September 30, 2008

His Worship Fred Eisenberger
Mayor
The City of Hamilton
77 James Street North, Suite 400
Hamilton, Ontario
L8R 2K3

Dear Mayor Eisenberger:

I am pleased to advise you of the approval of the Ministry's implementation details for our Canadian content policy. This policy is expected to create and protect skilled manufacturing jobs, foster economic development, and promote a fair and open procurement process that ensures value for taxpayers' dollars.

Based on the input received from stakeholders over the summer, we have shaped the details of the policy announcement that will ensure transit operators have the ability to procure the transit vehicles they need to provide the services that riders demand.

Effective September 1, 2008, all provincially-funded transit vehicles will require 25% Canadian content as set out in the Ministry's detailed policy document. The policy document outlining specific implementation details is attached. Transit managers will also be forwarded suggested Canadian content contract wording that they may use and refine according to their particular municipal transit vehicle procurements.

In addition, follow-up meetings are also being arranged to answer questions and further explain key policy details. Should you have any questions or concerns in the meantime, please contact Rebecca Ramsarran, Manager of the Provincial Transit Policy Office, at 416-585-7360.

.../2
I would also like to take this opportunity to thank all those who provided assistance in the policy development process through their input via the Canadian Urban Transit Association, the Ontario Public Transit Association and the Association of Municipalities of Ontario, as well as during the information sessions held by Ministry staff. The comments and feedback received at these meetings were invaluable to the formation of our policy.

Yours sincerely,

Jim Bradley
Minister

encl.

c: Andrea Horwath, MPP, Hamilton Centre
Sophia Aggelonitis, MPP, Hamilton Mountain
The Honourable Ted McMeekin, MPP, Ancaster-Dundas-Flamborough-Westdale
Paul Miller, MPP, Hamilton East-Stoney Creek
Transit Contact
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Effective Date

The Canadian Content for Transit Vehicle Procurement Policy is effective as of September 1, 2008.
CANADIAN CONTENT FOR TRANSIT VEHICLE PROCUREMENT POLICY

1. DEFINITIONS

When used in this document, the words set out below that import the singular include the plural and vice versa:

"Canadian content policy" means this Canadian Content for Transit Vehicle Procurement Policy", as amended from time to time, issued by the Ministry of Transportation.

"component" means any article, subcomponent, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the transit vehicle.

"dealer" means an agent who distributes transit vehicles on behalf of a manufacturer.

"eligible cost" means the compensation paid by a manufacturer for:

(a) labour performed in Canada that is directly related to the manufacturing process of transit vehicles;

(b) work performed in Canada in relation to freight, manuals, special tools, test equipment, or warranties; or

(c) components, subcomponents and raw materials produced in Canada in respect of transit vehicles or any of the items listed in (b) above.

"engineering" means the application of scientific and technical knowledge to the design, analysis, and/or construction of a subcomponent, component or transit vehicle.

"entity" means a person, firm, corporation, municipality, local board of a municipality, or transit or transportation commission, or authority, acquiring transit vehicles on behalf of a transit operator.

"freight" means the cost for transportation within Canada, and/or paid to a Canadian carrier for a) delivering a subcomponent or component to a manufacturer and b) delivering a transit vehicle to a transit operator or an entity.

"GO Transit" means the Greater Toronto Transit Authority established by the GO Transit Act, 2001, S.O. 2001, c.16, Sched. A.

"irreversible manufacturing process" means a manufacturing process which transforms subcomponents into a component which cannot be separated back into the subcomponents without destroying the subcomponents' integrity.

"labour" means the compensation paid for work performed by a manufacturer or, a
manufacturer's supplier of subcomponents and components, that is directly related to the manufacturing process of transit vehicles, including project management and engineering, plus any benefits paid or general administration and similar expenses recognized and allowed by Canadian accounting rules.

"manual" means a handbook or guidebook, specific to a transit vehicle, that a manufacturer may provide to a transit operator, or an entity.

"manufacturer" means the manufacturer of a subcomponent, component or transit vehicle acquired, or that may be acquired, by a transit operator or an entity and, as applicable, includes a dealer for such manufacturer.

"manufacturing process" means the application of processes to alter the form or function of components or subcomponents to create a component or a transit vehicle.

"Metrolinx" means the Greater Toronto Transportation Authority established by the Greater Toronto Transportation Authority Act, 2006, S.O. 2006, c.16.

"Ministry" means the Ministry of Transportation.

"project management" means the application of knowledge, skills, tools, and techniques to the manufacturing process, distribution and acquisition of transit vehicles.

"public transportation" means any service for which a fare is charged for transporting the public by transit vehicles operated by or on behalf of a transit operator, or under an agreement between a transit operator and an entity, and includes special transportation facilities for the physically disabled, but does not include transportation by special purpose facilities such as school buses or ambulance.

"special tools" means an engineered tool that a manufacturer may provide to a transit operator or an entity to service a transit vehicle after delivery.

"subcomponent" means a part of a component which cannot be further separated into its constituent parts without destroying its integrity.

"submission" means a response from a manufacturer to a fair, open and transparent procurement process.

"test equipment" means the diagnostic equipment a manufacturer provides to a transit operator or an entity.

"transit operator" means a municipality, GO Transit or Metrolinx.

"transit vehicle" refers to a street car, bus, trolley bus, subway car, light rail car, or passenger locomotive used for public transportation, made up of subcomponents and components, and acquired by a transit operator, or an entity under a contract with a manufacturer and for which
the Province of Ontario may provide, in whole or in part, funding.

“warranty” refers to the promise under a contract between a transit operator, or an entity, and a manufacturer that the material and workmanship of the transit vehicle is defect-free and will perform a specified level of performance over a specified period of time.

2. INTRODUCTION

On March 20, 2008, the Government of Ontario announced that all transit vehicles procured with provincial funding must have at least 25 per cent Canadian content. The Canadian content policy is a mandatory requirement for provincial funding of transit vehicles. The policy is expected to promote job retention and creation, foster economic development, protect skilled manufacturing jobs and continue to promote a fair, open and transparent procurement process that ensures value for taxpayers’ dollars.

The Ministry of Transportation has conducted extensive stakeholder consultations with municipalities, transit industry manufacturers, suppliers, dealers, as well as its own transit agencies. As a result of the stakeholder consultations, the 25% Canadian content policy will include exemptions and waivers as laid out in this document.

The Canadian content policy is effective as of September 1, 2008. Procurements issued publicly, prior to September 1, 2008, to solicit submissions from manufacturers are exempt from complying with the terms and conditions of the Canadian content policy. The Province will be taking the lead on implementing this policy, through its own coordinated procurement in 2009, the Greater Toronto Transportation Authority (‘Metrolinx”) Request For Proposals for Urban Transit Buses under the Joint Transit Procurement Initiative.

As outlined above, the Ontario government is committed to a transparent, fair and open process for transit vehicle procurement that ensures value for taxpayers’ dollars. The Canadian content policy will apply to the procurement of transit vehicles acquired with funds received under provincial programs such as the Dedicated Gas Tax Funds for Public Transportation Program (Gas Tax), the Ontario Bus Replacement Program (OBRP), and potentially other programs, as well as separate transit expansion funding commitments.

Although a minimum of 25% must be achieved and attested to in order to receive provincial funding, a municipality may require a higher percentage of Canadian content for its transit vehicle procurements.

3. CALCULATING CANADIAN CONTENT

Under the Canadian content policy, the overall Canadian content of a transit vehicle is calculated as a percentage of the total final costs to the manufacturer, less any applicable taxes.
The Ministry will only consider, as Canadian content, expenditures for eligible costs in respect of transit vehicles for the items listed below and which are directly related to transit vehicles manufacturing process, distribution and acquisition:

- labour;
  - subcomponents and components;
  - project management;
  - engineering;
  - manuals;
  - special tools;
  - test equipment;
  - freight; and
  - warranty.

In addition, the percentage of Canadian content for expenditures (see above list of items for which expenditures may be considered eligible) related to transit vehicles, components or subcomponents will be calculated as follows:

1. 100% Canadian for a component that has undergone an irreversible manufacturing process in Canada.

2. 100% Canadian for a component that contains 60% or more Canadian content through any combination of expenditures that may be considered eligible, as described above, if such expenditures are made in Canada.

3. The exact Canadian percentage for a component that contains between 0% and 59% Canadian content through any combination of expenditures that may be considered eligible, as described above, if such expenditures are made in Canada.

4. Where a component or subcomponent is procured from a Canadian supplier, a minimum Canadian content of 15% will be assumed, without the requirement of certifying the percentage of Canadian content of the component or subcomponent in a manufacturer's declaration of compliance with the Canadian content policy. Simply handling the component or subcomponent is not sufficient to qualify. The Canadian supplier must provide added value through the procuring, manufacturing or-after sales support of the component or subcomponent.

4. CANADIAN CONTENT DECLARATION & CONSENT FORM

Transit operators, and entities, must ensure that each manufacturer demonstrates how it will comply with the Canadian content policy requirements, and obtain a written declaration from the manufacturer:

- certifying the percentage of Canadian content of the transit vehicles described in the manufacturer's submission, calculated in accordance with this policy; and
providing the manufacturer's consent to the disclosure, verification and audit of the information forming the basis of the declaration, both before the contract award and, for the successful manufacturer, during and after the term of the contract. (See Part 9 below for additional details regarding disclosure, verification and audit.)

In addition, transit operators, and entities, must ensure that manufacturers provide such progress reports, during the term of the contract, as they or the Ministry or the Auditor General, or any of their designates, may require, and written declarations of ongoing compliance with the 25% Canadian content requirement.

Should it appear at any time that a manufacturer might not meet the 25% Canadian content level, a transit operator or entity may require the manufacturer to submit a revised plan indicating how it will achieve compliance.

Transit operators, and entities, must ensure that the successful manufacturer demonstrates, upon final delivery of the transit vehicle(s), how it complied with the Canadian content policy requirement, and obtain a written declaration from the manufacturer, certifying the percentage of Canadian content of the transit vehicles, calculated in accordance with this policy.

5. EXEMPTIONS

Through the consultation process, concerns were raised regarding the continued availability of certain types of transit vehicles and the ability to procure transit vehicles in an open and fair and fair procurement process in compliance with the 25% Canadian content requirement.

In consideration of the transit operator's efforts to comply with the Accessibility for Ontarians with Disabilities Act, 2005, and to procure specific transit vehicles to meet their individual strategic requirements to improve transit services, the following four vehicle types will be exempted from the 25% Canadian content requirement:

- specialized transit buses;
- conventional transit buses under 40 feet in length;
- double decker buses; and
- passenger locomotives.

Despite the above and to encourage Canadian content for the exempted transit vehicles listed above, transit operators and entities will apply a 5% price preference to the price for the submission with the highest percentage of Canadian content. In practice, this will result in the submission with the highest percentage of Canadian content being evaluated as if the price submitted in the manufacturer's offer were 5% lower than that which was actually submitted. The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.
6. WAIVERS

In the event that no Canadian content compliant submissions are received as part of a fair, open and transparent procurement process for non-exempted vehicles, a transit operator may formally request a waiver to comply with the Canadian policy from the Ministry by providing:

- a letter from the Chief Administrative Officer or Chief Executive Office to the Deputy Minister of Transportation supporting the request for a waiver;
- a resolution from the transit operator (e.g., municipal Council, GO Transit Board or Metrolinx Board resolution) requesting a waiver; and
- a detailed report outlining the procurement process that was used.

Upon receipt of the waiver request, the Ministry will have the above-noted documents reviewed by a Ministry-appointed fairness monitor to determine whether a fair, open and transparent procurement process was used. If the procurement process was determined to be fair, open and transparent, the Ministry may waive the requirement for compliance with the Canadian content policy for that specific procurement. The Ministry intends to communicate its decision in writing and within 20 business days upon receipt of the fairness monitor’s determination on whether it will provide a waiver. If the Ministry decides that the procurement process is not fair, open and transparent, the transit operator will have to decide to either initiate, or have the entity initiate, a new procurement process or proceed without provincial funding.

Where the Ministry issues a waiver, transit operators and entities will apply a 5% price preference to the price for the submission with the highest percentage of Canadian content. In practice, this will result in the submission with the highest percentage of Canadian content being evaluated as if the price submitted in the manufacturer’s submission was 5% lower than actually submitted. The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.

7. PROVINCIAL ENFORCEMENT

If, in the opinion of the Ministry, a transit operator, or an entity, fails either to comply with or to ensure manufacturers’ compliance with any of the Canadian content policy requirements, the Ministry may avail itself of any remedies it may have under the terms of the program or arrangement under which the transit vehicle may be funded, or any other remedies it may have at law or in equity.

8. MUNICIPAL ENFORCEMENT

Transit operators, and entities procuring transit vehicles on their behalf, are responsible for ensuring the manufacturers’ compliance with the Canadian content policy. As such, transit operators and entities are expected to include, in their contract documents, provisions that set out the manufacturers’ obligations to comply with the Canadian content policy and remedies should a selected manufacturer default in meeting these obligations. Such
remedies may include termination for breach of such requirement. In addition, transit operators and entities may require an indemnity from the selected manufacturer for any liability the transit operator and/or entity might incur in the event of such breach. Transit operators and entities should obtain independent legal advice in order to adequately address related issues.

The Province shall not incur any liability whatsoever, expressed or implied, resulting from a transit operator’s or entity’s implementation of this Canadian content policy.

9. DISCLOSURE, VERIFICATION AND AUDIT

Transit operators and entities are required to ensure manufacturers from whom they acquire transit vehicles are in compliance with this Canadian content policy. Despite the above, and unless provided otherwise under the terms of a program or arrangement under which provincial funds are provided for a transit vehicle, the Province and/or the Auditor General, or any of their designates, may also perform a verification or compliance audit to ensure manufacturers from whom transit operators and entities procure transit vehicles comply with this Canadian content policy, the costs of which the Province will assume.

10. WHERE TO REQUEST OR PROVIDE INFORMATION

Any questions from transit operators regarding the Canadian content policy are to be directed to the Ministry’s Transit Policy Branch at telephone (416) 585-7360 or fax (416) 585-7343.

Any questions from manufacturers regarding the Canadian content policy for a specific transit operators’ procurement should be directed to the transit operator, or entity, responsible for the procurement.
ATTACHMENT A

CANADIAN CONTENT POLICY
PROCUREMENT DOCUMENT AND AGREEMENT PROVISIONS FORM
SAMPLE WORDING

Transit operators receiving provincial funding for the acquisition of transit vehicles and entities must comply with the Canadian content policy (the "policy"). To comply with the policy, transit operators, or an entity on behalf of a transit operator, must ensure manufacturers, from whom transit vehicles are acquired, meet the specified Canadian content requirements set out in the policy.

The following sample wording for procurement document provisions is provided to assist transit operators in implementing and complying with the policy. However, the responsibility for implementing and complying with the policy remains with each transit operator regardless of whether or not it chooses, or requires an entity, to use the sample wording provided in this document. As the form and content of each transit operator’s and entity’s procurement document will differ, modifications to the sample wording provided below should be made to suit the needs of each transit operator and entity, and each transit operator and entity should obtain any necessary independent legal and procurement advice it may require in that regard.

The Ministry shall not incur any liability whatsoever, expressed or implied, resulting from a transit operator or entity having used all or some of the sample wording provided or from implementing the policy.

1. SAMPLE PROCUREMENT DOCUMENTS PROVISIONS

1.1 Definition

The procurement document may define the term “Canadian Content”.

Sample Wording

“Canadian content” means the Canadian content of the transit vehicle determined in accordance with Schedule ● to this procurement document.

1.2 Evaluation of Submissions

The procurement document should explain how the policy will impact the evaluation of submissions and the selection of the successful manufacturer.
Sample Wording

This procurement document is subject to the Ontario Government’s Canadian Content Policy for the procurement of transit vehicles, attached as Schedule • to this procurement document. Under the terms of this policy, unless the transit vehicles are exempt from this requirement or this requirement is waived in accordance with the policy, only submissions with a minimum 25% Canadian content, determined in accordance with the policy may be considered for evaluation. Where the transit vehicles are exempt or a waiver has been provided, the policy provides that the submission with the highest percentage of Canadian content, as determined in accordance with the policy, will be given a 5% price preference in the evaluation of submissions for any transit vehicle(s). The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.

1.3 Evaluation of Level of Canadian Content

The procurement document should have provisions specifying how the requirement for Canadian content in a manufacturer’s submission will be evaluated.

Unless the procurement is for exempt vehicles or the Canadian content requirement is waived in accordance with the policy, there is no requirement for weighting of Canadian content under the policy; only those manufacturers meeting this threshold will be evaluated.

For procurements of exempt transit vehicles or where a waiver has been provided, a 5% price preference will be given to the manufacturer with the highest level of Canadian content.

Sample Wording

Manufacturers should refer to Schedule • in order to calculate the Canadian content of their submissions. Unless the procurement is for exempt vehicles or the minimum level of 25% Canadian content requirement is waived in accordance with Schedule •, to be considered for evaluation, manufacturer’s submission must meet the 25% minimum level of Canadian content determined in accordance with Schedule •.

For the procurement of exempt transit vehicles or where a waiver has been provided in accordance with Schedule •, a 5% price preference will be given to the manufacturer with the highest level of Canadian content.

For example, a transit operator, receives three submissions for a transit vehicle that has been exempted from achieving the 25% Canadian content requirement:

- Manufacturer #1 submits $250,000 and attests to achieving a Canadian content level of 22%.
- Manufacturer #2 submits $270,000 and attests to achieving a Canadian content level of 23%.
• Manufacturer #3 submits $260,000 and attests to achieving a Canadian content level of 19%.

During the evaluation, manufacturer #2 will have its submission evaluated as 5% less during that phase of the evaluations, reducing the price for the offer to $256,500.

2. Canadian Content Declaration & Consent Forms

Manufacturers should be advised that a Canadian content declaration and consent form, provided by the transit operators or entity to the manufacturers as part of the procurement document, must be included with the form of offer they submit in response to the procurement document. As required by the policy, the declaration and consent form should:

• certify the level of Canadian content of the transit vehicles described in the manufacturer's submission, calculated in accordance with the policy; and

• provide the manufacturer's consent to the disclosure, verification and audit of the information forming the basis of the declaration, both before the contract award and, for the successful manufacturer, during and after the term of the contract.

Manufacturers should also be advised that the successful manufacturer must demonstrate, upon final delivery of the transit vehicle(s), how it complied with the Canadian content policy requirement, and provide a written declaration, certifying the percentage of Canadian content of the transit vehicle(s), calculated in accordance with this policy.

The sample declaration and consent form included in Appendix A to this attachment, assumes that the specific levels of Canadian content are included in the form itself. However, transit operators, and entities, may choose to require that the level of Canadian content be provided in other documentation associated with the procurement document, such as the manufacturer's submission or the form of offer (see Appendix B for sample language).

3. Agreement Provisions

A transit operator or entity, as applicable, should include provisions, similar to those in the procurement document, in any agreement with the selected manufacturer that capture/confirm the selected manufacturer's ongoing obligations related to the Canadian content policy.

In addition, the agreement with the selected manufacturer should include provisions that provide the transit operator with adequate remedies if the manufacturer defaults in its obligations relating to the required level of Canadian content. As each transit operator or entity will need to determine what remedies best address the needs of its particular circumstances, no sample clauses are provided. That said, remedies could include termination for breach of a provision of the contract (which would normally include terms and conditions set out in the agreement, and other documents) relating to the manufacturer's obligations concerning the required level of Canadian content.
A transit operator or entity may also wish to limit its own liability for breach of the manufacturer’s Canadian content obligations, and request an indemnity from the manufacturer for any liability the transit operator or entity might incur in that regard.
APPENDIX A

SAMPLE FORM: CANADIAN CONTENT DECLARATION & CONSENT FORM

The [Transit Operator/Entity] requires all manufacturers to indicate the level of Canadian content in their submissions, determined in accordance with Schedule • to this [Procurement Document]. In this regard, manufacturers are advised that the [Transit Operator/Entity] requires a declaration from all manufacturers setting out and certifying the level of Canadian content. As well, the [Transit Operator/Entity] requires the manufacturers consent to the disclosure and verification of the information certified in the declaration and, if the manufacturer is awarded the contract, to the audit of these levels during the contract term by or on behalf of the [Transit Operator/Entity].

This declaration and consent must be submitted in order to be considered for evaluation

Declaration – Canadian Content Level

On behalf of [Legal Name of Manufacturer], I/we certify that the Canadian content of the transit vehicles, as set out and determined in accordance with Schedule • to this procurement document, is accurate to the best of my/our knowledge.

Dated at this day of 20 .

(An authorized signing officer with the authority to bind the manufacturer)

(Print Name)

(Title)

(Phone Number) (Fax Number)

The manufacturer acknowledges that the [Transit Operator/Entity] relies upon this declaration to evaluate submissions and to enter into any contract resulting from this submission. This declaration may be verified or audited in such manner as [theEntity.] the Transit Operator, the Ministry of Transportation or the Auditor General, or any of their designates, may reasonably require. Should such verification or audit disclose a material inaccuracy of the information certified in this declaration, the [Transit Operator/Entity] shall have the right to disqualify the manufacturer or terminate any contract awarded to the manufacturer pursuant to this procurement process.
Consent to Disclosure, Verification & Audit

I/We consent to the [Transit Operator/Entity] releasing the information certified in this declaration to the Ministry of Transportation, as well as any other information necessary for the purpose of verifying the continuing accuracy of the level of Canadian content certified in this declaration.

I/We also consent to [Entity], the Transit Operator, the Ministry of Transportation, and the Auditor General, or any of their designates verifying and auditing the level of Canadian content of the transit vehicles determined in accordance with Schedule • to this procurement document, during the term of any contract awarded by the [Transit Operator/Entity] pursuant to this procurement document to [Legal Name of Manufacturer] and for seven (7) years after such term.

Dated at this day of 20

(An authorized signing officer with the authority to bind the manufacturer)

(Print Name)

(Title)

(Phone Number) (Fax Number)
APPENDIX B

SAMPLE FORM: CANADIAN CONTENT

Name of Manufacturer:  
Submission No.:

The manufacturer must set out below the level of Canadian content for all costs included in the transit vehicle:

<table>
<thead>
<tr>
<th>Item</th>
<th>Category of Item</th>
<th>Percentage of Total Vehicle Cost (A)</th>
<th>Percentage of Canadian Content for Item (B)</th>
<th>Total Percentage Canadian Content (A*B%)</th>
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Total Percentage of Canadian Content of Vehicle:

*Note: Manufacturers will be required to submit this form, along with the declaration form, during the initial submission and the successful manufacturer must submit this form upon final delivery of the transit vehicle(s).