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Changing How We Think of Value in Atlantic Canada Procurement Strategies

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Purpose: To encourage governmental buyers to support local economic development by increased contracting with suppliers based within their region and within the Atlantic Provinces. This paper does not see Trade Agreements to be a significant barrier to this opportunity and a range of options exist for localizing procurement.

Background: Public sector institutions are becoming more aware of an increased responsibility to not only deliver the goods and services of their core mandate, but also to act as an economic engine within the communities where their facilities are located. Their purchasing power can act as a significant economic engine when deployed into local economies.

The emergence of regional and international trade agreements has led government buyers to believe that there are few allowances to support local suppliers within Atlantic Canada. Domestic trade agreements are designed to eliminate provincial and territorial barriers to trade. Trade agreements encourage the unrestricted flow of goods and services and increase market access.

There are several important exceptions, exemptions and exclusions to trade agreement obligations which governmental buyers should pursue to realize increased local economic and social development within the Atlantic Region. Noted author and lawyer Paul Emanuelli has reiterated, *government contract award decisions should be based on clear, transparent and objective criteria that are applied free from political considerations or political interference.*

When government buyers exercise their objective prerogatives within the trade agreements, these actions support an increased level of regional employment. Local and regionally supplied goods and services create a measurable increase in social value and community benefits.

Trade agreement exceptions, exemptions and exclusions:

All trade agreements contain allowances for local procurement strategies. Specific sections and excerpts are cited below; please refer to the appropriate agreement.

1. Canadian Free Trade Agreement (CFTA)

- 1.1 Further government procurement exceptions are provided in Chapter 11 Article 504 h) v) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
- 1.2 Procurement exceptions specific to NFLD, PEI, NB and NS are referenced within the CFTA.¹ Regional economic development or benefits may be derogated for NFLD, PEI, NB and NS as outlined within the CFTA.² Derogation applies where the total value is estimated at \$1 million, or less; and is used to support small firms or employment opportunities in non-urban areas; it is noted that derogation cannot exceed ten times in total per calendar year.

Additional Exceptions exist for specific provinces which warrant consideration. For example, Prince Edward Island has exceptions for the following:

- Local Food;
- Article 507.1 and Article 509.1 do not apply to procurement that targets poverty reduction for disadvantaged natural persons if the value of the procurement is below \$200,000;
- Any of Prince Edward Island's covered procuring entities may derogate from this Chapter in order to promote regional economic development.
- Any procurement qualifying for a derogation pursuant to this paragraph shall: (i) be undertaken to support small firms or employment opportunities in a non-urban area.

2. Atlantic Procurement Agreement (APA)

Recognizes the same exceptions and exemptions as the Agreement on Internal Trade Articles 506, 507 and 508. The CFTA superseded the AIT in 2017³.

3. Comprehensive Economic and Trade Agreement (CETA) CHAPTER NINETEEN Government Procurement Article 19.3

4. New Brunswick Procurement Act (S.N.B.2012, C.20)⁴

Temporary exemptions are granted under Sections 18 (1-5); with the conditions that this *shall not give preferential treatment to a prospective supplier*.

Summary: Based on the above findings, there is an allowance for sourcing strategies to be more inclusive of local and / or Atlantic-based suppliers.

These references provide strategic sourcing options for government buyers, whether they are in provincial, municipal, academic or health service positions. For example, social procurement practices are proving to be very effective in providing meaningful to barriered individuals through local social

¹ NFLD pages 80-81; PEI pages 75-76; NB pages 70-72; NS pages 68-69

² NFLD page 80; PEI page 75; NB page 71; NS page 68

³ APA page 4

⁴ <http://laws.gnb.ca/en/ShowTdm/cs/2012-c.20/>

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enterprises (SEs) and are supported by international and regional trade agreements⁵. SEs reduce the need for government subsidies and deliver a social return on investment.⁶

Supplier diversity programs encourage a greater participation in government contracts for aboriginal peoples and minorities. Governments can engage with larger corporations to promote supplier diversity for the delivery of goods and services through contracts or through subcontractor agreements.⁷ These strategies serve to increase the competition in a market which can only add to the value in the long-term. For example, the Nova Scotia Procurement Act (Bill 23) is ideally framed to move forward with contracts to support supplier diversity.⁸

Local and regional economic development is recognized as an important procurement tool to address localized needs. Small, medium enterprises (SMEs) are for-profit companies which could benefit from strategic shifts in sourcing practices. The Canadian Competition Act was intended to address the need to have SMEs participate in the spending by governmental departments.⁹ By consolidating volumes on supplies to get the lowest cost, sourcing decisions may unintentionally default to larger multinational corporations at the expense of SMEs.

Emanuelli notes that *“Buying Canadian” does not translate into building your local community. It simply allows for a generic Canadian preference for all Canadian suppliers and products across all Canadian communities.*¹⁰ This statement acknowledges that there are conditional opportunities for government buyers to increase local sourcing.

Key considerations: Trade agreements refer to general procurement rules.¹¹ These rules recognize that local and regional sourcing can be conducted as long as there is no intentional favouritism for local goods, local content or suppliers of a particular Province or region, including construction projects.

Government procurement must always ensure that they are receiving value for money in all business transactions. We are seeing that only considering the lowest cost is hurting long-term economic interests and social development. Fair competition is good for all players in a market.

Options: Several options exist for developing an effective local and regional procurement strategy.

- Balancing lowest cost with value for money could be achieved through the *unbundling* of larger procurement contracts. Rather than an “all or nothing” model, government buyers can exercise their prerogative to have more than a single supplier for goods or services. Decisions could be affected by transportation routes or geographical locations and service needs.

⁵ <https://ccspi.ca/>

⁶ <https://atira.bc.ca/apmi-social-return-on-investment-report/>

⁷ <https://www.camsc.ca/what-is-supplier-diversity>

⁸ https://nslegislature.ca/legc/bills/61st_3rd/3rd_read/b023.htm See Section S.2

⁹ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04267.html>

¹⁰ Ibid 1

¹¹ CFTA Article 503: General Procurement Rules

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- The existing allowances with the Atlantic provinces' schedules should be prioritized for taking sourcing actions. Local food is an example of an unrestricted exemption to leverage in procurement strategies.
- Instead of being *prescriptive* using specific criteria in competitive bid documents, government buyers can seek clarification as to how potential suppliers can increase their economic development and social value commitments to Atlantic Regions through the use of *descriptive* criteria.
- Provide specific training to government buyers within the Atlantic provinces on how to work within the various trade agreements to leverage the opportunities for localized economic and social benefits.
- Procurement policies and practices should formalize the exceptions, exclusions and exemptions to trade agreements.

Conclusions: The fact is, there are limitations within the trade agreements that have to be recognized and respected. However, there are ample opportunities to fully exploit the allowances in the trade agreements to promote local businesses. Looking within the Atlantic region should be a first option and not a last option. Price driven strategies, upon reflection, have not necessarily delivered the best value over the past decades and have resulted in significant economic leakage from local and regional economies.

Trade agreements act as a sword and a shield for economic development and social values. Ensuring there is an objective outcome which realizes the long-term best value for the Atlantic region requires a more balanced approach in procurement strategies. There are opportunities to adopt initiatives that are intended to promote local suppliers, economic development and social values. Complementing trade agreements with locally supplied goods and services, is a great opportunity for government buyers to leverage. Even small shifts in procurement to the local and regional levels can have a significant economic impact and social benefit.

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Robert Cervelli, B.Sc., M.Sc. – Robert is the Executive Director and Co-founder of the Centre for Local Prosperity. He has founded, or co-founded, several biotechnology and consumer health products. He has been an active volunteer in community building for over 35 years. He is a co-founder and Chair of Transition Bay St. Margarets Bay (www.transitionbay.ca), one of the first Transition Initiatives in the Maritimes. He has been a member of the E.F. Schumacher Society for over 25 years, has corresponded internationally and attended key international events on alternative economics. A particular area of interest is in projects implementing innovative new tools for rebuilding economic resilience at the local and regional levels. He holds a B.Sc. degree (Forestry) from Purdue University and a M.Sc. (Botany) from the University of Wisconsin.

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