



by Gerry Stobo

Procurement without borders

Government weans off local preferences

EVERY YEAR, MUNICIPAL, provincial and federal governments spend billions of dollars for every imaginable product and service – dollars that you and I give governments through the variety of taxes we pay. We want and expect that governments, as trustees of our money, will spend it wisely and in the most effective way possible. This goal is best achieved through buying processes that are truly open and fully competitive.

Yet, we still see government solicitations that favour suppliers from a local community, either by restricting the procurement to suppliers in that area or by giving them a percentage “boost” in the evaluation. Let’s be clear though, “local preferences” are not always bad for taxpayers. Those who support local preferences point out the benefits for local residents and businesses, while opponents bemoan the increased cost of procurement due to reduced competition.

Local preferences can be used to improve the economic welfare of a disadvantaged region or group of individuals – Canada’s aboriginal and land claims set aside programs being two such examples. The hope is that by preferring bids from our native population the economic welfare of this group will be enhanced and important skill sets will be developed that will help them towards economic prosperity. That’s the good face of local preferences. The less attractive face is the one confronted by Canadian suppliers who attempt to sell to governments in the US only to find that road sometimes blocked by the provisions of the *Buy America Act*.

Governments throughout Canada, and indeed the world, have been working towards more open procurement practices to ensure that suppliers are not discriminated against on the basis of their geographic location. There are many examples of treaties that promote open, non-discriminatory procurement practices, including the *World Trade Organization-Agreement on Government Procurement*, the *North American Free Trade Agreement* and Canada’s inter-provincial/federal *Agreement on Internal Trade*.

The basic rule in each of these trade agreements is that suppliers from a party to the *Agreement* should not, except in exceptional cases, be denied the opportunity to provide goods and services to another party. But as we know, many procurements fall outside the scope of those agreements, and when they do, local suppliers may be given a “leg up.” For example, Article 504(5) of the *AIT* states that a party may accord a preference for Canadian value added, provided that it is no greater than 10 percent, and that potential suppliers are informed of this preference in the solicitation documents.

In Ontario, a Canadian steel preference policy has been implemented in which a 10 percent price preference for Canadian structural steel products is given in construction bids of more

than \$100,000. The preference allows for a 10 percent deduction of the value of bids that use Canadian structural steel products. In other words, a bidder using Canadian steel will get a 10 percent price advantage over competing bidders who do not use domestic steel.

Local preferences in Newfoundland and Labrador have been announced for procurements relating to the Voisey Bay Project. The recently announced policy states that “first consideration” will be given to provincial companies and businesses located in communities adjacent to the mine and to nearby aboriginal communities.

And the move, in 2004, of Nova Scotia’s procurement functions to its economic development arm raised some fears that this might indicate a move in support of local preference policies. The province says the move is not intended to promote local preferences; it was done to improve the awareness of local suppliers about government procurement opportunities.

Recognizing that local preferences still exist and the prejudice this causes to the business community, some provinces have taken steps to minimize their impact. The *Atlantic Procurement Agreement* states that, “no party to the *Agreement* shall require general contractors to favour sub-contractors or suppliers from their own provinces.” However, this clear rejection of local preferences is tempered by an exception for “first-time manufacturing or service facilities.”

Another example is the Québec and New York *Agreement on Government Procurement*. This *Agreement* allows suppliers in the State of New York and Province of Québec reciprocal access to compete for government contracts in the other jurisdiction.

More recently, an *Internal Framework Agreement* was reached in May 2004 between British Columbia and Alberta. In this *Framework Agreement*, both provinces have agreed to focus on, among other things, implementing a policy of non-discrimination in trade and investment. This agreement is particularly important for Albertan suppliers who may have been locked out of previous procurement opportunities in British Columbia, a province that was once known for its preferential treatment of provincial businesses.

Governments have slowly begun to wean themselves off of local preferences. It is the Canadian taxpayer that will be the ultimate beneficiary of policies that promote open and truly competitive procurement processes. *MSM*

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