

Recommendations of the Monitor and Review Committee

In line with the Yukon First Nations Procurement Policy (YFNPP), section 11(7.1) (c)(ii), the Monitor and Review Committee (MRC) has received a Bid Value Reductions (BVRs) Review report for consideration. The recommendations below consider the report findings and the MRC's assessment of the effectiveness of the BVR measure to date based on the available data and evidence.

The MRC recognises that BVRs is one measure of many that are designed to meet the Policy's goals and principles outline in GAM 2.6. MRC also acknowledges that BVRs, with many other measures, is part of the effort of Yukon Government (YG) to meet its Yukon First Nations Final Agreements commitments, mainly under Chapter 22. The YFNPP and the work to ensure effective implementation, continuous improvement and working towards the goals of the policy are vital to maintain productive government to government relations. MRC acknowledges and respects treaty and Aboriginal rights and title and is actively advancing relationships with Yukon First Nations (YFNs) to enable collaborative approaches that enhance the YFNPP to the benefit of all stakeholders.

MRC contends that to maximize the effectiveness and achieve the objective of BVRs, there are other measures within the YFNPP which need to be advanced and improved, including:

- **Unbundling** – MRC recommends establishing a sub-working group to explore overcoming barriers to unbundling. By having more contracts which are of a manageable size for YFN business to compete, they will be able to leverage the full BVR potential, instead of small sub-contracts where the affect of the BVR is diluted. Unbundling into other areas such as direct awards also builds business capacity, which can lead to growth of YFN business to levels where they can compete in larger procurements, increasing the prevalence of BVR across YG procurements.
- **Set Asides** – MRC recommendations that the Set Asides measure (section 11(7.4)) be actioned at the earliest opportunity. Similarly to Unbundling, Set Asides have the ability to deliver business capacity development, experience of contracting with YG, and can maximise benefits to YFN businesses. By having Set Asides as an available procurement tool, this may alleviate some of the pressure on BVRs being the focal point to advance the goals and principles of the YFNPP.
- **Workforce Development** – MRC recommends continuing to invest in and support workforce development. Having detailed information and insight, including a capacity assessment of the available YFN citizens that are able to find work, through the measures of the policy helps ensure that commitments made, including those made through the BVR measure, are realistic. By having rosters and more YFN citizens prepared to take advantage of YG procurement opportunities, increases the ability for businesses to make reliable and realistic BVR labour component commitments. MRC recognizes that a collaborative, YFNs led approach is already underway, and continuation of substantial commitment, investment and support of the workforce development initiative will lead to successful moving forward.
- **Labour Levels** - the impact of allowing both the YFN Labour BVRs and YFN Labour Levels in value driven procurements has not been substantiated and needs to be looked at in line with whether they are moving the needle in YFN citizen employment and workforce development. MRC recommends looking into the interaction between YFN Labour BVR and YFN Labour Levels in value-driven proposals, as well as how these can be enforced throughout the life of the contract.

Recommendations

On review of the information and considerations made in the BVR Review Report the MRC asks the Deputy Minister of Highways and Public Works to consider and respond to the following MRC recommendations:

1. **Using Data to Understand the Success of BVRs.** MRC Recommends:
 - .1 Adequately resourcing the Performance Measurement Framework, to have it fully implemented as soon as possible in order to fully understand the performance and impact of BVRs, including their impact on other areas of the policy.
 - .2 Providing MRC with comprehensive data of all YFNPP policy measures to facilitate and inform additional recommendations arising from the analysis of this data to support the effective implementation of YFNPP including BVRs.
 - .3 Break BVR analysis down into relevant industry sectors. The main objective of the BVR review was to analyse unintended consequences and therefore MRC needs to be able to identify market disruptions. MRC notes that this is missing from the analysis. In order to make timely and informed recommendations, data needs to be broken down and assessed by sector to determine to what extent specific sectors and markets are being affected by BVRs or any other policy measure in the YFNPP.
 - .4 Assembling baseline data, ideally from 2 years prior to the release of the YFNPP, to measure trends and impacts more effectively.

2. **Communication and Engagement.** MRC Recommends:
 - .1 YG commit to enhanced engagement with businesses. Not only would this help dispel misinformation and misunderstanding, but it would enable YG and YFNs to share timely, accurate and relevant information with all stakeholders who are integral to the success of the YFNPP.
 - .2 YG create targeted education and training materials addressing a variety of YFNPP and YG procurement topics to assist in the development of concise and reliable commitments, that serve to support YFN citizens and businesses to realise the benefits of the policy. This can lead to more realistic BVR related commitments, increasing the likelihood of the success of fulfilling subsequent contract commitments, which will serve to achieve the objectives of the YFNPP.
 - .3 Developing communications to discourage proponents from building partnerships, joint ventures and other approaches that are intended to 'game the system' by seeking competitive advantage which does not advance the policy goals and principles. This can be done by sharing successes and highlighting failures of the BVR measures regularly and openly. Communications should include specific examples of 'gaming the system' approaches and why they are not acceptable and what measures and action will be taken to inform, halt or resolve these issues in a timely manner when they arise.
 - .4 Describing and publishing YG's efforts and processes aimed at preventing and identifying 'gaming the system' scenarios. Include a process for proponents to report potential 'gaming the system' incidences and a process to have these complaints investigated in a fair and transparent manner.

3. **Training.** MRC Recommends:
 - .1 Enhancing training and communication for procurement/contract managers and suppliers to increase awareness about the objectives and implementation of YFNPP incentives and in particular the rules, conditions, and verification of BVRs in proponent bids.
 - .2 YG provides robust training and support to procurement managers to enable effective assessment of proposed YFN participation within bid documents. It is important that bid evaluation considers whether YFN participation commitments in proposals are reasonable and realistic, so that BVRs are not applied to contracts when the First Nation participation commitment is not realistic or can not be verified.

- .3 YG develop regular supplier targeted training, including how YFN business and non-YFN business can leverage BVRs, to increase the knowledge of BVR, and other policy measures to ensure a reduction in mistakes and misconceptions, while promoting partnerships in procurements. YG should also consider the need for additional supports for YFN businesses to ensure they can engage meaningfully in the procurement process.
4. **Relationship Building.** MRC Recommends:
- .1 YG support Industry and YFNs to create a forum for all business interested working with the Yukon Government and YFN governments to exchange priorities, opportunities, challenges, and any other matters that will enhance understanding and the relationship between the parties in respect to the YFNPP.
 - .2 Encouraging and facilitating honest conversations about the policy with businesses, YFNs and YG.
5. **Contract Enforcement.** MRC Recommends:
- .1 YG create a central resource, including tools, processes and supports, for contract managers. This is with the goal of increasing consistency in application of contract enforcement of commitments made by proponents in claiming BVRs and other YFNPP incentives. MRC believes it is important to focus on all points within the procurement contract process, including post-contract and other feedback mechanisms that enable consistent, seamless, and effective implementation of the YFNPP.
 - .2 YG find ways to increase accountability for all parties involved in YFNPP implementation. This includes increasing project/contract manager understanding and commitment to policy implementation, their ability to effectively manage and oversee YFNPP commitments in contracts, Procurement Support Centre is supporting the process with consistent, timely and decisive management of the procurement process, and contractors being held accountable to deliver on their commitments made to access YFNPP incentives.
 - .3 YG to create a process for receiving complaints, feedback, and issues from businesses and YFN governments to help YG understand potential contractual issues, which could be perceived as gaming behaviours, or issues which may not be visible by YG.
6. **'Whole of Government' approach.** MRC recommends:
- .1 YG commits to a Whole of Government approach. It is the opinion of MRC that a Whole of Government approach is critical to the success of the YFNPP.
 - .2 advancing dedicated departmental targets (GAM 2.6, section 11(11)(e)) to elevate the importance of policy implementation by all departments across YG.
 - .3 Encourage more senior leadership engagement on the policy measures to increase uptake, ownership, accountability and due diligence of the measures across YG departments.

With a robust action plan, and appropriate resourcing and dedication, the BVR measure has the potential to maximise the success in delivering YFNPP goals and principles while increasing the impact of other measures of the YFNPP.

MRC, through an effective performance measurement framework, will continue to review and monitor the performance of the policy, and will be looking for significant improvement in the areas highlighted above. Through its annual review, MRC requests that YG provide a robust update of the progress made on the recommendations above. If BVR effectiveness cannot be realised through MRC's recommendations, the MRC will consider other additional recommendations to put forward to the Deputy Minister for consideration. Below are a few potential recommendations that the MRC may move forward following the annual reviews.

1. In partnership with its YFN partners, YG explore alternative strategies to modify BVRs, including increasing participation pieces. This could include changing the current percentage spreads to have incremental impact.
2. Look into other components of the contracting process that are outside of the procurement process which still provide competitive advantages and advance the objectives of the policy.
3. Consider alternatives approaches to procurement which don't support timely commitment such as Standing Offer Agreements which have been historically problematic.
4. Find other procurement tools which can be used to increase effectiveness of the BVR measure, including the other implemented measures such as set asides, community development agreements, unbundling, direct awards, etc.