Changes to Export Development Canada domestic powers regulations

In the wake of the financial crisis, Export Development Canada (EDC) was granted temporary powers in the 2009 budget to provide domestic insurance and financing for a period of two years. This change of mandate allowed EDC to provide reinsurance to Canadian sureties and credit insurers, as well as guarantees to banks to secure letters of credit used as performance security. Faced with a growing requirement to post letters of credit as security in the Public Private Partnership (P3) space, and with increased international competition, Canadian contractors quickly became principal users of this new source of security. The recent budget has unfortunately confirmed the intention of the government to cancel the temporary domestic powers and replace them with amended powers that limit access to EDC capacity to those companies that are active exporters.

Canada's Economic Action Plan announced in 2013 that the government will introduce new regulations governing EDC's domestic activities with the stated intention of exiting from the domestic financing and insurance market, and focusing on their core mandate of promoting exporters and international business transactions.

On December 18, 2013 the Departments of Finance and International Trade produced the final regulations in the Canada Gazette that will come into force on March 11, 2014. These regulations were developed after consultation with various industry stakeholders over the past eight months, and clarify the circumstances under which EDC could provide support in the domestic market without Ministerial approval.

The following is a summary of an email sent to Aon from the Chief of International Finance Section at the Department of Finance:

- EDC may support domestic transactions for Canadian companies that have at least 50 per cent of their total annual sales in export and foreign markets.
- Otherwise, EDC could seek Ministerial Authorization to enter into a domestic transaction.
- The validation period for Ministerial Authorizations has been extended from up to 24 months to a period of up to 48 months.
- EDC will also be required to ensure that its domestic transactions complement the products and services available from commercial financial institutions, commercial insurance providers and the Business Development Bank of Canada.
- Regarding performance security, EDC will retain the discretion to offer this product in the domestic market in support of public-private partnership projects.

What does this mean for contractors?

The new regulations take effect on March 11, 2014. Prior to this date, EDC will be operating under the existing amended regulations and following that date, they will be required to follow the new regulations.

- EDC will be able to support purely domestic transactions for companies that have at least 50 per cent of their sales as export or derived from foreign markets. Very few if any Canadian construction companies would qualify under this test.

- If the company does not meet the 50 per cent threshold, but otherwise could meet EDC's mandate requirements, i.e., they do some export sales, have foreign investment or operations outside of Canada or even have a defined plan to grow export sales in the future, EDC can seek Ministerial Approval from both the Minister of International Trade and the Minister of Finance to permit EDC to enter into a domestic financial transaction. Once such an approval is granted, the contractor could be eligible for up to 48 months continued support from EDC and does not need to re-apply for Ministerial approval for each transaction.
- Contractors with no foreign activity or no intention of expanding beyond Canada are unlikely to be eligible for support going forward under either scenario, as EDC can only recommend contractors with export business or business plans for ministerial approval.

Aon has been very active in the public-private partnerships (P3s) and project finance market since the beginning of this trend in Canada, and we have been working with all market stakeholders (contractors, lenders, lending advisors, technical advisors, rating agencies, and insurance and surety carriers), to design performance security tools that optimize the management of your projects' needs. We currently have a suite of potential solutions for contractors that allow them to put their best foot forward and compete on projects delivered under these new procurement models. These solutions are intended to enhance a contractor's ability to provide liquid security that is required by lenders, and at the same time more sustainably manage their balance sheet.

What should contractors do?

If your company intends to pursue projects in the emerging asset management space, P3, design/build/finance or alternative project delivery, it is imperative that you educate yourself around all available tools beyond the traditional offerings.

As a leader in the performance security space, Aon's Construction Services Group would welcome the opportunity to ensure you have a full understanding of all available tools and options that may be available to assist your company and help replace or augment this important performance support that is set to expire.

For more information, please feel free to contact your Aon Account Manager or the individuals noted under Contacts.

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