Finance
Frost Building South
7th Floor, 7 Queen's Park Crescent
Toronto, ON.
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February 6, 2019

Dear Minister,

Established in 1889 at the behest of the Minister of Education and given a provincial mandate by the legislature in 1890, the Ontario Association of Architects (OAA) is the self-regulating body for the profession of Architecture in Ontario. The OAA governs the practice of architecture and administers the *Architects Act* in Ontario in order that the public interest may be served and protected.

While the architectural profession in Ontario may be relatively small with just under 4300 members, an independent report by Altus Group found that its "contribution to the Ontario economy cannot be overlooked"ⁱ. The architecture industry's "footprint in Ontario totaled \$128.4 billion, or 14% of Ontario's GDP" while supporting "nearly one million jobs" throughout the province that span from construction to tourism. Directly, architecture "produces \$2.2 billion in annual economic activity". Architecture has important ties to the Province's budget and economy.

It is with the economy and the public interest in mind that the OAA wishes to make the following set of recommendations:

1. 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 its 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.

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

The report found that low bid procurement "is not appropriate for professional consulting services"ⁱⁱ, 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 1%. The report found that a small investment of an additional \$40,000 in design costs on an \$11.2M project would "return savings in a ratio of 11:1" (or \$450,000 over the lifecycle of the asset)^v.

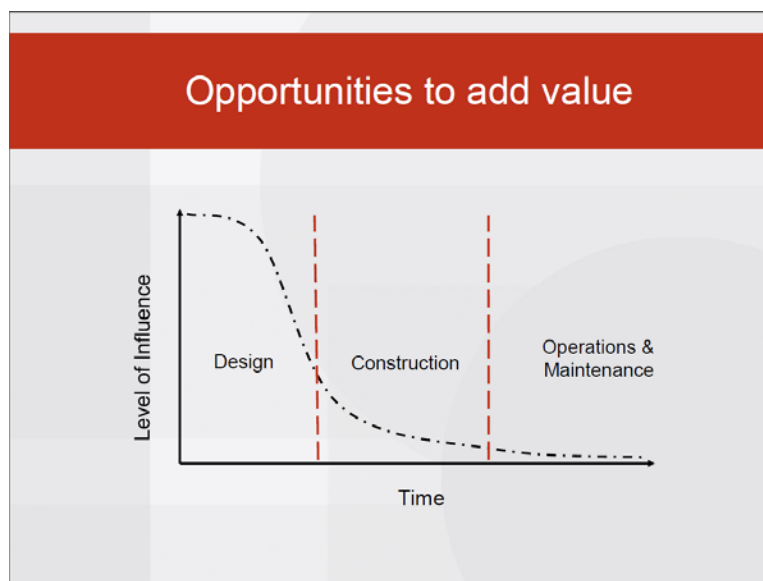
The report shows that any requirement “to bid fees in a proposal call does not achieve the expected outcomes”, focusing the consultant on “how to minimize fees to win the assignment” instead of “how to deliver a service that will add the most value for the client”. The report flags this as “a serious 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 “consider 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.

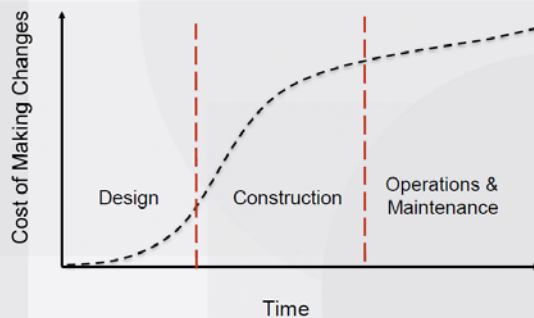
The concept of QBS is not revolutionary, having been enshrined as the mandatory method of procuring architectural and engineering services in the United States since the enactment of the *Brooks Act* in 1973. 46 states have QBS (“mini-Brooks”) laws with agencies in 3 others (IA, VT and WI) adhering to a QBS procurement process. In the US, hundreds of municipalities have also adopted QBS.^{ix}

QBS is also not foreign to the provincial government. Indeed, the provincial agency Metrolinx already uses QBS for some of its procurement. And within Canada, the Province of Quebec requires QBS for the procurement of architectural and engineering services. Similarly, some municipalities also utilize QBS. Ontario has stubbornly continued to be one of the most resistant jurisdictions when it comes to utilizing such enlightened approaches as QBS for procuring architectural (and engineering) services.

Perhaps front and centre to adopting QBS has been a political perception that QBS will somehow drive 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 1%). Any savings are best realized through the construction and operations and maintenance on a project where QBS can allow innovative design to create significant cost reductions on what constitutes 98-99% of the total budget.



Opportunities to add value



(Source: Association of Consulting Engineering Companies | Canada, 2019)

There is also a misperception that QBS does not meet policy requirements for considering price in public sector procurement, but QBS 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 can not 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 to 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 growing federal pilot and widespread adoption of QBS in other jurisdictions, Ontario must adopt QBS 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.

“QBS is an invaluable tool for us. It consistently delivers high-quality, on-time infrastructure projects for the citizens of New York.” - William F. O'Connor, Deputy Commissioner, New York State Office of General Services.^{xiii}

2. Reform Site Plan Approval

While this is not explicitly tied to the Ontario Budget, it is explicitly a budgetary issue as it concerns the state of Ontario's overall health and competitiveness. Since 2013, the OAA has been advocating for reforms to what is a costly and increasingly broken building approval process. An independent report by Bousfields and Altus Group released in October 2013 found that each month of delay associated with site plan approval added \$443 per unit for a prospective condominium buyer (in a 100 unit condominium), and over \$7000 for a business owner (in a 50,000 square foot office building). Respectively, the total costs to all stakeholders was estimated to be \$396,500-\$479,800 per month on the residential side and \$123,400-\$136,800 per month on the business side. The report found that more than half of all applications took more than 6 months to be approved, an effect that was particularly pronounced in large municipalities where nearly half of applications were found to take more than 9 months.

Since the release of this report, the OAA has been asked by government, media and other officials to quantify the cumulative impact of site plan approval delays for Ontario. An independent report by Altus Group commissioned by the OAA and released on July 19, 2018 found that the total cost to stakeholders is estimated to be as high as "\$900 million per year in Ontario."^{xiv} Due to the conservative modelling undertaken by Altus Group, the OAA anticipates this cost to the Province likely exceeds \$1 billion each year. These costs are borne by homeowners, businesses, industry and by the government itself.

In 2006, changes were made to the *Planning Act* giving municipalities an authority that amounted to design control. At that time, the OAA gave a deputation to the Standing Committee on General Government that the Association was "extremely concerned that such authority will focus design review on architectural details that have little impact on the public realm and that could frustrate the design review and planning approval process."^{xv} Sadly we now know that the OAA's concerns were well-founded as little has demonstrably changed to the built form but the cost to the province has been astronomical.

The OAA has been engaged in discussions with the Ministries of Municipal Affairs and Housing as well as Economic Development, Job Creation and Trade. Early in 2019, the OAA will also reach out to the Premier's Office. Given the government's well-founded objectives to create a province that is open for business and to "do whatever it takes...to fix housing"^{xvi}, reforming site plan approval is a critical step to realizing both objectives. This is echoed by the Construction Design Alliance of Ontario (CDAO) as well as some of its individual members including the Residential Construction Council of Ontario (RESCON).

The OAA has detailed a proposal to make changes to the *Planning Act*, ensuring that site plan approval is a more predictable process. At the core of these recommendations is to revert the failed changes to the *Planning Act* by restoring the former exemptions regarding "colour, texture and type of materials, window detail, construction detail, architectural detail and interior design of buildings".

The government recently made strides toward this in Bill 66 which is currently before the legislature. This Bill, entitled *Restoring Ontario's Competitiveness Act, 2018*, had proposed to restore design exclusions but make them subject to the passage of an open for business bylaw. However, with the recent announcement that Schedule 10 will be removed from Bill 66, it is even more critical than before that the design exclusions be restored unconditionally to the *Planning Act*. In doing so, the ability for businesses to increase the speed at which they build housing will be greatly improved.

Beyond this core recommendation, the OAA will be proposing a series of revisions to Section 41 of the *Planning Act* that would make site plan approval a more predictable and technical process. Each of these revisions is aimed to significantly reduce the time and eliminate red tape and roadblocks that have made Ontario one of the least competitive jurisdictions in the world according to the World Bank Group's annual report "Doing Business 2018"^{xvii}. The OAA's proposed development approval timeline can be expected to result in the following:

First Submission	
Pre-consultation (optional)	
Submission received	Timeline begins on next business day after submission
Cursory review	Day 5
Approval/Deemed Approval/Refusal	Day 30
Resubmission (if needed)	
Resubmission received	Timeline begins on next business day after submission
Cursory review	Day 5
Approval/Deemed Approval/Refusal	Day 30
Dispute resolution*	
Adjudication	Decision rendered in 15 days
Length of process	No more than 75 days
<i>Current process**</i>	<i>54% > 6 months, 36% > 9 months</i>

* Timing of decision by the LPAT at the Tribunal's discretion

** As identified in *A Review of the Site Plan Approval Process in Ontario* (Oct. 2013)

The OAA hopes to see design exclusions fully restored to Section 41 of the *Planning Act* and looks forward to further discussion with the government over its subsequent proposal.

The OAA has a number of other recommendations, but is using this opportunity to focus on two of the timeliest items that are before the province today. We look forward to exploring these and any other issues with the government and remain at your service for such discussions.

Regards,



Kathleen Kurtin, Architect
OAA, MRAIC
President

ⁱ Altus Group, "Contribution of the Architectural Services Industry to Ontario's Economy", July 2018. Pg. i.

ⁱⁱ Infraguide, "Selecting a Professional Consultant, Pg. 9.

[https://fcm.ca/Documents/reports/Infraguide/Selecting a Professional Consultant EN.pdf](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.

xiv Altus Group, "Site Plan Delay Analysis", July 19, 2018. Page iii.

xv OAA Deputation to the Standing Committee on General Government, July 19, 2006.

xvi Hon. Doug Ford, Queen's Park Hansard, September 17, 2018.

xvii Of the 33 countries ranked with a comparable (or better) building quality control score by the World Bank Group, Canada is tied for second last at 249 days required to obtain a construction permit (site plan approval is responsible for nearly 75% of that time). Only Romania is worse at 260. The top 8 countries take less than 100 days. The United States takes 80.6 days, while Mexico takes 82.3 days.

