

HALIFAX

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Item No. 14.1.12
Halifax Regional Council
June 20, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 5, 2017

SUBJECT: Options For Scoring of Local Preference, Social Economic Benefit, Employee Compensation/living Wage and Environmental Impact

ORIGIN

Agenda Item # 17.4 Halifax Regional Council meeting of February 7, 2017, requesting a staff report regarding Administrative Order 2016-005-ADM, the Procurement Policy and options for scoring of local preference, social economic benefit, employee compensation/living wage and environmental impact when evaluating proposals and recommend any supporting amendments to the procurement policy as a result.

LEGISLATIVE AUTHORITY

Section 2 of Administrative Order 2016-005-ADM (the "Procurement Policy") provides that the purposes of the Procurement Policy are to:

- (a) provide for the procurement of Goods, Services, Construction and Facilities by the Municipality in a fair, open, consistent and transparent manner resulting in Best Value;
- (b) provide direction for the expenditure of funds to complete the programs and projects approved by Council in the business planning and budget process;
- (c) promote procurement processes and decisions that are consistent with the strategic goals and objectives of the Municipality;
- (d) provide for sustainable procurement by integrating environmental, economic and social considerations in the procurement process;
- (e) maintain ethical business practices;
- (f) respect regional, national and international trade agreement obligations and other applicable legislation; and
- (g) encourage competitive bidding for the supply of Goods, Services, Construction and Facilities.

RECOMMENDATION

It is recommended that Halifax Regional Council direct staff to create a cross departmental working group to engage external stakeholders, conduct further investigation and recommend with respect to whether or not to adopt a policy framework for the consideration of social economic benefit, employee compensation/living wage and environmental impacts in the procurement process (excluding local preference) and report back to Council.

BACKGROUND

At the February 7, 2017 meeting of Halifax Regional Council, staff was directed to provide a report addressing the options for the scoring of local preference, social economic benefit, employee compensation/living wage and environmental impact when evaluating proposals, and recommend any supporting amendments to the procurement policy as a result.

DISCUSSION

It is recognized that the procurement activities of HRM have an impact on individuals and the local economy through the engagement of vendors. This report outlines the opportunities and challenges identified by HRM Procurement of pursuing strategies that influence procurement decisions on the basis of the consideration of local benefit or geographic location, social economic benefit, employee compensation/living wage and environmental impact in the procurement processes. As per the recommendations contained in this report, staff believe it is important to develop a cross departmental working group and to engage external stakeholders before implementing any significant changes to HRM's Procurement Policy or existing practices.

HRM's procurement processes operate within a framework of legislation, trade agreements, HRM's Procurement Policy (Administrative Order 2016-005-ADM) and sound procurement practices. An overarching principle is that procurement processes are to be fair, open, consistent and transparent and result in the Best Value for the Municipality. In HRM's Procurement Policy, Best Value is defined as "the bid that is determined by the Municipality to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the bid documents".

Fundamental to the framework within which HRM's procurement processes operate is the concept of competitive bidding. Good procurement practice also recognizes that in the pursuit of sustainability, procurement processes should integrate environmental, economic and social factors. The challenge of public procurement is to balance these elements to achieve best value within a framework that reflects best practice and complies with legal obligations.

Sustainability/Environmental Impact

A sustainable procurement policy is often seen as a relatively easy way for local governments to improve the sustainability of its operations through the products and services it buys. However, there are many additional options for improving sustainability. For example, adding sustainable procurement language to sustainability plans, climate action plans, and zero waste plans can bolster a municipality's sustainable purchasing efforts. Sustainable specifications can also be included in solicitation documents without a prescriptive policy.

Some municipalities have developed comprehensive sustainability plans that lay out a vision for improving the environmental, social, and financial sustainability of the community. Sustainable procurement can be included as one strategy for helping the municipality to meet its overall sustainability goals. As a part of a larger sustainability plan, sustainable procurement policies often state that some or all departments are responsible for carrying it out. However, a sustainable procurement policy is stronger if it assigns specific tasks to staff or departments and includes guidance on how everyone will work together. Potential provisions include identifying which business units will be responsible for developing sustainability criteria for the bid selection process, prioritizing and planning the municipality's sustainable procurement activities, educating and training employees and vendors, etc. Ideally such a policy assigns the responsibility to develop sustainable procurement tools, including model specifications and vendor survey questions for its employees to use.

Some jurisdictions that have adopted sustainable procurement policies as part of their overall sustainability plans are Toronto, Edmonton, Hamilton, Ottawa, and Calgary. These municipalities have adopted different ways of imbedding sustainability considerations into their solicitations whether it be through General Terms and Conditions; Declaration forms; Supplier Code of Conduct; Vendor Sustainability Questionnaires and Specifications.

Assigning “points” to desirable sustainability criteria based on answers to vendor survey questions, if they were included in the solicitation, is challenging and can lead to an increase in vendor complaints and allegations of arbitrariness if not implemented carefully.

In an RFP process, which allows for a more subjective evaluation, a questionnaire is used by some municipalities to evaluate sustainable factors. When a sustainability questionnaire is included in the bid solicitation package each responsible vendor’s answers are scored in the proposal evaluation process, alongside price, quality, and service. Municipalities that do so normally award 10-25% of the overall evaluation score to sustainability (e.g. 10-25 points out of 100 points), so that it remains a meaningful portion of the evaluation. Prospective vendors score points toward the sustainability line item based upon their responses to the included questions pertaining to the products or services they are selling or to their internal practices (e.g., Vendor Sustainability Questionnaire).

Since it takes considerable time and effort to evaluate sustainability-related questions, some jurisdictions only evaluate bidders that meet the mandatory bid requirements. When mandatory sustainability-related specifications are included in the bid solicitation, they are treated as any other specification, and the vendor is evaluated on a pass/fail basis on whether or not they can meet the required specifications. Meeting such specifications does not award prospective vendors any points toward their overall score, but are simply a requirement that must be met if they wish to be considered for selection.

In a tender process with mandatory sustainability requirements, Procurement staff have to verify that the products offered by each bidder meet the Municipality’s sustainability criteria. In order to be as objective as possible, the Municipality generally requires sustainable products to be certified by a third party certifier or measured against an objective metric, such as:

- 1) Computers and Electronics (EPEAT or third party certifier)
- 2) Buildings/infrastructure – LEED/ Energy Star
- 3) Fleet (fuel efficiency)
- 4) Janitorial Products (Ecologo)

Staff recommend that a cross departmental working group be created to engage external stakeholders and conduct further investigation on whether or not to adopt a sustainability policy or comprehensive sustainability plan for Council’s consideration.

Employee Compensation and Living Wage

The premise of a Living Wage is that individuals who work should not have to live in poverty but should be able to sustain themselves and their families. While no single definition of Living Wage has gained universal acceptance, a sustainable income or Living Wage is one that allows people to feed, clothe and shelter their families, maintain their health, participate in the community and work toward long-term goals.

According to the Fraser Institute, over 140 municipal jurisdictions in the United States currently have Living Wage ordinances that guarantee a minimum hourly wage at a rate over and above the legal minimum wage.

According to the City of Hamilton, Living Wage rates can be calculated in a variety of ways including the Low Income Cut-Off (LICO), Low Income Measure (LIM), both from Statistics Canada, or the Market Basket

Measure from Human Resources and Skills Development Canada (HRSDC). Another method was developed by the Canadian Centre for Policy Alternatives (CCPA). The CCPA Calculation Guide takes into account family expenses, government transfers, taxes and deductions in order to generate an hourly Living Wage rate. Calculations also take other local factors into consideration.

According to the CCPA paying employees a Living Wage or fair wage is not only good for society, it is good for the organization that employs them. CCPA states that there are a number of benefits that an organization receives by paying their employees enough to allow him or her and their family to enjoy a reasonable quality of life. Some of these include;

- Reduction of workplace and personal stress
- Decreased employee turnover
- Cost savings for staff hiring and training
- Improved job quality
- Productivity and service delivery
- Lower absenteeism
- Benefits to the broader economy by stimulating consumer spending
- Greater corporate social responsibility and organization reputation

CUPE defines a Living Wage as the wage needed to provide the minimum income necessary to pay for basic needs based on the cost of living in a specific community. Calculations of Living Wages vary significantly: from about \$14 an hour in some communities, to just over \$20 in Metro Vancouver and Yellowknife. Living Wages rely on public and private employers voluntarily agreeing to pay them. The CCPA has deemed the Living Wage in Halifax Regional Municipality to be \$19.10 per hour which is \$8.25 per hour over our current minimum wage amount of \$10.85 per hour for experienced workers and \$10.35 for non-experienced workers

In contrast, according to CUPE, Fair Wages are minimum wage rates for specific occupations that must be paid by contractors doing work for governments with Fair Wage policies. These policies generally apply to construction, trades and sometimes cleaning and security workers, and are often tied to union wage rates.

Living wage policies are slower to take traction in Canada than Fair Wage policies. Staff are only aware of two Canadian municipalities with living wage policies - New Westminster and Toronto. Some jurisdictions, like Toronto, have Fair Wage policies that provide a starting place for Living Wage campaigns to strive. Because Fair Wage policies are based on prevailing industry wage standards in a given geographic region, they do little to raise base wages for workers in the lowest wage industries and may be expanded with a Living Wage law that sets a floor below which no contract, regardless of industry, can go.

The City of Toronto introduced the first Fair Wage policy in 1893, before minimum wages existed. Since then the federal government, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, the Yukon and a number of municipalities have adopted (and sometimes subsequently repealed) Fair Wage policies.

The intent of Fair Wage policies is to ensure that building trade contractors hired by the municipalities pay their employees a Fair Wage for the work performed, and to ensure that workers are not exploited or discriminated against.

Based on the City of Toronto's model, a Fair Wage policy would require contractors and sub-contractors to provide remuneration to employees in accordance with a Fair Wage schedule. The Fair Wage schedule would cover a variety of construction related positions. The fair wage schedules would be continuously updated to reflect wages negotiated for the applicable Trade Union and would likely require all contractors for the Municipality to pay their workers union rates, and for non-union workers, that they be paid prevailing wages and benefits in their industry. The policy might also require compliance with acceptable working hours and conditions of work. Such a policy would apply to all employees that are hired by contractors, sub-

contractors, suppliers or tenants of Municipal property. The Toronto policy does not apply to small business (such as owner-operators), partnerships or principals of companies.

Currently, Toronto's Fair Wage rates are established through negotiations between employee and employer groups and associations. Within Halifax these associations could include, but are not limited to, CANS, CENS, APALA and the NSAA. The rates are then recommended to Council and reviewed on a three year basis. For the construction industry, wage rates are based on the lowest rates established by collective bargaining. Other occupational rates are based on market and industrial surveys, along with the prevailing wages for non-union workers. Wages and wage rates are to include fringe benefits such as health benefits, but do not include payroll deductions. The contractor must display a copy of the Fair Wage policy in a prominent position in the workplace where all workers have access to view the policy.

Toronto has a Fair Wage committee that is responsible for establishing a registry of non-compliant companies, regular audits and compliance evaluation reports, the development of performance indicators, and ensuring the provision of sufficient staff training. If a Fair Wage policy is established at HRM, the Municipality can include in all its competitive bid documents a declaration (as did the City of Toronto and the City of New Westminster) referencing the Municipality's expectations regarding compliance with the policy. Completion and submission of the declaration would be required prior to contract award.

In the reference material reviewed by staff, it was found that there has been evidence of significant increases in costs for specific contracts in sectors involving labor-intensive work performed by large numbers of low-wage workers because of the implementation of Fair Wage policies. In some locations, several such contracts increased substantially in cost. Sectors reporting significant cost increases include security services and janitorial contracts. One would expect contracts for labour-intensive services such as security, grounds-keeping, and janitorial services to increase because such contracts usually employ a large low-wage workforce.

Where a Living Wage policy was applied, contractors may have been willing to absorb some costs because the costs are partially offset by savings from reduced turnover and higher productivity among workers whose wages rose because of the Living Wage requirements. However, according to the Fraser Institute, evidence in the United States has shown that Living Wage policies have actually led to fewer job opportunities for less-skilled workers and generally have not helped pull the poorest families out of poverty. There is also the potential for Living Wage policies to inflate municipal budgets through higher costs for public services which has impacted the efficiency levels of public governments.

Staff recommend that a cross departmental working group be created to engage external stakeholders and conduct further investigation on whether or not to adopt an employee compensation/living wage policy for Council's consideration.

Social Economic Benefit

British Columbia's Social Impact Purchasing Guidelines contains the following definition of Social Enterprise: "Social enterprises are organizations, either for-profit or not-for-profit, that direct the money they make toward a social purpose. While there is no legal definition of the term, social enterprise is generally considered to fall between a traditional business and a traditional not-for-profit organization. Social enterprises generate revenue, and may even pay dividends to shareholders, but the percentage of profit directed toward their social mission is more significant than in a traditional business."

As outlined above HRM's procurement practice recognizes that in the pursuit of sustainability procurement processes HRM should integrate environmental, economic and social factors. The challenge is to balance these elements to achieve best value within a framework that complies with applicable legislation and reflects best practice. While most procurement must be done through a competitive process, HRM's Procurement Policy permits staff to sole-source the purchase of goods and services for a variety of reasons, including:

- for the procurement from philanthropic institutions, prison labour or persons with disabilities;
- for the procurement of Goods, Services, Construction or Facilities from a public body or a not-for-profit corporation; or
- for the procurement of Goods or Services (not exceeding \$25,000) for the purpose of evaluating or piloting new or innovative technology with demonstrated environmental, economic or social benefits when compared to conventional technology, but not for any subsequent purchases.

Some Provinces such as Ontario, Quebec, Manitoba, and British Columbia have established and adopted social purchasing policies and guidelines to help guide their purchasing decisions when it comes to Social Enterprises. The policies allow the organization to consider not only value for money, but also social and environmental impacts when purchasing goods and services. It also enables the organization to consider the broader impact of their purchasing decisions. British Columbia has adopted social impact purchasing guidelines that considers social value as well as financial value. It does not mean choosing the most socially conscious supplier, regardless of cost.

Depending on the nature of the procurement, social value can be included in the procurement process through

- Incorporating Social Value/Social Benefit into the solicitation documents; and/or
- Purchasing goods or services from a social enterprise or socially conscious business.

In the province of British Columbia social value can be included in the evaluation criteria regardless of the size and complexity of the solicitation document, and whether or not suppliers are social enterprises or traditional businesses. The criteria used, however, varies, depending on the focus and capacity of the supplier/service provider community. A few examples of criteria are included below:

1. Is your company privately owned? A Co-operative? A Not-for-profit? A Community Contribution Company? A social enterprise?
2. Does your company provide job skills training and/or employment opportunities for people with disabilities or other barriers to employment? If so, please describe these activities.
3. What type of benefits do you provide to your employees?
4. Does your company have a social impact purchasing policy?
5. Does your company purchase goods and/or services through social enterprises through longer-term, contractual arrangements (such as janitorial services, office supplies, etc.)? If yes, please provide examples.

The Not for Profit association, Buy Social Canada, brings socially driven purchasers and social enterprise suppliers together, building business relationships that generate social benefits to communities across the country. Suppliers can apply to become Buy Social Canada certified. Once certified, Buy Social Canada adds them to the database of certified companies that can be accessed by the procurement industry. This type of third party certification could allow HRM the opportunity to request third party certification when issuing quotes or more formal solicitation documents. It would also allow HRM staff the opportunity to access the list of certified companies when preparing informal quotes and doing low value purchases under \$10,000.

The strength of social procurement policies can largely depend on how precisely “social value” or “social benefit” principals or objectives are defined. Narrower definitions or criteria may be impractical or cause undue burden for some departments, specifically HRM’s Procurement section. Because procurement operates in a complex legal environment, social procurement policies are currently mostly designed to complement rather than replace legislation, policies or processes. Few jurisdictions within the US, Europe and Canada have established mandatory or well-enforced social purchasing policies. Most policies use non-compulsory language that encourages contracting authorities to seek out social value through spending activities and contract criteria rather than obligating them to do so. For example, policies are often

worded to “require” that contracting authorities “consider” the use of community benefits clauses or to purchase from a social enterprise. The use of non-compulsory language is to reduce the risk of trade disputes that may arise from potentially unclear criteria.

Staff recommend that a cross departmental working group be created to engage external stakeholders and conduct further investigation on whether or not to adopt a social economic benefit policy for Council's consideration.

Local Preference

Staff previously reported to Council on the subject of local preference/local benefit on March 4, 2014 (Item 11.1.3). As a result, Council passed the following resolutions:

That Halifax Regional Council not amend Administrative Order 35 or otherwise adopt a specific procurement policy with respect to:

- a) the scoring of local benefit when evaluating bid submissions; or
- b) applying a preference or penalty based on the geographical location of any bidder, or potential vendor/supplier of goods, services and/or construction relative to the Halifax Regional Municipality.

A local preference is the practice of applying a preference, or penalty, based upon the geographic location of a bidder or the local content of any goods or services provided. Typically this is implemented through the application of a price differential. Occasionally it is implemented through the use of a scored evaluation component of an RFP. HRM's Procurement Policy does not provide for a preference based on the geographic location of a bidder or the local content of goods or services provided.

When considering the use of any “preference” in procurement processes the following factors should be considered:

- Applicable legislation and trade agreements place significant restrictions on the ability of public sector entities to give preference to local vendors. HRM is only able to apply a local preference for lower value purchases. Under the Agreement on Internal Trade (soon to be replaced by the Canadian Free Trade Agreement) HRM is prohibited from giving preference to local vendors for procurement of goods and services valued at \$100,000 or greater and construction valued at \$250,000 or greater. The thresholds under the Atlantic Procurement Agreement are \$25,000 or greater for goods, \$50,000 or greater for services and \$100,000 or greater for construction.
- A preference may represent a premium in terms of purchasing costs.
- It is difficult to assess the effectiveness of a preference in terms of the additional costs to HRM and the impact on local business.
- A preference restricts competition and may impose a tax burden to the taxpayer by putting the interest of a local supplier ahead of the interests of taxpayers and eventually reduces the pool of competing bidders.
- There will always be expenditures that cannot occur locally due to their specialized nature (i.e. Transit vehicles).
- Local bidders already have a competitive advantage given their proximity to HRM: cost advantage of travel/ shipping requirements, knowledge of HRM's requirements and processes, access to HRM staff and procurement opportunities (availability of debriefings/supplier outreach, ease of submitting bid documents), and are well positioned to provide after sale support (services/warranty work/training),
- Professional Procurement Organizations, including NIGP and the CPPC to which HRM belongs, promote the concept of competition and recognize the potential risk associated with preferential treatment. Some area chapters expressly oppose local preference policy on the basis that it is not good business practice.
- There are inherent risks of integrating preference into a formal bidding process and the resulting

legal liability. It is difficult to define the circumstances where a preference may be granted to a local vendor. In other words, it is difficult to answer what makes a bidder a local bidder. The challenge is to define what is "local" - PO Box, number of employees working in HRM, property taxes paid, amount of goods/services bought in HRM, where services originate. It is also a challenge for procurement professionals to verify whether a bidder is as "local" as it claims to be.

- Other jurisdictions could adopt retaliatory practices (reciprocity) and hurt local vendors potentially impacting higher value exports. As stated in the Atlantic Procurement Agreement (APA), "the Atlantic provinces reserve the right to accept or reject, consider and evaluate bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat an Atlantic supplier for a similar requirement. In cases where a province or body would not permit an Atlantic supplier full access to review a tender opportunity and/or subsequently bid in an unrestricted fashion, the Atlantic provinces reserve the right to reject that bid at any time during the tender process on the basis of reciprocal treatment." If HRM adopts a local preference in accordance with the trade agreements to the disadvantage of a bidder from jurisdiction "A", the principle of reciprocity permits a similar preference to be applied by jurisdiction "A" against HRM bidders seeking work in that jurisdiction.
- There are challenges in managing a local preference policy: vendors may become disinterested or apathetic as there is a perceived disincentive to maximize money spent; close bids will continue to arise even if a preference policy is adopted; local labour may only constitute a small part of the cost; it may be difficult and time consuming to administer; additional work is required of both bidders and procurement staff.
- The difficulty in defining at what level to differentiate the preference - HRM (urban versus rural), HRM versus the balance of the Province, Atlantic Provinces versus the balance of Canada.

Council could direct staff to consider local benefit (rather than local preference as described above). The flow of local benefit should be consistent with those municipal purposes within HRM's mandate as provided by the HRM Charter. These include the promotion and attraction of institutions, industries and businesses, the stabilization and expansion of employment opportunities, and the economic development of the Municipality. If the Municipality were to consider local benefit in its evaluation processes, staff would likely be called upon to ensure that the proponent delivered on local benefit that was within the Municipality's mandate. There are considerable challenges associated with the consideration of local benefit within the RFP process. The RFP process cannot contain any areas of uncertainty and the use of local benefit as a deliverable cannot be used as a way to apply a local preference beyond applicable trade agreement thresholds in order to disadvantage non-local proponents or favor local proponents. A local benefit can be delivered by a non-local proponent as well as by a local proponent, and the evaluation of the potential local benefit of each proposal cannot degrade into a method of discriminating against proponents based on their home jurisdiction. The scores assigned to each proposal cannot be arbitrary and must be well supported. Claims of local benefit by proponents have to be measured, validated and monitored. From a policy perspective, there is also the requirement to define what makes a benefit "local".

Given the complexity and risks associated with integrating consideration of local benefit in the RFP process, this approach is generally used very selectively and is not readily endorsed by most jurisdictions. As a result, it is difficult to provide any assessment of how the adoption of this approach actually contributes to the attainment of local benefits, impacts the overall cost of projects and the suppliers of the procuring entity. On rare occasions, the Province of Nova Scotia has used this approach, relying heavily on the expertise of economic development specialists. If Council were to direct the Procurement Section to include the consideration of a proposal's claimed local benefit within its evaluation criteria, what is really being asked of staff is that they score the proponent's potential to create a local benefit should it be awarded the work. This requires that the stated outcomes of the claim be tracked and enforcement action taken during the life of the contract. This is a significant departure from the normal approach to RFPs. The consideration of local benefit in the RFP process is complex and is considered to be associated with significant legal risks. The evaluation and tracking of the delivery of local benefit requires specialized resources and the expertise of

economic development specialists.

HRM's Procurement Policy defines the procurement methods that can be used for various purchase value thresholds. For low value purchases under \$10,000, the policy enables bidding without the requirement to publicly advertise, thus enabling both the Procurement office and their Business Unit clients to use a targeted invitation approach to getting bids. This allows the Municipality to select pools of bidders, particularly for goods, to attain local benefit by using a purchasing card or low value purchase order. For higher value purchases up to \$25,000, publicly posted quotations are generally required but, in cases of urgency, three quotations are to be solicited. This provides an opportunity to direct these purchases within the local business community given the existing high level of local spending in these value ranges and the prominent use of standing offers. Raising these limits would not necessarily be an effective method to encourage more local purchases.

In light of the above factors, staff do not recommend amending Administrative Order 2016-005-ADM to include a provision for "local preference" or "local benefit". A significant portion of HRM's expenditures already contribute to the "local" economy and will not be materially impacted by the adoption of local preference. Furthermore, local preference measures are inherently problematic to design and administer and will increase purchasing costs.

FINANCIAL IMPLICATIONS

It is difficult to predict how incorporating the consideration of local benefit, local preference, social economic benefit factors, environmental conditions and employee compensation/living wage conditions into the scoring criteria of the procurement process will impact the operating costs of HRM. These are complex situations involving many factors and requiring a multitude of assumptions to be made.

RISK CONSIDERATION

HRM is subject to several trade agreements that significantly limit the extent to which HRM is able to give preference to local vendors. In all circumstances the evaluation of tenders and other forms of procurement must be done in an open, fair and transparent manner. Scoring systems that assess qualitative factors must be robust so that award decisions are not viewed as arbitrary. Certain subjective factors may therefore be difficult to incorporate into a scoring system.

There are no additional risks identified outside of the discussion section of this report.

COMMUNITY ENGAGEMENT

N/A

ENVIRONMENTAL IMPLICATIONS

There are no additional environmental implications identified outside of the discussion section of this report.

ALTERNATIVES

1. Council could direct staff to propose revisions to the Procurement Policy that permit and facilitate the evaluation of local preference and/or local benefit in the procurement process. This approach is not reflected in procurement best practice and would likely lead to legal challenges and as a result is not recommended by staff.

ATTACHMENTS

Attachment A: Source Material

Attachment B: Regional Council Report Dated March 4, 2014 - Administrative Order #35, Procurement Policy – Consideration of Local Benefit

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Erin MacDonald, Senior Procurement Consultant, Finance and Asset Management
902.292.5795

ATTACHMENT A

Source Material

Cook, D. (2008) The impact of living wage policy for the city of Calgary

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Executive Director, Social Development, Finance and Administration Chief Corporate Officer
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Ministry of Social Development and Social Innovation, (2014) Social Impact Purchasing Guidelines

Dragicevic, N. and Ditta, S. (2016) Community Benefits and Social Procurement Policies – A Jurisdictional Review.

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Social Enterprise Network of Nova Scotia (2016) Social Enterprise Sector Survey (<http://senns.ca/>)

Buy Social Canada (www.buysocialcanada.ca)

Feist, A. (2014) Administrative Order #35, Procurement Policy – Consideration of Local Benefit

Item No. 11.1.3
Halifax Regional Council
March 4, 2014

TO: Mayor Savage and Members of Halifax Regional Council

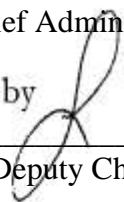
Original signed by



SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by



Mike Labrecque, Deputy Chief Administrative Officer

DATE: February 3, 2014

SUBJECT: Administrative Order #35, Procurement Policy – Consideration of Local Benefit

ORIGIN

Agenda Item # 14.1 Halifax Regional Council meeting of Oct 1, 2013, requesting a staff report regarding Administrative Order 35, the Procurement Policy and the consideration of local benefit.

LEGISLATIVE AUTHORITY

Administrative Order 35, the Procurement Policy, establishes purchasing guidelines that provide for the procurement of goods, services, construction and facilities by the Halifax Regional Municipality in a fair, open, consistent and transparent manner resulting in best value as approved by Council.

RECOMMENDATION

It is recommended that Halifax Regional Council not amend Administrative Order 35 or otherwise adopt a specific procurement policy with respect to:

- a. the scoring of local benefit when evaluating bid submissions; or
- b. applying a preference or penalty based on the geographical location of any bidder, or potential vendor/supplier of goods, services and/or construction relative to the Halifax Regional Municipality.

BACKGROUND

At the October 1, 2013 meeting of Halifax Regional Council, staff was asked to provide a report outlining the options for and the pros and cons of an amendment to Administrative Order 35 to permit the scoring of the “local benefit” of bid submissions in HRM’s evaluation criteria. The report would consider the limitations imposed by the various trade agreements that impact the HRM.

DISCUSSION

It is recognized that the procurement activities of HRM have an impact on the local economy through the engagement of vendors. This report outlines the opportunities and challenges of pursuing strategies that influence procurement decisions on the basis of the consideration of local benefit or geographic location (preference) in procurement processes.

HRM’s procurement processes operate within a framework of legislation, trade agreements, HRM’s Procurement Policy (Administrative Order 35) and sound procurement practices. An overarching principle is that procurement processes are to be fair, open, consistent and transparent and result in best value. Fundamental to this is the concept of competitive bidding. Based on the principles of sustainability, Procurement practice also recognizes that in the pursuit of sustainability procurement processes should integrate environmental, economic and social factors. The challenge of public procurement is to balance these elements to achieve best value within a framework that reflects best practice and can withstand legal challenge.

For the purposes of this report, it is important to distinguish between a local benefit and a local preference. Where a bid submission includes a claim that will be a benefit to the local community in the performance of the work by the bidder, HRM is being asked to consider “local benefit” in the evaluation process. This can be implemented as a scored evaluation component of an RFP. Because HRM’s Procurement Policy does not specifically identify achieving “local benefit” as a guiding principle in procurement processes, it would have to be amended in order to permit the procurement professionals who are employed by the Municipality to consider the potential local benefit of a bid submission. A local preference is the practice of applying a preference, or penalty, based upon the geographic location of a bidder or the local content of any goods or services provided. Typically this is implemented through the application of a price differential. Occasionally it is implemented through the use of a scored evaluation component of an RFP. HRM’s Procurement Policy does not provide for a preference based on the geographic location of a bidder or the local content of goods or services provided.

HRM’s procurement processes must respect the trade agreements and legislation applicable to municipalities within Nova Scotia. Municipalities in Nova Scotia are currently subject to two trade agreements and will be subject to a third in the near future. It is important to note that these agreements are complex in nature and the following comments are designed to provide the overall context and highlights of each agreement. These agreements are aimed at creating a common market through the reduction of trade barriers on the procurement of goods, services, and construction. The first agreement, the Agreement on Internal Trade (AIT) applies to the

Provinces, Territories, Municipalities, School/Health Boards and the like (referred to as “MASH”), Crown Corporations and the Federal Government. Under the AIT, municipalities cannot adopt any procurement practices that discriminate based upon the place of origin of goods, services, or construction or the location of suppliers of goods, services or construction. This applies to the consideration of economic benefit in the evaluation of bids; that is, municipalities cannot use the evaluation of economic benefit as a method to discriminate against bidders from outside jurisdictions. It is noteworthy that the agreement permits a preference for Canadian value-added goods/services provided the preference does not exceed 10 percent (this refers to the premium that may be awarded during the evaluation of bids, not to the required level of Canadian content), provided sufficient competition exists.

The AIT applies to contracts that exceed \$100,000 for goods and services and \$250,000 for construction. For the purchase of goods and services and construction below these amounts, subscribing jurisdictions such as HRM are free to apply a “local preference” by imposing criteria in the evaluation of bids or award of contracts that favours the goods, services or suppliers of a particular Province or region of Canada (subject to the Atlantic Procurement Act). However, the agreement encourages municipalities to respect the spirit of the AIT for contracts below the thresholds of the agreement.

The second agreement, the Atlantic Procurement Agreement (APA), applies to the four Atlantic Provinces including municipalities in Nova Scotia. This agreement aims to eliminate trade barriers between the Atlantic Provinces and prohibits municipalities within the Atlantic Provinces from adopting procurement processes that are designed or are used to discriminate between goods and services or the suppliers of goods and services for construction based on geographic location of suppliers within the Atlantic Provinces.

To provide fair treatment for Atlantic Canadian suppliers, the agreement also provides a Regional Reciprocity Framework. Using this framework and HRM as an example, if HRM was to apply a “preference” that limits the competitiveness of suppliers from another jurisdiction, that jurisdiction is allowed to apply a similar “preference” to disadvantage HRM-based suppliers bidding within that jurisdiction.

The APA applies to contracts that exceed \$25,000 for goods, \$50,000 for services and \$100,000 for construction and below the thresholds established by the AIT. The APA does not apply to the procurement of goods, services or construction below these amounts. As a result, municipalities may apply a “local preference” for services and construction provided by suppliers within their jurisdiction up to the amounts of the applicable APA thresholds. (The *Public Procurement Act* treats goods differently so a municipality may only apply a “local preference” for goods manufactured or produced in Nova Scotia, as opposed to their own jurisdiction, over other jurisdictions that are subject to the APA).

A third agreement, the Canada-European Comprehensive Economic and Trade Agreement (CETA) has been approved in principle and is expected to be effective in 2015. This agreement binds all Canadian jurisdictions, including municipalities, to international trade obligations with the European Union. Similar to the other trade agreements, this agreement requires that

municipalities not place restrictions on procurements including “preferences” over certain thresholds. Although not confirmed, CETA is expected to apply to contracts that exceed \$300,000 for goods and services and \$7.8 Million for construction and will include a streamlined dispute enforcement mechanism that will make it easier to adjudicate bid protests.

Procurement activities of municipalities in Nova Scotia are also subject to the *Public Procurement Act*. This Act allows public sector entities within Nova Scotia to apply a preference for goods that are manufactured or produced in Nova Scotia, up to the thresholds of the APA. It also reaffirms the ability of municipalities to apply the principle of reciprocity as provided by the APA.

Local Benefit

The Procurement Policy identifies the use of a Request for Proposal process as an acceptable method of procurement and best practices guide how the RFP process will be undertaken. Consideration of local benefit can be considered within the Request for Proposal process; however, the approach is only practical for large procurements including, but not limited to, significant infrastructure related projects. Typically this approach is limited to projects of the magnitude of the Harbour Solutions project undertaken by HRM.

Given the requirements of public procurement and the importance of the principles of openness, transparency and fairness, RFP’s have to be carefully planned, designed and executed to ensure the integrity of the procurement process is maintained and the risk of legal challenge is minimized. The process requires that the specific evaluation criteria and weighting, scoring, selection and eventual award mechanism be clearly identified prior to the issue of the RFP based upon a thorough review of the requirements of the procurement. Where this approach is used, the claim of local benefit is weighted within evaluation criterion in the technical portion of the evaluation. A local benefit evaluation matrix typically provides for consideration of a number of factors including employment and workforce characteristics.

There are considerable challenges associated with the consideration of local benefit within the RFP process. The RFP process cannot contain any areas of uncertainty and the use of local benefit as a deliverable cannot be used as an underhanded way to apply a local preference beyond applicable thresholds in order to disadvantage non-local proponents or favour local proponents. A local benefit can be delivered by a non-local proponent as well as by a local proponent, and the evaluation of the potential local benefit of each proposal cannot degrade into a back-door method of discriminating against proponents based on their home jurisdiction. The scores assigned to each proposal cannot be arbitrary and must be well supported. Claims of local benefit by proponents have to be measured, validated and monitored. From a policy perspective, there is also the requirement to define what makes a benefit local.

If Council were to direct the Procurement Office to include the consideration of a proposal submissions’ claimed local benefit within its evaluation criteria, what is really being asked of staff is that they score the proponents potential to create a local benefit should it be awarded the work. This requires that the stated outcomes of the claim be tracked and enforcement action

taken during the life of the contract. This is a significant departure from the normal approach to RFP's. The consideration of local benefit in the RFP process is complex and is associated with significant legal liability. The evaluation and tracking of the delivery of local benefit requires specialized resources and the expertise of economic development specialists.

Furthermore, the flow of local benefit should be consistent with those municipal purposes within HRM's mandate as provided by the HRM Charter. These include the promotion and attraction of institutions, industries and businesses, the stabilization and expansion of employment opportunities and the economic development of the Municipality. If the Municipality were to move to consider local benefit in its evaluation processes, staff would likely be called upon to ensure that the proponent delivered on local benefit that was within the Municipality's mandate.

Given the complexity and risks associated with integrating consideration of local benefit in the RFP process, this approach is used very selectively and is not readily endorsed. As a result, it is difficult to provide any assessment of how the adoption of this approach actually contributes to the attainment of local benefits, impacts the overall cost of projects and the suppliers of the procuring entity. On rare occasions, the Province of Nova Scotia has used this approach relying heavily on the expertise of economic development specialists.

In a recent letter, as attached, the Canadian Manufacturers and Exporters (CME) express their support for ensuring that Canadian companies can compete on a fair and reciprocal basis against international competitors when supplying goods, services and new technologies to infrastructure projects in Canada and in export markets. They are not seeking the creation of Buy Canada rules but wish for a leveling of the playing field for Canadian industry and urge for consideration of options to support the local industry base. The use of the RFP process to consider local benefit for significant infrastructure projects would be consistent with this request.

Local Preference

HRM is obliged by the fiduciary duty it owes to taxpayers to use sound public procurement principles and seek best value in procuring goods, services and construction. The application of a "preference" as allowed by the trade agreements and the *Public Procurement Act* should be consistent with this requirement. Within the constraints of the trade agreements and the *Public Procurement Act* as previously outlined, HRM would be permitted to consider the following for the purchase of goods, services and construction (assuming Administrative Order 35, the Procurement Policy, were to be amended accordingly)

- "Buy HRM" preference below the APA thresholds (\$50,000 for services; \$100,000 for construction)
- "Buy Nova Scotia" preference below the APA thresholds (\$25,000 for goods)
- "Buy Atlantic" preference between the APA thresholds and the AIT thresholds (\$25,000 to \$100,000 for goods; \$50,000 to \$100,000 for services; \$100,000 to \$250,000 for construction)
- "Buy Canadian" preference for Canadian added-value (up to 10 percent) under the CETA thresholds (\$300,000 for goods)*

- A reciprocity provision so that if HRM adopts a local preference in accordance with the trade agreements to the disadvantage of a bidder from jurisdiction “A”, the principle of reciprocity permits a similar preference to be applied by jurisdiction “A” against HRM bidders seeking work in that jurisdiction.

*only applicable once CETA is effective

This is not an exclusive list of the options for the application of local preference but highlights and generalizes the concepts inherent in the trade agreements and the *Public Procurement Act* for the purchase of goods, services and construction.

A scan of other jurisdictions across Canada provides a few examples of procurement policy that allow local preference in procurement processes. The Province of Nova Scotia’s Procurement Policy provides for a Nova Scotia Preference for goods up to, and including, \$10,000 which are manufactured or produced in Nova Scotia in cases where it is determined to be in the best interest for the province. This policy also allows “reciprocity” whereby the Province reserves the right to accept or reject, consider or evaluate bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a Nova Scotia supplier for a similar requirement within the constraints of the trade agreements. Cape Breton Regional Municipality’s Procurement Policy provides for a 5% preference for regional suppliers (commercial taxpayers) over suppliers outside the region. The 5% price preference may not exceed \$12,500 regardless of the tender amount in compliance with the trade agreements. A similar policy exists for the Town of Truro for goods, services and construction below the thresholds of the APA. Local businesses are defined as a person or organization that carries out a “significant portion” of its business in the Town of Truro. The City of Toronto adopted a Canadian Content Policy in 2000 but later suspended the policy in 2003 on the basis that there were ongoing difficulties in verifying vendors’ claims of Canadian content, the policy had limited effectiveness and utility in achieving its stated goals, and the increased risks of legal challenges.

When considering the use of any “preference” in procurement processes the following factors should be considered:

- A preference represents a premium in terms of purchasing costs.
- It is difficult to assess the effectiveness of a preference in terms of the additional costs to HRM and the impact on local business.
- A preference restricts competition and represents a tax burden to the taxpayer. It puts the interest of one supplier ahead of the interests of taxpayers and eventually reduces the pool of competing bidders.
- A review of HRM’s expenditures subject to the Procurement Policy was conducted for 2012-13. The expenditures were as follows:
 - o 76% in HRM
 - o 3 % in Nova Scotia (excluding HRM)
 - o 11 % in Canada with local distributors in HRM
 - o 9 % in Canada with no distributors in HRM
 - o 1 % outside of Canada (0.82% from the USA).

- There will always be expenditures that cannot occur locally due to their specialized nature (i.e. Transit vehicles).
- Local bidders already have a competitive advantage given their proximity to HRM: cost advantage of travel/ shipping requirements, knowledge of HRM's requirements and processes, well positioned to provide after sale support (services/warranty work/training), access to HRM staff and procurement opportunities (availability of debriefings/supplier outreach, ease of submitting bid documents).
- Professional Procurement Organizations, including NIGP to which HRM belongs, promote the concept of competition and recognize the potential risk associated with preferential treatment. Some area chapters expressly oppose local preference policy on the basis that it is not good business practice.
- There are inherent risks of integrating preference into a formal bidding process and the resulting legal liability. It is difficult to define the circumstances where a preference may be granted to a local vendor. In other words, it is difficult to answer what makes a bidder a local bidder? The challenge is to define what is "local" - PO Box, number of employees working in HRM, property taxes paid, amount of goods /services bought in HRM, where services originate?
- It is also a challenge for procurement professionals to verify whether a bidder is as "local" as it claims to be.
- Other jurisdictions could adopt retaliatory practices (reciprocity) and hurt local vendors potentially impacting higher value exports.
- There are challenges in managing a local preference policy: vendors may become disinterested or apathetic as there is a perceived disincentive to maximize money spent; close bids will continue to arise even if a preference policy is adopted; local labour may only constitute a small part of the cost; it may be difficult and time consuming to administer; additional work is required of both bidders and procurement staff.
- The difficulty in defining at what level to differentiate the preference - HRM (urban versus rural), HRM versus the balance of the Province, Atlantic Provinces versus the balance of Canada.

In light of the above factors, it would be difficult to endorse amending Administrative Order 35 to include a provision for "local preference". A significant portion of HRM's expenditures (87%) already contribute to the "local" economy and will not be materially impacted by the adoption of local preference. Furthermore, local preference measures are inherently problematic to design and administer and will increase purchasing costs.

It is noteworthy that vendor questionnaire tools to assess vendors on a variety of factors are an emerging procurement best practice. These questionnaires consider a wide array of interests. At the most advanced level, the questionnaires focus on workplace practices, health and safety and are robust enough to be integrated into an evaluation process as scored criteria. These questionnaires do not consider local benefit. Questionnaires are inherently problematic and it unlikely that they will be used for this purposes in the near future.

HRM's Procurement Policy defines the procurement methods that can be used for various purchase value thresholds. For low value purchases under \$1,000, business units have the

opportunity to direct their purchases, particularly goods, to attain local benefit by using a purchasing card or low value purchase order. Where existing standing offers exist, contract pricing must be obtained. For higher value purchases up to \$15,000, publicly posted quotations are generally required but, in cases where this is not practical, three quotations are to be solicited. This provides an opportunity to direct these purchases within the local business community. The utility and effectiveness of raising these thresholds to encourage more local purchases is marginal given the existing high level of local spending in these value ranges and the prominent use of standing offers.

HRM's Procurement Policy outlines the process to award contracts in the event of a tie bid. If a tie bid occurs, bidders are requested to submit a final offer. If there is still a tie bid, the contract is awarded to the local bidder. While this process is rarely used, if ever, staff is currently reviewing best practices to determine if there are preferable mechanisms to resolve a tie bid. The existing mechanism does not resolve a tie bid between two local bidders and references the geographic location of a bidder.

Procurement Office staff provide general information to local vendors on how to effectively respond to procurement opportunities through an outreach program that informs local vendors about the existence of procurement opportunities, fosters good business acumen and creates ongoing dialogue between staff and local vendors relative to procurement processes. Staff does not discuss particulars about specific procurement opportunities with any vendor unless this information is already available to the general public. To ensure that all bidders can compete, including local bidders, it is standard practice to ensure that bid requirements are reasonable and not restrictive or confusing, and that solicitations are designed to ensure that a variety of vendors are eligible to bid. This is a tried and tested approach for encouraging the participation of local vendors in the procurement process.

FINANCIAL IMPLICATIONS

It is difficult to predict how procurement processes designed to consider local benefit or give local vendors a preference will impact the operating costs of HRM and benefit the local economy. These are complex situations involving many factors and requiring a multitude of assumptions to be made. Under these circumstances, an estimate of either costs or benefits would not be meaningful. It is evident that the consideration of local benefit in the RFP process is resource intensive.

COMMUNITY ENGAGEMENT

Not Applicable

ENVIRONMENTAL IMPLICATIONS

The Procurement Policy requires environmental considerations to be integrated in procurement processes.

ALTERNATIVES

1. Council could incorporate revisions to the Procurement Policy that identify achieving “local benefit” as a guiding principle thereby permitting the evaluation of local benefit in the RFP process. Adopting this approach to RFP’s has limited application; requires significant specialized resources; and is a less tried and tested approach to RFP’s.
2. Council could incorporate revisions to the Procurement Policy that permit a form of local preference based on geographic location or the local content of goods or services provided. This is contrary to procurement best practice.

ATTACHMENTS

Letter from Canadian Manufacturers & Exporters dated November 7, 2013

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Anne Feist, Manager, Procurement, 490-4200

Report and Financial
Approval by:

Original Signed by Director

Greg Keefe, Director of Finance & ICT/CFO, 490-6308



November 7, 2013

Mayor Mike Savage
Halifax Regional Municipality
1841 Argyle Street, PO Box 1749
Halifax, NS B3J 3A5

Re: Municipal Role - A level-playing field for public infrastructure procurements

Dear Mayor Savage,

Canadian Manufacturers & Exporters (CME) has pushed hard for free trade agreements like the recently announced Comprehensive Economic and Trade Agreement (CETA) with the European Union. The goal is to break down many traditional non-tariff barriers to trade, to align regulatory policy where possible and to open procurement markets in both markets. The CETA announcement raises an important opportunity, as well as challenge for our local municipalities including HRM.

Nova Scotia and Halifax Regional Municipality boast a strong manufacturing sector. CME studies show that manufacturers, on average, provide employment salary and benefits at the rate of 14.3% more than the provincial average. These employers provide valuable financial stability to their employees and to HRM through commercial and industrial assessments. Our goal is to support these firms, to encourage exports and to encourage the growth of local firms and local employment. The benefit to HRM is a stronger tax base and improved stability. An added benefit is the retention of our skilled trades and educated workforce who will resist the opportunities of other jurisdictions, to maintain their family life in Halifax and NS.

Our Nova Scotian manufacturers and exporters have become increasingly concerned about the use of trade restrictive practices with Canada's key trading partners in the area of public infrastructure procurement, particularly in the USA with their governments' increased 'Buy American' restrictions.

By contrast, in Canada, public infrastructure procurement is largely open to foreign bidders. We believe that this should be a key concern for a major municipality like Halifax.

As you know, the federal government announced in its last budget a second round of major investments in public infrastructure across the country. The **Building Canada Plan** will invest \$46 billion over the next 10 years in public infrastructure projects. Similarly, provincial and municipal governments are spending billions more on new and renewed public infrastructure over the coming decade.

As a result of the input and direction of our members, Canadian Manufacturers & Exporters has been working aggressively with federal, provincial and municipal governments to level the playing field on infrastructure procurement between Canada and foreign markets, especially in the fields of bridges, highways, construction grade steel, water and wastewater, and public transportation equipment. It's important to note that we are not seeking the creation of *Buy Canada* rules, but a leveling of the playing field for Canadian industry.

You will find attached a letter we recently sent to the Ministers of Transport and Infrastructure explaining our concerns in more detail.

With CETA, there will be opportunities and challenges for our local manufacturers. We look to Halifax Regional Municipality, our Mayor and Councillors to consider options to support our industry base, to promote growth and to retain our young educated workers and skilled trades.

CME would welcome the opportunity to work with you and your fellow HRM Council members to see how we can identify solutions to build on the opportunities of CETA and create a public infrastructure procurement policy that supports HRM's goals and its strong manufacturing sector.

Thank you in advance for your support. Please do not hesitate to contact me directly if you have any additional questions or if you wish to get more involved in our advocacy efforts across Canada.

Sincerely,

Original Signed

Ann E. Janega
Vice-President, CME – Nova Scotia Division

Telephone 902-449-9002
Email ann.janega@cme-mec.ca

Enclosure: CME, CISC, CSPA letter to Federal Ministers


Cc Pat d'Entremont, Chair, CME NS
Cc HRM Councillors



**Canadian
Manufacturers &
Exporters**

**Manufacturiers et
Exportateurs du
Canada**



CSPA  **ACPA**
Canadian Steel Producers Association
L'Association canadienne des producteurs d'acier

Ottawa, October 7, 2013

The Hon. Lisa Raitt
Minister of Transport
Transport Canada
330 Sparks Street
Ottawa, ON
K1A 0N5

The Hon. Denis Lebel
Minister of Infrastructure
180 Kent Street
Suite 1100
Ottawa, Ontario
K1P 0B6

The Hon. Diane Finley
Minister of Public Works
and Government Services
11 Laurier Street
Gatineau, Quebec
K1A 0S5

Dear Ministers:

The federal government has clearly demonstrated that upgrading and renewal of Canada's public infrastructure is a top priority. Since 2007, more than \$33 billion dollars has been invested across the country by the federal government through the Building Canada Fund. The government is now embarking on an ambitious second phase of infrastructure renewal with the new Building Canada Plan which includes \$53 billion over the next ten years; \$47 billion in new funding for local and economic infrastructure, and \$6 billion in existing funding that remains from the 2007 Building Canada Fund. Canadian manufacturers applaud the government's efforts: Canada's infrastructure investment is a unique opportunity to strengthen this country's advanced manufacturing sector by improving internal logistics, and through the economic benefits of the construction phase.

We are writing to urge our government to use this investment in public infrastructure to leverage the capabilities of Canada's manufacturing sector and to ensure that Canadian companies can compete on a fair and reciprocal basis against international competitors when it comes to supplying goods, services, and new technologies to infrastructure projects in Canada and in export markets.

In recent years, Canadian manufacturers and exporters have become increasingly concerned about the restrictive trade practices of key trading partners for projects in the public infrastructure sector. These practices limit the potential for Canadian companies

to compete for those public procurement opportunities, which negatively affects the ability of Canadian manufacturers to grow, innovate and compete internationally.

By contrast, infrastructure procurement practices in Canada offer essentially open and equal access to foreign bidders to compete against Canadian companies, while benefiting from protective advantages in their own domestic markets. These differences in procurement market access exist with many of our major trading partners, but for Canadian manufacturers they are particularly pronounced with the United States for two reasons. The first is geographic proximity: especially for infrastructure projects, we are each other's most natural competitor and export market. Second, the scope of the historic Buy America and Buy American policies that have existed for decades has continued to expand. This erodes or simply forestalls the ability of Canadian firms to compete in the transportation, construction, and municipal infrastructure sectors, in particular. Many Canadian products are, for instance, consistently blocked from public procurement opportunities funded through the U.S. Department of Transportation for public transit, highways, and other transport-related infrastructure projects. This lost potential reverberates throughout the entire supply chain, negatively affecting innovation, investment, and ultimately jobs across a spectrum of Canada's manufacturing and services industries.

We recognize and support the Canadian government's efforts to negotiate international trade agreements that provide a level playing field, including the Canada-EU Comprehensive Economic and Trade Agreement (CETA) and the Trans-Pacific Partnership (TPP). We supported the earlier Canada-U.S. procurement agreement that applied to certain economic recovery funds, albeit on a project and time limited basis. We endorse the bilateral Canada-U.S. procurement strategy for the New International Trade Crossing (Detroit-Windsor). In our view, reciprocal and symmetrical market access is an important first principle in trade relations and negotiations.

However, serious barriers remain, placing Canadian firms at a clear disadvantage. Thus, where other countries maintain public procurement barriers that favour their domestic companies, Canadian governments should be prepared to establish procurement policies that will contribute to a level playing field vis-à-vis such foreign competitors. We do not advocate operating outside the rules of the WTO, the WTO Agreement on Government Procurement, NAFTA, or other FTAs but we believe there is scope within those agreements for governments in Canada to use investments in public infrastructure to support Canadian industrial capabilities, particularly in cases where the international playing field is tilted against them.

As an example, in addition to the Building Canada plan, the government is undertaking a multi-billion project involving the replacement of the aging Champlain Bridge and several kilometers of urban highway infrastructure on both sides. In funding these large infrastructure projects, we urge you to consider how to maximize the opportunity for Canadian materials and services, in this case particularly in the structural steel, rebar, construction materials, and urban transportation sectors, in a manner that respects our international trade obligations.

We recognize the benefits of more open and reciprocal access to public procurement markets, and companies in Canada are prepared to compete on that basis. Thus, our start point is that Canada should negotiate more open procurement trade based on the principle of reciprocal, non-discriminatory market access. However, we must also ensure that when and where such conditions do not apply, and where trading partners

are not prepared to extend comparable access conditions to Canadian firms, then Canada should be prepared to support its own suppliers in a manner consistent with its rights and obligations under the WTO, WTO Agreement on Government Procurement, and its FTAs.

We would be pleased to meet with you to discuss this issue, and other barriers that Canadian manufacturers and exporters face in foreign countries and how Canada can level the playing field to support this important sector of the Canada economy.

Regards,

Original Signed

Jayson Myers
President & CEO
Canadian Manufacturers & Exporters

Original Signed

Ed Whalen
President, Canadian Institute of Steel Construction

Original Signed

Ron Watkins
President
Canadian Steel Producers Association (CSPA)

c.c. Minister Ed Fast, Minister of International Trade