

Building Ontario Businesses Initiative (BOBi) and Ontario Made Procurement

Governments spend billions of dollars every year on public infrastructure, health care, military, and other procurement projects. Some countries have used this spending power to drive economic growth and innovation. For example, the US was successful with its Defence Advanced Research Projects Agency, which is credited for its contribution to world changing innovations with broad-based consumer applications, such as the Internet, automated voice recognition and language translation, and the Global Positioning System (GPS).

Canada does require companies involved in military procurement to allocate certain spending to Canadian companies through the industrial regional benefit program. However, aside from this program, there are limited relationships between government procurement, on the one hand, and economic development and product commercialization on the other. These relationships need to be strengthened.

In Spring 2022, building on the creation of Supply Ontario as the province's procurement hub in the previous year, the Government of Ontario announced two key measures:

- The *Building Ontario Businesses Initiative Act* (BOBiA – Schedule 2 of Bill 84), requires public sector buyers to give businesses in Ontario preference when conducting procurements for goods and services under trade agreement thresholds. Subsequent information shared by Ontario suggested BOBi would also i) restrict procurement opportunities to Ontario trade partners, ii) apply domestic weighed criteria to increase the possibility of procurements being awarded to Ontario businesses; and iii) include an Industrial Regional and Technology requirement for all procurements with an estimated value of \$10 million or more.
- Schedule 5 of the *Pandemic and Emergency Preparedness Act* (Bill 106) established the *Personal Protective Equipment Supply and Production Act*, requiring the province to maintain a stockpile of Personal Protection Equipment (PPE) and Critical Supplies Equipment (CSE) purchased from local sources, and mandatory reporting of key information on those inventories.

The following recommendations aim to further inform the development and implementation of those policies to ensure they deliver broad benefits to the Ontario manufacturing sector. Unless otherwise specified, recommendations apply to both measures.

Recommendation 1 – Embrace Value-Based Procurement

Originally conceived in the health sector, value-based procurement is an approach that aims to deliver measurable benefit from a purchase over and above a reduction in purchase price. Translated broadly, it means moving away from relying solely on the lowest bid, taking a longer view of what value is and placing greater weigh on criteria such as quality, 'in service support' and maintenance costs as well as economic and environmental impacts when purchasing goods and services. For example, in health care, procurement of a bandage would consider the patient journey, and whether purchasing a higher quality product could alleviate the need for frequent changes or minimize infection risks.

CME fully support the establishment of weighted domestic criteria to embrace value-based procurement. It should become standard for Ontario public sector organizations to consider the full life cycle of a product or service purchased. Additional requirements to ensure product quality such as mandating ISO certification or considering environmental standards could also be introduced. Not only will this level the playing field for local companies, but it will also guarantee better value for money by reducing the need to frequently return to market for key supplies.

Recommendation 2 – Leverage the Ontario Made Program

One of the obstacles most frequently encountered by manufacturers when seeking to obtain government contracts is the lack of familiarity of procurement officials with Ontario Made options.

To solve this problem, CME's Ontario Made program, which was funded by the Ontario Together Fund can and should be leveraged. Since its creation in 2020, the program has grown to feature more than 12,300 products from over 2,700 manufacturers. It not only offers a searchable product database for consumers to make more informed purchasing decisions but also provides a platform for businesses in Ontario to connect more easily with each other and purchase Ontario made goods. Operational guidance issued as part of BOBi should systematically refer to this resource to enable government and broader public service organizations to better survey local capacity and inform purchasing decisions.

Recommendation 3 – Confirm Supply Ontario as the Procurement Hub

A percentage of all RFPs from publicly funded institutions should be awarded to Ontario manufacturers. To achieve this objective, the application of policies established by Bill 84 and 106 must be broad and binding on all ministries and broader public service organizations. Granting exceptions would only dilute the policy rationale and province's ability to leverage its combined purchasing power.

Users of products and services purchased should retain a say in procurement processes. Supply Ontario should have dedicated teams with the requisite expertise for which procurement is being conducted (ie. Teams procuring for Ministry of Transportation would have expertise in transportation system technologies; teams procuring for health care would have knowledge of value-based health care methodologies).

While there is room for a reasonable transition period, Supply Ontario should aim to remove organizational duplications and fully replace existing Shared Service Organizations (SSO) and Group Purchasing Organizations (GPO) in the near term. To that end, manufacturers would welcome more proactive and complete information on planned milestones and timelines to fully establish Supply Ontario as the province's procurement hub. Business associations like CME can help support this transition with our membership, by introducing training, webinars, and other communications.

Recommendation 4 – Use Flexibility in Trade Agreements to Benefit Local Supply Chains

CME supports the preference to Ontario businesses for low-value procurements introduced by Bill 84. The overarching principle should be to maximize the preference to local businesses in the most trade compliant way possible, while also preserving the incentive for foreign-based company to establish operations in our jurisdiction (see recommendation 5 below).

With regards to transit projects, Ontario currently has flexibility under CETA to require up to 25% of local content in transit public procurement. In the context of current 5-year revision period under this trade agreement, it is our opinion that Ontario should maintain as a minimum the right to impose 25% of local content requirement and include final assembly provisions, as the Government of Quebec has done.

As Ontario considers new or updated international trade agreements in the future, these minimum requirements should be considered for other types of strategic procurements, where possible, for example, in the context of ongoing negotiations with the UK.

Recommendation 5 – Define ‘Ontario Business’ Broadly to Incentivize Foreign Investment

When defining businesses eligible, the policy should acknowledge the significant role of foreign investment in sustaining domestic manufacturing. Ontario’s chief selling point as an investment destination is our proximity and access to the US market, but the province has lost ground in recent years. In fact, US manufacturing investment in 2020 was more than 30 per cent higher than its level in 2005, whereas it was one-third lower in Ontario. Regulatory predictability and incentives to maintain manufacturing operations in Ontario are key to reverse this trend.

Most manufacturers (large and small) operate in supply chains that are interconnected in North America and abroad. Canadian and Ontario manufacturers are smaller on average, when compared with other OECD jurisdictions - more than 85 per cent are SMEs. In a world where the larger players tend to succeed, this has implications for competitiveness. The path to profitability, upscaling and success for businesses is often to seek partnerships and investments from larger enterprises.

When deciding to commit resources to Ontario, be it to build needed manufacturing facilities, establish new production mandates or conduct research and development activities, these businesses generally consider a wide range of factors, including their ability to sell goods in our jurisdiction.

Thus, Ontario should seek to establish a simple and workable definition of an ‘Ontario Business’. Specifically, qualifying criteria excluding ownership by foreign subsidiaries should be avoided. Foreign-owned companies with a physical footprint in Ontario (plant, office, lab) and a minimum number of employees (sufficient to meet the definition of at least an SME) should be considered local.

Recommendation 6 – Introduce Transparent Procurement Reporting

As part of the newly introduced *Personal Protective Equipment Supply and Production Act*, the government of Ontario is committing to maintain a stockpile of Personal Protection Equipment (PPE) and Critical Supplies Equipment (CSE) purchased from local sources. The new legislation requires annual disclosure of information of those supplies and their origin. **CME believes such transparency is a positive step and could also be used to incentivize momentum in the implementation of BOBi.** For example, a new mandatory requirement should be introduced under relevant provincial directives that all ministries and broader public service agencies must set targets in their annual Business Plans for the proportion of goods and services purchased from local sources as a share of total procurements. Ministries and Agencies should also disclose performance against those targets in annual reports.

Recommendation 7 – Allow for Longer-Term, Predictable Contracts

Governments should avoid repeating the mistakes of the past with PPE stockpiles that expire and require business to scramble to bid for large contracts. Such approach minimizes opportunities for small and medium size enterprises and prevents the development of a stable supply chain. Instead, where appropriate, there should be flexibility to extend large public sector manufacturing contracts for products such as PPEs beyond the traditional one-year window to span 2, 3, or 4 years. Doing so would help manufacturers (especially smaller firms) avoid overtime costs associated with meeting tight deadlines and allow them to set up long-term supply chains, resulting in lower costs for everyone.

All contracts (short or long-term) should include appropriate clauses and flexibility to mitigate the impacts of unforeseen periods of high inflation (see recommendation 8 below).

Recommendation 8 – Build in Flexibility to Address High Inflation

As of July 2022, inflation was at a 40-year-high with soaring prices profoundly affecting Canadian consumers as well as the country's manufacturers. The raw materials price index for May was up 37.4 per cent from a year ago and has risen by two-thirds since January 2020. Along with these escalating costs, manufacturers are also grappling with other significant challenges, including supply chain bottlenecks, labour and skill shortages, and heightened global uncertainty. Combined, these challenges are weighing on margins, leaving manufacturers with no choice but to pass on some of the additional costs to consumers, where feasible.

This situation is especially problematic for suppliers locked in long-term government contracts lacking flexible provisions to account for the exceptional rise in costs they are currently facing.

As the province plans its procurement policies going forward, appropriate hyperinflation clauses in government contract should enable appropriate readjustments to compensate for unforeseen increases in costs. Contract terms should also appropriately shorten during periods of hyperinflation to account for the impacts of price uncertainty. In absence of such measures, key local suppliers may have no choice but to pull from key projects, potentially upending local supply chains and large infrastructure projects, with the associated impacts on employment.

Recommendation 9 - Learn from federal Industrial Regional and Technology Benefits (IRTBs)

For decades, the federal government has maintained a policy that companies applying on defence and coast guard procurement must plan for investments in Industrial Regional and Technology Benefits (IRTBs). Building on this example, the Ontario government could modulate its approach for the application of local content requirement.

There is not enough information at this time for CME to comment definitively on the provincial policy to be implemented as part of BOBi and our advice would be to fully consult industry on the design. There are many considerations, including maintaining compliance with trade agreements.

Nevertheless, and especially as it relates to transit projects, we believe Ontario should emulate the federal program as to a) when local content requirement is triggered, b) what should be considered the obligations/commitments, and c) inclusion of a point-rated system at the bid-evaluation stage to rate commitments.

Our preliminary advice is as follows:

- A. **Keep it Simple.** To incentivize participation, ITB policy design should remain as lean as possible, and keep an SME lens in the design phase. A complicated process will impact the number of bidders and create barriers to participation.
- B. **Establish clear Parameters on When the Policy Applies.** When a competitive environment exists in Canada, with companies holding industrial capabilities, local content requirement should automatically apply no matter the contract value. However, if no such capabilities exist in the country, it may become necessary to apply a different threshold. These thresholds should be based on transparent industry consultation and be subject to revision to reflect the development of industry capabilities. As an example, for transit projects, CAD \$50M could be a starting point.
- C. **Define Obligations to Deliver Local Benefits.** While local content requirement is regularly understood as strategic sourcing and supply chain investment calculated in Canadian Content Value (CCV), companies are also able to claim commitments in terms of labour hours for assembling goods or providing services within CETA, which the federal policy recognized as direct work under the ITB policy. In this case, final

assembly provisions should also be added within the province's purview in CETA. Furthermore, any version of offsets or ITB should include investment multipliers to key sectors such as R&D, SME, indigenous businesses and skills development. This will reduce the impact on profits for the bidder and increase investments into targeted areas.

Just like the federal Value-Proposition (VP), bid evaluations under the application of local content requirement, beside technical and pricing evaluations, should consider the commitments of interested suppliers to invest in Canada or in Ontario if they are awarded contracts. This could be achieved through a point-rated system, with points awarded if a bidder intent to make value-added transactions towards the fulfilment of its local content requirement. Additional weighting could be provided to bidders who leverage local installers, converters, and maintenance with the potential to stimulate partnerships between large bidders and SMEs in Ontario. In Service Support provided by local companies could also be an effective criterion for assessing procurement bids for best value products that are not manufactured in Ontario.

- D. **Keep Trade Compliance in Mind.** It should be stated that the Cabinet-mandated policy of VP and ITB can only be implemented under a National Security Exemption for it to be compliant with Canada's free trade agreements, which of course cannot be lifted in provincial procurement. This calls for a careful and deliberate approach to policy development, to avoid unintended reactions from trading partners which could impact our exports.