



Encouraging Innovative Solutions to Government Problems Through Procurement

Position on Values Based and Sustainable Procurement Policy in NL

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EMPLOYERS' COUNCIL
NEWFOUNDLAND & LABRADOR

What is Values-Based Procurement?

In 2018, the provincial government implemented the Public Procurement Act to increase oversight, transparency, and consistency, adding flexibility in how public bodies can purchase. The Act also created a Chief Procurement Officer tasked with achieving more consistency in processes across public bodies, standardized procurement procedures, increased requirements for documentation, and required knowledgeable staff to carry out procurement.

A major objective of this legislation was to shift the procurement process from the lowest tendered price to the best overall value. This new legislation allowed public bodies to conduct values-based procurement versus awarding contracts to the lowest bidder. This legislation has laid the groundwork for government to invest in developing knowledge and skills in measuring value for money and outcome-based contracting. "Best value" as defined in our legislation includes the best balance of cost, quality, performance, and support, achieved through a transparent, efficient, and competitive procurement process using clear and fair evaluation and selection criteria.¹

In values-based procurement, qualified and interested suppliers propose cost-effective, outcomes-based solutions in an actively engaged approach. This model connects the government to vendors through partnerships to co-design solutions with shared financial risk and accountability for the delivery of outcomes. The process involves a closer strategic relationship between purchasers and vendors through the mutual exchange of information where purchasers learn about market solutions, and vendors learn about their procurement needs.

Under the current Public Procurement Regulations state that after evaluating bids and determining that an award is to be made, a public body "shall award a contract to the preferred supplier who:

- i. submits the lowest priced bid meeting all terms, conditions, and specifications of the invitation to tender, or
- ii. submits the highest-ranking proposal meeting all the criteria in a request for proposals;"²

What Do We Think?

The Employers' Council supports the move towards values-based procurement. We have been lobbying for increased use of outcome-based contracts with the private and not-for-profit sector to improve government service delivery for many years. This type of contracting procures solutions, or outcomes, instead of outputs and provides better value for taxpayer dollars. It allows government agencies to post their problem statements, desired capabilities, and key performance indicators without specifying the technologies or solutions desired. This allows the private sector to use its innovative ideas to propose solutions to the problem outlined by government.

Barriers to Innovative Solutions

Despite these legislative changes, the Employers' Council consistently hears of barriers that exist in procurement policies and practices that inhibit innovative solutions. Despite the move to standardize procurement processes and shift to values-based procurement, individual government departments still have significant control over how bids are evaluated, what criteria are included in RFPs, and which tender to accept. Employers' Council members report that many departments or purchasers do not engage in values-based procurement but still award for the lowest cost. Also, values are not clearly

¹ <https://assembly.nl.ca/Legislation/sr/Regulations/rc180013.htm>

² Ibid.

defined nor are methods of assessment. In particular, innovative solutions or creation of local economic capital or jobs are not necessarily valued. In situations where RFIs are requested to facilitate the creation of big bold ideas, there are concerns about releasing proprietary information. This process, in current application, does not seem to align with requests we receive from politicians, for “big bold ideas” to help address government program spending and service delivery problems. Seeking big, bold ideas and being prepared to move ahead with innovative proposals entails a level of risk, but public bodies and government in general are known to be risk averse.

Presently, the Public Procurement Agency has responsibility for managing procurement for all government departments. Government departments, agencies, boards and commissions still conduct play a major role in procurement and they are not consistent in their approach. The disjointed nature of public sector procurement could be addressed by having a centralized procurement office that is appropriately staffed with well educated and well trained procurement expertise. A single point of contact that would ensure the private sector is included in sustainable procurement.

Recommendations

- Increase clarity, consistency, education, and awareness within on-the-ground government procurement officials as to how values-based procurement should be applied as well as expertise and leadership to shift to outcome-based contracting.
- Increase education and outreach to current and potential suppliers to ensure they are aware that this is a current procedure, how they can measure and assess added value.
- Increase clarity around values that aligns with the economic and social goals of the province. It is important that the priorities are clear and align with the big-picture government objectives and do not conflict with the objectives of other departments. These objectives must be aligned with NL's economic, business, and labour market development goals. Political leadership also must encourage these practices and ensure departments are prioritizing outcome and values-based contracting with the public service wherever necessary.
- Establish a Procurement Centre of Expertise. The Employers' Council's 2016 study into partnerships to help improve government services and infrastructure recommended the establishment of a procurement Centre of Expertise. This model would build internal capacity with the main goal of incentivizing and encouraging the broader public sector to adopt Alternate Service Delivery (ASD) and Public-Private Partnerships (PPP) models. This Centre of Expertise could develop the capacity within government to assess the effectiveness of public services, conduct value-for-money analyses, and understand the cost drivers in its existing service delivery models.³

Despite the creation of the CPO, purchasing and contracting processes are still disjointed and siloed. Currently, Public Private Partnerships are managed under the Department of Transportation & Works with the CPOs office overseeing procurement. In addition, government has separately conducted an Asset Review. Further centralization and expertise within government on these types of outcome-based contracts and values-based procurement could be beneficial, increase efficiency and expertise for assessments to ensure best value-for-money for the province.

³ Why Wait in Line? Opportunities to Improve Government Services and Infrastructure in Newfoundland & Labrador – PG 23

Sustainable Procurement

Government is currently consulting on the development of a Sustainable Procurement Policy that will shift this process even further from the lowest available cost. This creates an opportunity for us to shape procurement policy to create local procurement opportunities and eliminate barriers to local procurement, while also ensuring competitive procurement policies that build capacity in the local industry, incentivize outside investment and innovation in public services, and economic growth.

This approach is focused on how tendered goods and services could be provided that will create additional value for communities, leveraging spending power to increase social impact. Our government's approach to sustainable procurement is based on incentivizing environmental, social, and local values.

Local Procurement

Local procurement includes procuring more solutions from local firms and providing advantages to local firms in evaluating bids. It can also include provisions such as community benefits agreements, evaluating outside firms based on contribution to the local economy, requiring regional hiring preferences, and evaluating the impact on the community.

In 2020, government amended the Public Procurement Act Regulations to increase local procurement thresholds. This mandated an allowance of 10% for local suppliers for all types of procurements, to the maximum permitted under the Canadian Free Trade Agreement. In addition, the thresholds at which open calls for bids are required have been increased to allow for more opportunities to direct business to local suppliers through a limited call process. This provides flexibility for a more efficient procurement process, and also provides additional flexibility to direct business specifically to local enterprises. A full list of these thresholds can be found [here](#).

Green/Environmental Procurement

Green procurement is based on reducing resource waste, emissions & organizational consumption, elimination of hazardous materials in production and transportation, and reduction of waste at the source of production. Our government's objective for green procurement is to protect the environment and encourage job creation and investment in the green economy. This involves buying goods and services that have fewer negative environmental impacts than those of comparable goods and services. The goal of this policy would be to balance environmental protection with economic costs.

Social Procurement

Social procurement values are based on workers' rights, employment of underutilized workforces, local employment rates, ethical production, positive impact on the community, and the organization's overall reputation. This province aims to use social procurement to increase procurement with social purpose organization's and/or incentivize the creation of social and community capital in procurement with private and not-for-profit organizations. The implementation of a Social Procurement Policy will both reward vendors and suppliers for actions that add social value and encourage businesses to pursue these approaches to improve their ability to compete for future procurement opportunities.

What Do We Think?

Don't discount the private sector. The Employers' Council supports sustainable procurement however we have highlighted the need for more outreach and proactive support for local businesses in assessing social/green value and local/community capital. Many private sector businesses create capital that they

may not be aware they can use to improve the value of their proposal. This type of policy should be inclusive of the private sector, and not simply include outreach to social enterprise and nonprofits.

Recommendations

- Make it easier. The Employers' Council has also emphasized the need for a clearer, simpler, procurement process with more "customer support" particularly if government expects SMOs and social organizations to engage.
- Concern about community/industrial benefits agreements. These provisions include things like first consideration of local workforce human capital, the first consideration for goods and services or suppliers provided from within that region, or preferences given if suppliers invest in local diversity training programs or employment opportunities for underutilized segments of the labour market. While these agreements could be beneficial, how these agreements are structured is important. If implemented they must be flexible and structured to incentivize rather than be prescriptive in nature, so as not to hamstring bidders in tight labour markets. Benefits agreements that have specific workforce quotas to be filled to receive a successful tender, such as minimum thresholds for workforce diversity could be problematic in this province. Similarly, in some jurisdictions these agreements have been used by unions to increase membership. British Columbia has 'Community Benefits Agreements,' which mandates that all workers bound to these agreements must be a member of the BC Building Trades Union.

We strongly oppose any procurement practice that is this prescriptive in nature. Further, while these agreements help to build capacity in the local market, there must be an appropriate balance between creating local jobs while ensuring we are not making government contracts unattractive to outside innovators or investors who could modernize our programs and services or make us uncompetitive.

- Incentivize and Value Innovation. It is concerning that creation of economic value is not included, this includes things like cost-efficiency and investment in R&D. Innovation is an important value that should also be incentivized. Value should be assigned to vendors based on innovative principles to support and foster the creation of fresh ideas and their utilization of innovative practices. Achieving Sustainable Prosperity,⁴ a study commissioned by the Employers' Council from the Conference Board of Canada stated that incorporating innovation into government procurement of products and services would increase local innovation and productivity. Increased competitive forces lead to new ideas, improved business organization, and innovative production procedures. Competition is a driving factor encouraging businesses to regularly invest in process improvements, machinery and equipment or research and development. Industry Canada's Expert Review Panel on Research and Development recommended making business innovation one of the core objectives of government procurement for these reasons. In addition to bringing about "big, bold ideas", innovation also includes incrementally improving processes to add to or sustain the value of products and services, or to enhance the efficiency and effectiveness of existing business processes. These improvements to processes are sorely lacking in public delivery models, and in many traditionally procured government contracts.

⁴ Achieving Sustainable Prosperity. Benchmarking the Competitiveness of Newfoundland and Labrador – PG 77

Innovation is a large part of what makes outcome-based contracting with the private sector achieve better outcomes and services for citizens than traditional procurement models. Values-based procurement that further incentivizes innovative solutions or regular improvements could help to further improve government service delivery while also helping to make local firms more innovative, competitive and productive – leading to economic growth.

- Ensure a clear and transparent process. A clear and transparent process for assessing and measuring value is necessary. It is also important to provide clarity on how different values will be weighed against each other. Will this vary by department and align with the project goals?
- Engage in proactive outreach. There are two ways government can “do” social green and local procurement – It can be done ‘directly’ in a collaborative, partnership-based fashion through direct procurement versus an indirect bid score benefit in bid evaluation. Direct approaches involve purchasing from for-social-benefit entities, such as not-for-profits, social enterprises, minority-owned businesses, worker-owned cooperatives, and others. ‘Indirect’ approaches involve including social clauses, including employment targets, in contracts with private sector providers. Government should focus more on the direct approach to help shape its procurement practices. To start a direct approach with proactive outreach to get to know suppliers and what solutions they can provide, education and capacity building on both sides may be the best fit for NL.

Remaining Open to Competition

In any discussion about procurement policy change it is important we strike the right balance of incentivizing and leveling the playing field for local business, while still incentivizing outside investment, procurement of novel and innovative solutions, and policy that attracts large partners for local businesses to help build capacity and increase exporting and competitiveness.

We also must be mindful of international trade barriers and recognize there are limits on what government can, and should, implement in terms of local advantages. The Institute for Competitiveness & Prosperity found that protected industries do not generally produce global leaders. Sectors in which competition is curtailed and foreign entrants impeded had much lower levels of innovation and productivity. The Institute recommends policies should balance support with competitive pressure. Remaining open to competition in government procurement is important to our economic growth, government program spending reform and service delivery modernization.

Remaining open to competition in government procurement and seeking novel solutions to our problems that exist in other jurisdictions, while also conducting proactive outreach, removing barriers, and incentivizing innovative products and services from local firms should be done in tandem. This will serve the dual purpose of finding more innovative, competitive, modern solutions to public service delivery problems while also boosting innovation and productivity in the province. This leads to economic growth, capacity building, and potentially more businesses with innovative products and services to export.

If you have any questions or feedback on this or other Employers’ Council research or positions, contact Executive Director Jaclyn Sullivan at jsullivan@nlec.nf.ca.