



# SHORTCHANGING ONTARIO'S CITIES

*A Cardus Competitiveness Monitor Update*

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CARDUS

## EXECUTIVE SUMMARY

In 2012, Cardus released its first report on closed tendering in Ontario. The report, “Cardus Construction Competitiveness Monitor: Ontario Municipal Construction Markets,” surveyed the number of Ontarians affected by oligopolies that gave a select group of construction companies in major markets in Ontario exclusive access to publicly funded construction and infrastructure projects. It also provided estimates of the financial scope of the issue for Ontarians by reviewing the capital budgets of affected municipalities, and surveyed the estimates of costs savings that might be achieved if public construction projects were tendered competitively.

Since that time, the issue has grown to include another major municipality—the Region of Waterloo—and has surfaced as a key issue for municipal associations,<sup>1</sup> municipalities themselves,<sup>2</sup> was put forward as a private members bill,<sup>3</sup> and was alluded to in the most recent speech from the Throne.<sup>4</sup>

This paper provides an update on our initial paper and provides relevant background and data for citizens and policy makers to consider this issue. A review of the municipal budgets of the affected cities in Ontario shows that over \$2 billion worth of public construction work in Ontario is subject to oligopolies annually. And a survey of estimated costs that come as a result of these municipalities being forced to work outside of procurement best practice shows that these restrictions are costing Ontarians on average \$370 million per year.

Our research shows that closed tendering remains an ongoing challenge for Ontario municipalities that are struggling to build and maintain the infrastructure that serves its citizens in their daily lives, and that is necessary for sustainable economic growth in the province.



## AUTHORS

BRIAN DIJKEMA is Program Director, Work and Economics, at Cardus.

## CONTACT

BRIAN DIJKEMA  
905.528.8866  
bdijkema@cardus.ca

## ABOUT CARDUS

CARDUS IS A THINK TANK dedicated to the renewal of North American social architecture. Headquartered in Hamilton, ON, Cardus has a track record of delivering original research, quality events, and thoughtful publications which explore the complex and complementary relationships between virtues, social structures, education, markets, and a strong society. Cardus is a registered charity.

# ESTIMATES OF BUDGETED COSTS

*for projects subject to closed tendering in Ontario*



**TABLE 1:** Total amount of work subject to closed-tendering provisions.

## **GROSS ESTIMATES**

City of Toronto <sup>5</sup>	\$1,697,580,770
Region of Waterloo <sup>6</sup>	\$317,227,933
City of Hamilton <sup>7</sup>	\$235,628,000
City of Sault Ste. Marie <sup>8</sup>	\$45,429,750
<b>TOTAL MUNICIPALITIES</b>	<b>\$2,295,866,453</b>

Toronto District School Board	\$177,514,336
<b>TOTAL SCHOOL BOARDS</b>	<b>\$177,514,336</b>

<b>GROSS TOTAL</b>	<b>\$2,473,380,789</b>
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THE ABOVE TABLE CONTAINS ESTIMATES of the total amount of work that is subject to closed-tendering provisions that are the result of an unintended application of Section 126 of the *Ontario Labour Relations Act*.<sup>9</sup>

We compiled this data from publicly available budget documents (the sources for which are noted below), and have attempted to be as careful and comprehensive as possible. You will note that the estimated total cost for municipalities alone is approximately \$2.3 billion, up considerably from the \$750 million estimated when we first compiled the numbers in 2012. There a number of reasons for this, including the closing of a significant market that was previously open—the Region of Waterloo—in 2014, but also increased infrastructure expenditures in each municipality. (For instance, the Woodward Wastewater Treatment plant in Hamilton, among the top one hundred largest projects in Canada, was not begun when we compiled our original research in 2012.) If one includes the numbers from one other closed regime, the Toronto District School Board (TDSB), the total cost grows to almost \$2.5 billion. We believe these numbers give a reasonable estimate of the scope of the issue.

Below you will find a range of estimated cost savings that could be achieved by a return to a bidding regime that is in line with Ontario’s procurement directives, OECD recommended best practices, and that recommended by procurement experts to achieve best value for public expenditures.<sup>10</sup> These estimates provide the full range of estimated savings that could be achieved by returning to a competitive public construction tendering regime. Note that we have included the full range of estimates,

including those that we have shown to be implausible due to faulty methodologies. The median estimate suggests that savings of approximately 15 percent, or \$371 million, could be achieved if public construction tendering in these markets were made open to competitive bidding.

**TABLE 2:** Estimated savings if public tendering were opened to competitive bidding.

	<b>BY PERCENTAGE</b>	<b>BY DOLLAR</b>
Toronto Council Staff Report <sup>11</sup>	2.00%	\$49,467,615.78
BC NDP Government <sup>12</sup>	7.00%	\$173,136,655.23
Academic Estimates <sup>13</sup>	8.00%	\$197,870,463.12
	10.00%	\$247,338,078.90
	15.00%	\$371,007,118.35
	20.00%	\$494,676,157.80
	25.00%	\$618,345,197.25
City of Montreal Report <sup>14</sup>	30.00%	\$742,014,236.70
	40.00%	\$989,352,315.60

In all cases, there are significant cost savings to be gained if public construction tenders were to be opened to competitive bidding. Even the lower bound estimate, which is unreliable due to a faulty methodology in its derivation, suggests that savings equivalent to costs of 255 splash pads could be gained for Ontario.<sup>15</sup> The savings on the upper limit of the estimates would pay for the equivalent of almost three Woodward Wastewater Treatment Plants.<sup>16</sup> The likely range of 8–25 percent represents significant funds that could be allocated in multiple ways, depending on the priorities of the government. \$197–618 million could be used to build more infrastructure, to be reallocated to social programs, or to lower the tax burden of citizens.

A few important notes regarding these numbers:

1. Estimating the exact dollar amount affected in each municipality is not an exact science. The certification regime in each municipality differs slightly, and, they are applied unevenly in the different jurisdictions. And tenders for individual projects may be partially or totally subject to closed tendering rules. As such, informed judgment is required, and we recommend reading the notes in their entirety.
2. As noted in the “Cardus Construction Competitiveness Monitor,” there are a variety of factors that might cause procurement officers in various jurisdictions to close tenders. Among these are:

a. *Sectoral ambiguity*: As noted in our papers (all of which are listed below), construction labour law and OLRB decisions can be complex. Union coverage in the ICI sector is often extended to projects that, *de jure*, need not be subject to closed tendering. By way of example, a paving project in the Region of Waterloo that would typically fall outside of the ICI sector, and thus outside of the requirement for close tendering, was deemed closed by the region.<sup>17</sup> There is no way, apart from a detailed review of tender documents, to determine the number of projects that might, *de jure*, be open but are *de facto* closed. Thus, while we have excluded roadbuilding work in our estimates for, say, the Region of Waterloo, there is evidence to suggest that some of these projects are closed. They are not, however, included in our numbers.

b. *Jurisdictional ambiguity*: Different municipalities are obligated by trade unions of different trades.<sup>18</sup> For instance, the city of Toronto has obligations to various trades, including carpentry, electrical, and so on; the city of Hamilton is obligated to carpenters; Sault Ste. Marie, to both labourers and carpenters; and the TDSB, to a variety of trades. In cases where municipalities are subject to, say, carpenters, they may still opt to tender a project as closed because it contains components of carpentry work. Thus it is possible that some projects that are deemed to be, say, “electrical” still contain work that is deemed to be within the jurisdiction of a given union. Municipal procurement officials, wishing to avoid jurisdictional grievances, may err on the side of simply closing these bids to avoid the risk of jurisdictional grievances from signatory unions and the legal costs associated with dealing with them.

THE MEDIAN ESTIMATE SUGGESTS THAT SAVINGS OF APPROXIMATELY 15 PERCENT, OR **\$371 MILLION**, COULD BE ACHIEVED IF PUBLIC CONSTRUCTION TENDERING IN THESE MARKETS WERE MADE **OPEN TO COMPETITIVE BIDDING**.

c. *Procurement Habits and Culture*: You will note that we have excluded construction projects related to the Toronto Transit Commission, which is not subject to closed tendering requirements. However, as noted in appendix 3 of “Cardus Construction Competitiveness Monitor,” there have been clear examples of projects that are considered closed by municipal officials, even when there is no legal obligation to do so. Such cases suggest that our estimates may be low as it pertains to the city of Toronto. As we note: “High levels of government and bureaucratic discretion in determining which tenders are open, and which are subject to monopolies, provides further evidence in support of the notion that closed bidding increases rent-seeking activity from economic actors in the municipal construction market.”<sup>19</sup> We have deliberately excluded

TTC numbers from these estimates, but there is evidence that culture and bureaucratic discretion result in a procurement culture which assumes that some TTC projects are closed, even when legally they should remain open.

3. TORONTO DISTRICT SCHOOL BOARD: The numbers for the TDSB are more difficult to determine for a number of reasons. First, the collective agreement between the unions and the TDSB include a number of exemptions on subcontracting. These exemptions are noted in the agreement as follows:

*Exemptions*

*The following shall be exempt from union-only construction provisions but shall be subject to Metro Fair Wage schedules for ICI construction:*

- (i) New or replacement schools or buildings or additions to existing schools or buildings of more than five hundred (500) square feet floor area, including directly-related changes; and*
- (ii) Extensive changes to existing schools or buildings (defined as costing \$1,000,000 or more) which are no longer adequate to meet program requirements and/or require substantial upgrading of building elements/systems to meet current code requirements and standards.<sup>20</sup>*

Given the difficulties of determining the exact number of projects to which these exemptions apply, we have limited our estimates to the type of work that would most likely fall within the jurisdiction of the collective agreement: school condition improvements. It is important to note, however, that audits of TDSB procurement practices indicate that this number may be low. An audit commissioned by the minister of education in 2013 notes that “Forty-five percent (45%) of the 20 samples tested did not use a competitive bid process as required under the PPAP. Almost half of the 45% also did not meet the approval requirements.”<sup>21</sup> Given this, it is plausible, perhaps even likely, that our estimate may be lower bound.

4. ONTARIO POWER GENERATION: We have not included numbers for OPG, which is also subject to closed tendering provisions, in this review. The scope and complexity of OPG and its various construction projects is such that inclusion would have been too onerous. However, it should be noted that OPG is the owner of Canada’s two largest construction projects: the Bruce and Darlington Nuclear Plant refurbishment projects, worth approximately \$26 billion.<sup>22</sup> Again, it is plausible to suggest that opening tendering on projects of such scope, while not a silver bullet to Ontario’s energy woes, would likely result in significant cost savings.

## CONCLUSION

We believe our numbers to be reasonable estimates that provide a clear view of the scope of this issue. However, even if one were to play the role of the devil's advocate and adopt an extreme view of the limited nature of closed tendering rather than an expansive view, we believe the scope of the issue remains large. And for the sake of intellectual honesty, it's important to note the possibility that our estimates may be high, and that we have may have erred on including too much in making judgments on which projects to include or not. However, even if our estimates—which, again, we believe to be not just plausible, but reasonable—were discounted by a magnitude of 50 percent, it would leave the province with over \$1 billion of work that is closed from fair, open, and competitive tendering. Whether one takes our estimates at face value, or one discounts them significantly, the issue remains massive in scope. And, given not only the economic but also the social and industry effects of closed tendering that we note in our papers, it is an issue worth attending to.









We also provide a range of estimates related to the cost savings that may be achieved. You will note that, for the sake of intellectual honesty, we have shown the complete range of those estimates, including those that we do not believe to be plausible because of faulty methodologies. It is notable, however, that even the least plausible lower-bound estimate indicates significant cost savings in jurisdictions that are substantial, which could pay for significant pieces of municipal infrastructure, including public housing, child-care centres, water and sewage infrastructure, arenas, and much more. We have not included cost savings related to the reallocation of the efforts of civil servants—including municipal officers, OLRB officers, and so forth—who are currently responsible for managing and enforcing these restrictions.



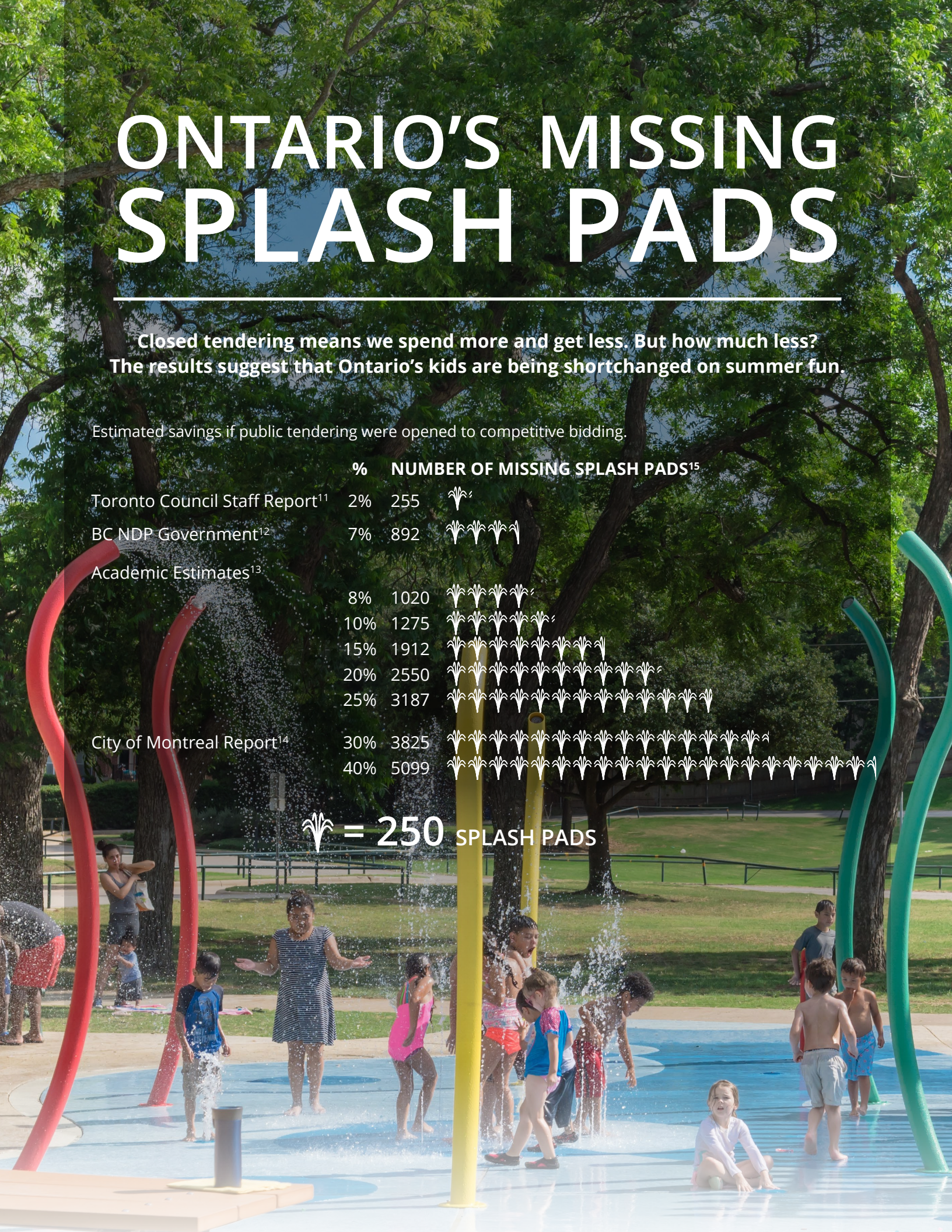
# ONTARIO'S MISSING SPLASH PADS

Closed tendering means we spend more and get less. But how much less? The results suggest that Ontario's kids are being shortchanged on summer fun.

Estimated savings if public tendering were opened to competitive bidding.

	%	NUMBER OF MISSING SPLASH PADS <sup>15</sup>
Toronto Council Staff Report <sup>11</sup>	2%	255 
BC NDP Government <sup>12</sup>	7%	892 
Academic Estimates <sup>13</sup>	8%	1020 
	10%	1275 
	15%	1912 
	20%	2550 
	25%	3187 
	City of Montreal Report <sup>14</sup>	30%
	40%	5099 

 = 250 SPLASH PADS



# CARDUS RESEARCH ON OPEN TENDERING

## SKIMMING OFF THE TOP

*by Brian Dijkema, July 16, 2018*

“Skimming Off the Top” uses industry benchmarks and best practices to evaluate procurement policy for public infrastructure construction. This paper explores the cost implications, but also goes beyond those numbers to consider the effects that the diversion from best practices can have on the construction industry, workers, and the public good.

## NO LONGER THE BEST: THE EFFECTS OF RESTRICTIVE TENDERING ON THE REGION OF WATERLOO

*by Brian Dijkema, March 1, 2018*

This paper focuses on data from one particular municipality, the Region of Waterloo, which, because of its relatively recent certification as a construction employer, did not have data that fit within the time frame studied by our previous papers.

## UP, UP, AND AWAY

*by Morley Gunderson, Tingting Zhang, and Brian Dijkema, December 6, 2017*

This empirical paper compiles bidding data from a variety of Ontario municipalities over time. Results suggest that restricting tendering to a select group of firms on the basis of their workers’ affiliations will lead to higher costs for municipalities than if they tendered their projects to all qualified bidders, with the strong possibility that municipalities will pay a substantial magnitude more.

## RESTRICTIVE TENDERING: PROTECTION FOR WHOM?

*by Morley Gunderson and Brian Dijkema, January 17, 2017*

This paper reviews academic data and literature on construction tendering and competition.

## TUNING UP ONTARIO’S ECONOMIC ENGINE: A CARDUS CONSTRUCTION COMPETITIVENESS MONITOR BRIEF

*by Brian Dijkema, April 9, 2015*

This paper reviews a city of Toronto staff report that estimates cost effects of closed tendering and finds significant methodological problems that lead to faulty conclusions. Particularly, the report failed to account for the variety of ways in which competition works. Instead, it focused on one segment of competition and failed to account for variables inherent to the competitive process.

## **HIDING IN PLAIN SIGHT: EVALUATING CLOSED TENDERING IN CONSTRUCTION MARKET**

*by Stephen W. Bauld and Brian Dijkema, September 9, 2014*

Ontario is faced with huge deficits and a debt that will hamper the province's long-term economic prospects. In the face of this dire situation, Ontario's government is turning over stones to find savings for the provincial budget. Leading procurement expert Stephen Bauld notes that achieving significant savings in Ontario can be achieved by opening up public construction procurement to competitive bidding. The paper provides evidence from best practices in procurement.

An update on the 2012 project and cost implications of closed tendering in Ontario.

## **CARDUS CONSTRUCTION COMPETITIVENESS MONITOR**

*by Brian Dijkema, October 25, 2012*

The original paper that explores the legal, historical, and economic implications of closed tendering in Ontario.

## NOTES

1. “AMO President’s Letter Re Open Tendering,” Association of Municipalities Ontario, March 17, 2015, <https://www.amo.on.ca/AMO-Content/Policy-Updates/2015/AMO-President-s-Letter-to-Minister-Flynn-re-Open-T>.
2. “Sault Ste. Marie Council explores OLRB filing, Change to Open Tendering Model,” Ontario Construction Report, June 5, 2017, <https://ontarioconstructionreport.com/sault-ste-marie-council-explores-olrb-filing-change-to-open-tendering-model/>.
3. Fair and Open Tendering Act (Labour Relations for Certain Public Sector Employers in the Construction Industry), Bill 73, 2013, Legislative Assembly of Ontario, <https://www.ola.org/en/legislative-business/bills/parliament-40/session-2/bill-73>.
4. “A Government for the People: A Speech from the Throne,” Government of Ontario press release, July 12, 2018, [https://news.ontario.ca/opo/en/2018/07/a-government-for-the-people.html?mc\\_cid=26a238d2a5&mc\\_eid=26439035c8](https://news.ontario.ca/opo/en/2018/07/a-government-for-the-people.html?mc_cid=26a238d2a5&mc_eid=26439035c8): “it will respect workers—across all professions and trades—by ensuring everyone gets a fair opportunity to compete for opportunities and build their careers here in Ontario.”
5. “Budget Notes,” City of Toronto, 2018, <https://www.toronto.ca/city-government/budget-finances/city-budget/program-agency-%20budgets/>.
6. “2018 Program Budgets,” Region of Waterloo,” 2018, [https://www.regionofwaterloo.ca/en/regional-government/resources/2018\\_Final\\_Budget\\_Book.pdf](https://www.regionofwaterloo.ca/en/regional-government/resources/2018_Final_Budget_Book.pdf).
7. Lindsay Gillies, Marcion Zukowski, and Marcel Cerminara, “2018 Tax Supported Capital Budget,” City of Hamilton, November 24, 2017, [https://d3fp11f1m7bbt3.cloudfront.net/sites/default/files/media/browser/2017-12-11/final\\_2018\\_tax\\_capital\\_budget.pdf](https://d3fp11f1m7bbt3.cloudfront.net/sites/default/files/media/browser/2017-12-11/final_2018_tax_capital_budget.pdf); and John Savoia, Marcel Cerminara, and Ashley Bono, “2018 Recommended Water, Wastewater and Stormwater Budget,” City of Hamilton, November 17, 2017, <https://d3fp11f1m7bbt3.cloudfront.net/sites/default/files/media/browser/2017-12-11/2018-recommended-water-wastewater-stormwater-budget-final.pdf>.
8. “Budget Meeting of City Council Agenda,” City of Sault St. Marie, December 4, 2017, [http://saultstmarie.ca/Cityweb/media/City-Clerk/Council-Agendas/2017/2017\\_12\\_04\\_BUDGET\\_AGENDA.pdf?ext=.pdf](http://saultstmarie.ca/Cityweb/media/City-Clerk/Council-Agendas/2017/2017_12_04_BUDGET_AGENDA.pdf?ext=.pdf).
9. See Brian Dijkema, “Cardus Construction Competitiveness Monitor: Ontario Municipal Construction Markets,” Cardus Work and Economics, October 25, 2012, 7, for details on how and why this applies. <https://www.cardus.ca/research/work-economics/reports/cardus-construction-competitiveness-monitor/>.
10. See Stephen W. Bauld and Brian Dijkema, “Hiding in Plain Sight: Evaluating Closed Tendering in Construction Markets,” Cardus Work and Economics, September 9, 2014, (<https://www.cardus.ca/research/work-economics/reports/hiding-in-plain-sight-evaluating-closed-tendering-in-construction-markets/>); and Brian Dijkema, “Skimming Off the Top,” Cardus Work and Economics, July 16, 2018, <https://www.cardus.ca/research/work-economics/reports/skimming-off-the-top/>.

11. See Brian Dijkema, “Tuning Up Ontario’s Economic Engine: A Cardus Construction Competitiveness Monitor Brief,” Cardus Work and Economics, April 9, 2015, <https://www.cardus.ca/research/work-economics/reports/tuning-up-ontarios-economic-engine-a-cardus-construction-competitiveness-monitor-brief/>.
12. See Rob Shaw, “NDP Rules Could Boost Pattullo Bridge Replacement by \$100 Million,” *Vancouver Sun*, July 26, 2018, <https://vancouversun.com/news/politics/ndp-rules-could-boost-pattullo-bridge-replacement-by-100-million>. Note that this estimate considers only wages, and does not account for the loss of value due to decreased competition.
13. See Dijkema, “Hiding in Plain Sight”; Dijkema and Morley Gunderson, “Open Tendering: Protection for Whom?,” Cardus Work and Economics, January 17, 2017, <https://www.cardus.ca/research/work-economics/reports/restrictive-tendering-protection-for-whom/>, and Morley Gunderson, Tingting Zhang, and Brian Dijkema, “Up, Up, and Away,” Cardus Work and Economics, December 6, 2017, <https://www.cardus.ca/research/work-economics/reports/up-up-and-away/>, for sources.
14. See *The Report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry*, vol. 3, *Schemes, Causes, and Consequences*, International Centre for Criminal Law Reform and Criminal Justice Policy, March 21, 2017, [https://icclr.law.ubc.ca/wp-content/uploads/2017/06/9503929\\_001\\_EN\\_Rapport\\_final\\_CEIC\\_Tome3-1.pdf](https://icclr.law.ubc.ca/wp-content/uploads/2017/06/9503929_001_EN_Rapport_final_CEIC_Tome3-1.pdf); and “Secrecy Shields Top Politicians,” *Montreal Gazette*, November 13, 2012, <https://www.pressreader.com/canada/montreal-gazette/20121113/281595237806255>.
15. The city of Hamilton budgeted \$194,000 for a splash pad in Alexander Park. See project ID 7101758002 in “2018 Tax Supported Capital Budget.”
16. The construction of the Woodward Wastewater Treatment Plant, according to ReNew Infrastructure, is valued at \$340,000,000. See “Woodward Wastewater Treatment Plant,” Top 100: Canada’s Biggest Infrastructure Projects,” <https://top100projects.ca/project-details/?id=365&yr=2018>.
17. See the video at *CTV News Kitchener*, <https://kitchener.ctvnews.ca/video?clipId=1386386>.
18. See Dijkema, “Ontario Municipal Construction Markets,” 16, for a graph indicating various obligations.
19. See Dijkema, “Ontario Municipal Construction Markets,” appendix 3, 18.
20. See “Collective Agreement between the Toronto District School Board and Unit E Maintenance and Construction Skills Trades Council,” Maintenance and Construction Skilled Trades Council, October 20, 2016, appendix E, p. 105. <https://tradesouncil.com/wp-content/uploads/2018/01/2014-2017-Collective-Agreement-MCSTC-Draft-Oct-20-16.pdf>.
21. Ernst and Young, LLP, “Ministry of Education Report to the Minister on the Toronto District School Board,” Ontario Ministry of Education, December 2, 2013, <http://www.edu.gov.on.ca/eng/new/2013/ErnstYoungReport.pdf>.
22. See “Top 100 Projects for 2017,” Top 100: Canada’s Biggest Infrastructure Projects, <https://top100projects.ca/2017filters/>.

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