

Unlocking procurement barriers

by Laura Eggertson and Marja Hughes

New ideas for the Agreement on Internal Trade

Greg Lusk, Nova Scotia's bureaucrat responsible for internal trade involving procurement, is reviewing his province's participation in the Agreement on Internal Trade (AIT). The trade deal, which came into effect in 1995, is an agreement among all the provinces and two territories (Nunavut is not yet a party to the deal). The deal is designed to lower domestic trade barriers and to facilitate the free movement of goods, services, people and investments from coast to coast. Inter-provincial exports totalled \$177 billion in 1998, about half the value of international exports at \$356 billion.

The deal requires the parties to review the procurement chapter – a process that is “starting very shortly,” according to Chris Charette, Industry Canada's director of Internal Trade and Outreach. At that point, provinces and territories can bring grievances or suggestions for improvement to the negotiating table. That's where Lusk comes in.

Lusk favours making all contracts issued by municipal governments, universities, school boards, hospitals and other public sector entities truly accessible to small and large businesses alike. Those sectors – known in trade parlance as MASH (municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities) are governed by a 1998 annex to the trade deal.

In practical terms, Lusk would like to eliminate the thresholds set in the procurement chapter. Currently, those thresholds require that all institutions in the MASH sector tender for public bidding contracts worth \$100,000 or more, or in the case of construction, \$250,000 or more. The agreement mandates

the “equal” treatment of people, goods and services anywhere in Canada. That means businesses in any province or territory are to be considered for procurement bids, eliminating “buy local” policies.

There are some exceptions in the deal. Provinces or municipalities can still designate sole-source suppliers in particular circumstances. Protecting the health and safety of their citizens is one such exception.



Greg Lusk, a free trader with a cause.

Lusk's proposal – which he says he has discussed with his provincial counterparts – would eliminate the thresholds.

“Most organizations' activity is in transactions valued less than trade agreement thresholds,” Lusk said in an interview from Halifax. “So there's a real question – how is the public sector responding to the business community's interest in participating in that? How do you give access to it?”

The only way, he contends, is to open the bidding process to all comers on all contracts, even those typically considered exempt. “A \$20,000 contract for most businesses is a very

nice piece of business,” Lusk says. “As far as I'm concerned we should have no thresholds. We should be targeting an internal free market zone in the country for all public-sector markets.”

But Lusk's idea is likely to be as unpopular with most municipal governments as it is popular with small business organizations.

“It would be a bureaucratic nightmare,” Toronto City Councillor Howard Moscoe says bluntly. Moscoe, who sits on the committee overseeing tendering for the Toronto Transit Commission (TTC), is also a member of the Federation of Canadian Municipalities' economic development committee. The issue of eliminating the procurement thresholds in the trade agreement has not yet been raised at the municipal level, Moscoe says. But he sees problems if Nova Scotia puts the proposal on the table.

Toronto's budget and needs are large enough that most of its contracts already fall into public tender territory because they are substantial. But the city requires potential suppliers to pre-qualify on a list of bidders. The qualifications, he says, are designed to ensure that the businesses are capable of meeting a contract's requirements. There are tight tendering rules, to discourage abuses, says Moscoe. Occasionally, Toronto engages in sole-source contracting because only one manufacturing company can make a product, such as particular hardware the TTC might require.

If Toronto were required to open the bidding process for all contracts, “it would have an enormous impact on us,” Moscoe says. “Just processing the applications would be extremely difficult.” The impact on smaller

municipalities, with fewer staff and less time to check a company's qualifications, would be even greater, he adds.

"It eliminates the purpose of the tender," he says – which is, after all, to save the government or organization money.

The Canadian Federation of Independent Business (CFIB) is among the organizations in favour of Nova Scotia's proposal. "I can imagine that idea would be quite popular with our members," says André Piché, national affairs director for the CFIB. "There's an interest in gaining greater access to this across Canada."

Small business owners in Canada are generally interested in ways that make the procurement process easier, Piché reports. "We've been talking about removing barriers to internal trade for some time, but it hasn't happened yet. This would be more like it, to have more transparency, fewer set-asides and lower thresholds."

Lusk is also advocating simplified language in the procurement annex and an easier process for identifying who is governed by it – what constitutes an organization in the social services sector, for example.

Surveys carried out by the CFIB suggest members are concerned about the amount of paperwork and the confusion surrounding who is governed by the AIT. Both issues are barriers to achieving procurement contracts, the surveys indicate. A 1998 survey of CFIB members in Ontario, for example, indicated 74 percent of small businesses were unable to find or were unaware of provincial procurement opportunities. Confusion about what the federal government wants and inability to contact the user or buyer were the top two barriers members cited to obtaining procurement contracts for small- and medium-sized enterprises.

Amending the procurement chapter of the agreement would require the agreement of all the provinces and territories, however – so change is likely not imminent. Firm dates to begin the review have not been established, because setting a meeting requires coordination and consensus. So do decisions. Each province or territory, and the federal government, can put forward suggestions about what changes they think are required. Then the group has to achieve consensus on whether to make a change – and how to do it.

"There will be (different) ideas and suggestions, and they won't be accepted until the parties agree on them," says Industry Canada's Charette. Even if the procurement chapter were revised, the various legislatures would also have to pass an amended agreement.

According to Lusk, his conversations with provincial counterparts have indicated that British Columbia is interested in opening up the procurement process, as is Alberta "to some degree." He believes Ontario and Quebec are opposed. Part of their opposition is due to the fragmentation of their contracting process, which makes it difficult to manage. "Part of it is they're very reluctant to open up their markets," Lusk contends.

Chris McAlpine is the manager of policy and strategic advice to Ontario's Management Board Secretariat. He is unaware of Nova Scotia's proposal to eliminate procurement thresholds, he says. Although he did not want to comment on the idea until it has been formally presented, McAlpine's current position seems to suggest Ontario might have some difficulty with the idea.

"We're working with the existing chapter and have no inclination or reason to think that anything would need to be changed," McAlpine says. "If that were the case, obviously we'd need to take it under consideration and look at what the impacts would be."

Eliminating procurement thresholds might make it onto the agenda when talks begin on the chapter – "if people are interested in having a conversation on that," McAlpine says. "It could be, presumably, a short conversation, if people are not willing to entertain it."

Lusk is aware that his campaign for greater accessibility to procurement contracts in the municipal, academic, hospital and social services sectors has a way to go. But he's committed to pursuing it, he says.

"I would very much like to see us come to the table with the honesty to take a look at what the interests of the larger business community are," he says. Nova Scotia is encouraging multilateral discussions among the federal government and the provinces to talk about access. "We're beginning to see some progress – but things are slow," Lusk says. *MM*

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