

1. INTRODUCTION

The Professional Engineers Registration Council (PERC) and the Bermuda Association of Professional Engineers (BAPE) Executive believe that for at least the last ten years Bermudian Engineering firms have readily demonstrated that they are capable of designing the Engineering content of most local buildings including office buildings, retail buildings, schools etc. This belief is based on the fact that the majority of these commercial buildings were done with Bermudian Engineering Firms or Design-Build firms providing the engineering design. A few Bermudian Architectural firms readily accepted the participation of the Bermudian Engineers on the majority of these projects.

PERC and the BAPE Executive are now alarmed at the recent rise in the number of foreign engineering firms that are providing design and construction administration services on Bermuda building projects, mostly by other Bermudian Architectural firms than those mentioned above. As PERC must by law be consulted by the Department of Immigration for all applications to practice Professional Engineering in Bermuda, PERC are well aware that many of these foreign Engineering firms either do not have valid immigration permits, or are working on other Bermuda projects for which they have no permits. Furthermore PERC has what we believe is irrefutable proof that at least one of these foreign firms actively solicited work in Bermuda, which is also illegal, as they did not have permission to do so.

PERC has been consulted by the Department of Immigration on permit applications for some of these offending foreign firms and we have provided Immigration with proof that they have been working here illegally or that they are Professional Engineers when their work permits do not state as such. Consequently, in 2007 several foreign engineers have either been refused entry into Bermuda or have had severe restrictions placed on their permits.

We believe that the whole principle of Bermudianisation as it relates to the engineering profession is being bypassed by these foreign engineering firms and the architects or owners that employ them. We strongly believe that Bermudian Engineering firms (this includes independent consultants, design-build firms and The Ministry of Works and Engineering's Engineering Department) should be given a fair opportunity to do all engineering work in Bermuda for which they have the relevant training and experience.

We do recognize that some larger projects require engineering resources that exceed the capacity and/or capabilities of Bermudian engineering firms. In this instance, we understand that foreign engineering firms may be employed by Bermudian engineering firms to provide the necessary resources on a project to project basis. However, the practice of foreign engineering firms paying a small fee to a locally registered engineer to "rubber stamp" their designs without having any involvement in the design process violates the intent of the Professional Engineers Code of Conduct and does nothing to benefit local engineering or Bermuda in general. PERC and the BAPE Executive therefore propose the following policies regarding foreign engineering firms providing professional services for Bermuda Projects.

We welcome feedback from all locally registered Professional Engineers and, assuming the majority support the policy, we expect that all of us should voluntarily adhere to the policy until such time as PERC can have either new regulations legally adopted or have our Professional Engineers Act changed to incorporate the aims of these policies. In this regard, PERC has the support of the Minister of Works and Engineering to tighten up on foreign firms working here to the detriment of Bermudian Engineering firms and to revise our Act.

2. POLICY

- 2.1. For the purposes of this policy, construction projects in Bermuda shall be categorized into two types as follows.

CLASS A PROJECTS are normal construction projects in Bermuda of the type that Bermudian Engineering firms have a demonstrated history of designing successfully. These include but are not limited to office buildings, retail buildings, residential buildings, schools, warehouses, restaurants, light industrial buildings etc.

CLASS B PROJECTS are construction projects in Bermuda that are either too large, too specialized or too complex for Bermudian Engineering firms to design on their own without foreign assistance. Projects that shall be classified as Class B are hospitals, new large hotels in excess of 250 bedrooms, major bridges, major industrial plants and generating stations. Prefabricated towers and prefabricated buildings shall normally be classified as Class B provided their foundations are designed by a Bermudian Structural Engineering firm. Class B projects may also include projects that need to be fast tracked in the national interest, such as after a major natural disaster.

- 2.2. For Class A projects, the Bermudian Engineering firm must be the prime engineering consultant and the Engineer of Record for each respective engineering discipline. The Bermudian engineering firm shall decide whether they need any foreign engineering assistance and who those foreign engineers should be. If a foreign engineering firm is retained by the Bermudian firm, the foreign firm shall be a sub-consultant to the local firm. The Bermudian Engineering firm shall be retained from the beginning of the design stage and shall be involved in the design development, schematic design, shall perform or review the engineering calculations and shall participate in or review the permit and construction drawings before stamping them. The Bermudian Engineering firm shall provide the construction administration services for each discipline as required. All Engineering plans shall bear the name and logo of the Bermudian Engineering firm responsible for their preparation and they may also bear the name of the foreign engineering firm if any. The foreign engineering firm's name shall be no bigger than the Bermudian engineering firm's name and shall not appear higher on the drawing. Only the Bermudian engineering firm's name and logo may appear on any construction signs erected at the project. If the foreign firm chooses to subsequently advertise the Bermuda project on their web site or other media, they must make due mention of their Bermudian co-consultants.
- 2.3. All projects shall be deemed to be Class A with the following exceptions:
- 2.3.1. Projects classified as Class B in 2.1 above.
 - 2.3.2. Projects that are pre approved by the Council as Class B prior to design development.

- 2.4. For Class B projects, foreign engineering firms may be selected by the owner, but their Immigration Permits shall be held by a Bermudian Engineering firm unless otherwise approved by PERC. The foreign engineering firm should work as a joint-venture with a local engineering firm or by some other arrangement whereby the local firm shall assist in and learn from the project. If PERC is satisfied that no Bermudian Engineering firm is qualified or willing to stamp the Permit drawings for a Type B project, they shall advise the Department of Building Control that a foreign engineering company shall be allowed to stamp the engineering drawings of the specific project.

3. ENFORCEMENT OF THIS POLICY

- 3.1. PERC shall continue to review and comment on all work permit applications for foreign engineers and engineering firms in accordance with its existing policy on these applications. BAPE members should report to PERC any engineering drawings they see with a foreign engineering firm's name on them that do not also bear the name of a Bermudian engineering firm. BAPE Members should report to PERC all foreign engineer's signs that appear at construction sites or any foreign engineer's stamps that appear on Building Permit drawings without a locally registered engineer's stamp. PERC shall investigate these reports and advise Immigration, Planning or the Police where they believe laws or policies have been broken.
- 3.2. PERC will, in future, take the more strict interpretation of our present Code of Conduct in regard to the stamping of drawings as this Code is legally enforceable on all locally registered Engineers. Where the Code of Conduct states that an Engineer shall "only stamp drawings prepared by him/her or under his/her direct supervision", PERC will interpret this to mean the Engineer shall only stamp drawings prepared by himself/herself or persons or firms employed by the locally registered Engineer. PERC may choose to publish an amendment to the Code of Conduct or a regulation clarifying what constitutes "under direct supervision".
- 3.3. If PERC becomes aware that a locally registered Engineer is rubber stamping foreign engineers drawings that are not employed by the local Engineer, without involvement by the local Engineer throughout the whole design process, PERC will write to the Engineer reminding him/her of the code of conduct, after which if the locally registered Engineer continues to rubber stamp foreign engineers drawings, PERC may hold a formal hearing to decide whether the Code of Conduct has been violated and if PERC concludes from the hearing that the Engineer has violated the Code of Conduct, take the necessary steps to discipline the offending Engineer.

4. TRANSITION PERIOD AND IMPLEMENTATION

- 4.1. Upon agreement by PERC and BAPE on the voluntary adoption of these new policies, PERC will distribute copies of the policies to the Minister of Works and Engineering, the Department of Immigration and the Department of Planning for their comments and/or approval. Assuming all three Government Departments support the new policies with possible minor modifications, PERC and BAPE will distribute the new policies to all local Engineering Entities, Architects and Project Managers.
- 4.2. From the date of this distribution, PERC will give any Architects or Owners who claim to have existing design contracts with foreign engineering firms for Class A projects one month to produce the following evidence to PERC:
 - 4.2.1. The project must have received a full Building Permit
 - 4.2.2. Progress detailed Construction Documents must be in existence (beyond schematic design and design development) to the satisfaction of PERC.
 - 4.2.3. A formal written contract with the foreign engineering firm must be in place.

Provided these three conditions are satisfied, the Owner or Architect must approach Bermudian engineering firms to join the design team to work with the foreign engineers such that the locally registered engineer is able to review the design and stamp the Building Permit drawings.

- 4.3. If the Owner or Architect is unable to satisfy the requirements under section 4.2, then Bermudian engineering firms must be offered the opportunity to take over as prime engineering consultants for the project.
- 4.4. PERC will thereafter consult with the BAPE and the Minister of Works and Engineering on the best way to formalize the new policies so they are legally binding by way of either revisions to the Code of Conduct, new PERC regulations or a revision to the Engineers Act.