



## STAFF REPORT ACTION REQUIRED

### Canadian Content – Bus Procurement

<b>Date:</b>	June 15, 2017
<b>To:</b>	TTC Board
<b>From:</b>	Chief Executive Officer

### Summary

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The purpose of this report is to obtain approval from the Board to revise the current Canadian content requirements for buses outlined in the TTC's Procurement Policy to match the current provincial Canadian Content guidelines as outlined in the Ministry of Transportation's (MTO) Canadian Content for Transit Vehicle Procurement Policy in preparation for the implementation of:

- 1) The 2017 Canadian Free Trade Agreement (CFTA) and,
- 2) The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA).

### Recommendations

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#### It is recommended that the Board:

1. Adopt the MTO's Canadian Content for Transit Vehicle Procurement Policy at 25%, thereby replacing TTC's current Canadian Content Policy, which is 40% for the 40-foot diesel buses with a minimum of 50% Canadian direct assembly labour, to prepare for the implementation of the CFTA and CETA which is anticipated to be passed into legislation after the third reading by the Canadian Government, thereby coming into effect July 1, 2017.

## **Financial Summary**

In order to receive Public Transit Infrastructure Funding (PTIF), the TTC will have to be compliant with the governing legislation.

Implementation of these revisions will ensure that TTC's Canadian content requirements are in line with other provincial transit agencies such as Metrolinx.

It is anticipated that once the CFTA and CETA become effective on July 1, 2017, the TTC's current Canadian content policy will be in contravention of the requirements of these trade agreements and could potentially have a detrimental impact on the TTC's ability to receive provincial and/or federal funding for future bus purchases.

The Chief Financial & Administration Officer has reviewed this report and agrees with the financial impact information.

## **Decision History**

At its meeting of August 27, 2008, the Board requested that staff explore the following:

- TTC establish a policy encouraging Canadian content of 50% for bus procurements,
- Explore the feasibility of requesting optional pricing based on a number of incrementally higher Canadian content percentages for consideration by the Board,
- TTC staff be directed to work towards increasing Canadian content in any additional vehicle order with a goal of achieving at least 50% Canadian content; and,
- TTC request that the government of Canada and province of Ontario be requested to adopt a 60% Canadian content requirement for transit purchases.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2008/Sept\\_18\\_2008/Minutes/index.jsp](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2008/Sept_18_2008/Minutes/index.jsp)

At its meeting of December 16, 2009, staff recommended that the Board approve proceeding with a pre-qualification process to determine the highest practical level of Canadian content that could be achieved for future low floor transit bus procurements, while maintaining competition.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2009/December\\_16\\_2009/Supplementary\\_Reports/Canadian\\_Content\\_Bus1.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2009/December_16_2009/Supplementary_Reports/Canadian_Content_Bus1.pdf)

At the same meeting, the Board approved a motion to replace the above recommendation with implementing higher Canadian content requirements as detailed within the following report.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2010/Jan\\_20\\_2010/Minutes/1915M\\_December\\_16\\_09.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2010/Jan_20_2010/Minutes/1915M_December_16_09.pdf)

At its special meeting of November 16, 2016 to approve the 2017-2026 TTC Capital Budget, the Board approved a motion requesting that staff report back on deleting the TTC specific 40% Canadian content requirement, in favour of the provincially mandated 25% Canadian content requirement for bus purchases.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2016/November\\_21/Reports/2\\_2017-2026\\_TTC\\_Capital\\_Budget.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/November_21/Reports/2_2017-2026_TTC_Capital_Budget.pdf)

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2016/November\\_21/Reports/Decisions/2017\\_2026\\_TTC\\_Capital\\_Budget.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/November_21/Reports/Decisions/2017_2026_TTC_Capital_Budget.pdf)

## **Issue Background**

On March 20, 2008, the Premier of Ontario announced that effective September 1, 2008; all transit vehicles procured using any sources of provincial funding must have at least 25% Canadian content. This requirement would be applicable to the procurement of revenue vehicles including city buses and light rail vehicles.

At the December 16, 2009 Board meeting, staff presented the findings of a report prepared by Booz Allen Hamilton (Booz Allen) outlining the highest practical level of Canadian content that could be achieved for low floor transit bus procurements, while maintaining competition which at the time included three Canadian bus manufacturers New Flyer Industries (New Flyer), Nova Bus a division of Volvo Group Canada Inc. (Nova) and Daimler Buses North America (Daimler).

Based on their findings and discussions with bus manufacturers, Booz Allen recommended that the highest practicable Canadian content requirements that could be implemented by the TTC while maintaining competition for future bus purchases as follows:

- a. A minimum of 50% Canadian direct assembly labour for future bus procurements;
- b. 40% Canadian content for 40-foot diesel powered buses;
- c. 30% Canadian content for 40-foot hybrid powered buses;
- d. 35% Canadian content for 60-foot diesel powered buses;
- e. 30% Canadian content for 60-foot hybrid powered buses.

Based on the findings from Booz Allen's report presented by staff at this meeting, the Board approved a motion to implement the recommended Canadian content requirements for TTC's future Bus procurements. Although the minimum Canadian content requirement stated in the MTO's Canadian content policy is 25%, the policy did allow for a municipality to require a higher percentage of Canadian content for its transit vehicle procurements. As such TTC's current Canadian Content policy is in compliance with the provincial guidelines and has not prevented the TTC from receiving provincial funding for the purchase of transit buses.

In 2012, Daimler, one of the three Canadian bus manufacturers and the largest suppliers of 40-foot buses to the TTC until 2012, announced that they would no longer be manufacturing transit buses. Consequently, there are only two bus manufacturers remaining in Canada, New Flyer and Nova, which should have the ability to meet TTC's Canadian content requirements.

### **Accessibility/Equity Matters**

All buses to be procured are fully accessible and compliant with all Federal and Provincial regulations.

### **Comments**

On April 7, 2017, the Government of Canada announced the implementation of the CFTA and CETA on July 1, 2017 resulting in changes to the Province's Canadian Content guidelines to ensure that any provisions do not contravene the requirements of these two trade agreements. As such, TTC's Canadian Content policy for transit buses will be in contravention of these trade agreements and will require that the policy be revised as recommended.

CETA is expected to come into force on July 1, 2017. As part of CETA, Canadian content requirements for transit vehicles cannot exceed 25% of the contract value. This limitation only applies in Ontario and Quebec. In addition, the CETA requirement moves away from the notion of "content" and refers to "value". In order to ensure continued funding through PTIF, TTC's policy needs to comply with the Ontario Ministry of Transportation requirements (which are based on the new CETA requirements). A copy of the CETA requirements is attached to this report as Appendix "A".

TTC currently has the ability to purchase a significant quantity of 40-foot buses by utilizing PTIF. In order for bus manufacturers to be able to supply buses to TTC by the specified deadline of March 31, 2019 to be eligible for PTIF funding., It may be required for both Nova and New Flyer to manufacture buses from their plants located in the U.S., not just supply buses from Canada only, to meet this stringent PTIF delivery cut-off date.

An RFP for the supply of 40-foot low floor diesel powered buses was publicly advertised on MERX on April 3, 2017. In preparation for the implementation of CFTA and CETA,

staff has included a revised Canadian content requirement of 25% matching the requirement as part of the contractual obligations to be met by the successful proponent in accordance with the current MTO regulations. The current closing date for the RFP is scheduled for the latter part of June, 2017.

It is necessary to revise TTC's current Canadian content requirements for the purchase of buses given that it would be contravening the CFTA and CETA requirements. Following the approval of this report by the Board effectively revising the TTC's Canadian content requirements, TTC can apply the PTIF subsidy to its procurement of transit buses for those buses delivered by March 31, 2019.

The recommended revisions to the TTC's Canadian content requirements based on board approval, would then be in line with Metrolinx's Canadian content requirements and also the TTC would be in compliance with CFTA and CETA, once these treaties are implemented. This change to the content guidelines will provide bus manufacturers the flexibility to manufacture buses at both their U.S. and Canadian manufacturing plants in order to meet the TTC's specific delivery requirements.

## **Contact**

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## **Attachment**

Appendix A – CETA Requirements

APPENDIX “A”  
(Notes to Canada’s Annex 19-4)<sup>1</sup>

1. For the Provinces of Ontario and Québec, this Note applies to the procurement of mass transit vehicles. A mass transit vehicle refers to a street car, bus, trolley bus, subway car, passenger rail car or locomotive for subway or rail system used for public transportation.
  - (a) Procuring entities in the provinces of Ontario and Québec, when purchasing mass transit vehicles, may, in accordance with the terms of this Chapter, require that the successful bidder contracts up to 25 per cent of the contract value in Canada.
  - (b) Any lowering of such percentage of contract value decided by the Government of Canada or the province of Ontario or the province of Québec, as a result of an international agreement or in domestic law, regulation or policy, will replace the abovementioned percentage of 25 per cent on a permanent basis under this Chapter for that province and for the category of mass transit vehicle to which such new percentage applies. When applying this note, the provinces of Ontario and Québec must treat European Union bidders no less favourably than Canadian or other third country bidders.
  - (c) The term “value” refers to the eligible costs in the procurement of mass transit vehicles for components, sub-components and raw materials produced in Canada, including labour or other related services such as after-sale and maintenance services, as determined in the tender. It also includes all costs related to a final assembly of the mass transit vehicle in Canada. It will be for the bidder to determine which part of the contract value will be fulfilled through the use of Canadian acquired value. However, the province of Québec may require that final assembly takes place in Canada.
  - (d) Final assembly:
    - (i) Final assembly of a bus includes:
      - (A) installation and interconnection of the engine, transmission, axles, including the brake system;
      - (B) installation and interconnection of heating and air conditioning systems;
      - (C) installation of pneumatic, electrical and door systems;
      - (D) installation of passenger seats and handrails;

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<sup>1</sup> Text is reproduced from the Comprehensive Economic and Trade Agreement (CETA) BETWEEN CANADA, OF THE AND THE EUROPEAN UNION [AND ITS MEMBER STATES].

- (E) installation of the destination sign;
- (F) installation of the wheelchair access ramp; and
- (G) final inspection, road tests and preparation for delivery.

(ii) Final assembly of a train includes:

- (A) installation and connection of the ventilation, heating and air conditioning system;
- (B) installation and connection of bogie frames, suspension, axles and differential;
- (C) installation and connection of propulsion engines, propulsion control and auxiliary power;
- (D) installation and connection of braking control, braking equipment and air brake compressors;
- (E) installation and connection of communication system, on-board information and remote monitoring system; and
- (F) inspection, verification of all installation and interconnection work and fixed-point testing to verify all functions.

- (e) The eligible costs must provide reasonable flexibility for a successful bidder to source the contract value on competitive terms from Canadian suppliers, including price and quality. Contracts may not be split with the purpose of restricting the choice of eligible costs by the bidder.
- (f) The procuring entities must indicate the existence of such conditions clearly and objectively in both tender notices and contract documents.
- (g) The application of this paragraph will be revisited five years after entry into force of this Agreement.
- (h) The application of this paragraph will be revisited with a view to reduce its inconsistency with the provisions of this Chapter in the event that the United States of America permanently lowers its local content restrictions applicable to transit vehicles (rolling stock) below 25 per cent for local and state contracting authorities.