



Report on the Review of Bid Value Reduction Measures

in the Yukon First Nations Procurement Policy

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Executive Summary

The Yukon government, in partnership with Yukon First Nations, has developed and launched the Yukon First Nations Procurement Policy (YFNPP), which includes measures intended to support the businesses, workers and economies of Yukon First Nations. The policy was developed through a government-to-government collaborative process, and supports the spirit and intent of the economic development provisions in the Final Agreements (Chapter 22); it is considered a tangible action by the Government of Yukon, Yukon First Nations and Industry to advance reconciliation.

One set of measures introduced in the YFNPP, Bid Value Reductions (BVRs), is a mechanism to adjust bid prices (for evaluation purposes) depending on certain levels of Yukon First Nations participation in the procurement. The purpose of this report is to address the requirement established in the policy for a review of the impact of the BVR participation measures to occur two years after the effective date of the policy. Specifically, section 11 (7.1)(c) of the YFNPP establishes that:

Two years after the effective date of the Yukon First Nations Procurement Policy, Government will review the bid value reduction measures, including maximum bid value reductions, to consider their impact and make policy amendments to address any unintended consequences.

- (i) The review will also consider the impact of the bid value reduction measures on the number of Yukon First Nations Businesses qualifying for SOAs along with the number of Yukon First Nations Businesses that are being called-up through SOAs.*
- (ii) As part of the review undertaken by Government, the Monitor and Review Committee will assess the effectiveness of bid value reduction measures. Government will consider the Monitor and Review Committee's assessment and the Committee's recommendations, if any, prior to amending section 11(7) of the Yukon First Nations Procurement Policy.*

This review therefore provides an early 'temperature check' on the implementation of the BVR measures as well as an opportunity to identify preliminary indications of successes and challenges that could hinder the effectiveness of BVR measures. It also provides the opportunity to identify data that will be needed to support a more robust assessment of the measures in the future. The assessment is conducted in the context of the objectives of GAM

2.6, including the objectives and principles established as part of the Yukon First Nations Procurement Policy (i.e., GAM 2.6 ss. 11(1) and 11(2), provided in Appendix 2).

The review is based on input received from 125 individuals and organizations, as well as the examination of data provided by the Yukon government. Between May 1st and June 21st, a total of 21 engagement sessions (focus groups and interviews) were held to obtain direct input from 55 individuals representing Yukon government staff, Yukon businesses (both First Nation and non-First Nation), and Yukon First Nations governments. Survey responses were received from 14 Yukon First Nation (YFN) businesses and 48 Yukon non-First Nation businesses, along with a written submission providing input on behalf of eight First Nation governments. The review does include quantitative data that helps identify some aspects of how BVR measures have been applied to date, however it is important to note that numbers alone only provide a limited part of the picture. For example, assessment of such things as whether YFN and non-YFN business representatives indicate the BVR measures are contributing to increased or decreased partnership and contracting opportunities are also important.

Although BVR measures are just one of the tools established in the Yukon First Nations Procurement Policy, they have attracted more attention than other provisions – most likely because they are applied to a greater number of procurements and involve a wider number of participants both within the supplier community and the Yukon government. While the basic operating premise of BVR measures (i.e., that they provide a reduction in the bid prices only for the purposes of evaluating bids to credit the extent that Yukon First Nations businesses and workers will participate in a project) is relatively easy to communicate, challenges can arise when applying that straightforward concept across a wide variety of procurement and contracting practices. Implementation of BVR measures is a work in progress: the contractor community is continuing to develop and test new partnerships, new businesses are emerging, and Yukon government staff are adjusting procurement and contracting practices to effectively incorporate BVR measures. A number of government staff that participated in the review process noted that they were not as well prepared as they would have liked for the initial launch of the BVR measures, and while some felt that implementation was well in hand now, others identified that they were still working to resolve aspects of managing the related procurement or contract management impacts.

The report, therefore, offers suggestions as considerations that will require further discussion among those with policy oversight responsibilities and procurement practitioners to ensure changes do not cause more problems than they solve, and to consider opportunities to customize changes for different types of contracts and procurement approaches.

A majority of participants voiced their support for the objectives of the policy and demonstrated an active interest in wanting to see it administered effectively. Many participants offered

suggestions about how to address issues that are emerging as implementation continues to unfold. The review contains four considerations that aim to help address the implementation challenges identified. While action is already underway to address several of these topics, they are still captured here to help document the linkages with issues raised.

The report also offers four key findings based on the engagement and data reviewed:

Key Finding 1: the Bid Value Reduction measures are increasing the participation of YFN businesses in government contracting and are increasing the number of contracts awarded to YFN businesses.

Survey responses as well as the engagement sessions provide evidence that First Nations businesses are participating in a greater number of bids, both as prime contractors and subcontractors, and the quantitative data indicates that YFN businesses are winning contracts they might not otherwise have obtained as a result of the application of BVR measures. The quantitative data also suggests that BVR measures are having a positive impact on YFN business participation. While the 2023 annual report of the Monitoring and Review Committee indicates that 6.2% of all contracts (measured by number) were awarded to YFN businesses; the data provided for the BVR review indicates that YFN businesses won a greater proportion of contracts that had BVR measures applied. Specifically, YFN businesses won 18% of contracts arising from tenders that had BVR measures applied, and 53% of the contracts arising from tenders that were re-ranked as a result of BVR measures.

Key Finding 2: The perception that there is behaviour related to “gaming” or using loopholes in BVR administration is a significant concern.

Although there were few specific examples of potentially problematic procurements discussed, the concerns raised can create risks to the credibility of the policy and warrant a clear indication from the Yukon government that action will be taken. Some actions are already underway, for example to revise the definition of First Nation business “ownership”, and additional effort will be required to ensure the YFNPP is understood to be implemented fairly.

Key Finding 3: The data reviewed does not indicate evidence of negative unintended consequences that were considered potential risks when BVRs were initially implemented, such as unanticipated cost increases, concentrations of market share, or widespread disruptions to procurement processes.

However, additional data capture and analysis is required to effectively monitor displacement and concentration of market shares among suppliers. It is clear there have been both positive and negative impacts to some Yukon businesses, with contracts being awarded to new

competitors and new partnerships being formed. These impacts are the kinds of change the policy anticipated and sought, and cannot be considered “unintended consequences”. There have also been, however, impacts that were not fully anticipated, including:

- the training required and workload added for YG staff to incorporate BVR measures into procurement and contract management processes
- the complexity of information requirements for bidders and contract holders
- concerns related to the definition of YFN-owned businesses, and
- the scope of concerns around gaming behaviour.

Additional data, analysis, resourcing and coordination across YG will be required to address these impacts.

Key Finding 4: Socio-economic and cultural change are long term endeavours, requiring ongoing relationship building, education and communication.

The review identified a number of areas in which additional efforts in communication and education are required. Progress towards the YFNPP objectives depends significantly on cultivating collaboration among the partners involved, which in turn requires acknowledgement by all parties of the issues raised.

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Abbreviations

BVR	Bid Value Reduction	SOA	Standing Offer Agreement
GAM	General Administration Manual	YFN	Yukon First Nation
HPW	Highways and Public Works (Government of Yukon Department)	YFNPP	Yukon First Nations Procurement Policy
MRC	Monitoring and Review Committee	YG	Yukon Government
RFP	Request for Proposals		

Introduction

Purpose of the Report

The Yukon government, in partnership with Yukon First Nations, has developed and launched the Yukon First Nations Procurement Policy (YFNPP), which includes measures intended to support the businesses, workers and economies of Yukon First Nations. The policy was developed through a government-to-government collaborative process, and supports the spirit and intent of the economic development provisions in the Final Agreements (Chapter 22) and is considered a tangible action by the Government of Yukon, Yukon First Nations and Industry to advance reconciliation.

One set of measures introduced in the YFNPP, Bid Value Reductions (BVRs), is a mechanism to adjust bid prices (for evaluation purposes) depending on certain levels Yukon First Nations (YFN) participation in the procurement, in order to increase the likelihood that bids containing YFN participation are successful in winning contracts. The purpose of this report is to address the requirement established in the policy for a review of the impact of the BVR participation measures to occur two years after the effective date of the policy. Specifically, section 11 (7.1)(c) of the YFNPP establishes that:

Two years after the effective date of the Yukon First Nations Procurement Policy, Government will review the bid value reduction measures, including maximum bid value reductions, to consider their impact and make policy amendments to address any unintended consequences.

- (i) The review will also consider the impact of the bid value reduction measures on the number of Yukon First Nations Businesses qualifying for SOAs along with the number of Yukon First Nations Businesses that are being called-up through SOAs.*
- (ii) As part of the review undertaken by Government, the Monitor and Review Committee will assess the effectiveness of bid value reduction measures. Government will consider the Monitor and Review Committee's assessment and the Committee's recommendations, if any, prior to amending section 11(7) of the Yukon First Nations Procurement Policy.*

This review is not an evaluation of the Yukon First Nations Procurement Policy (YFNPP), as the policy contains much more than the BVR measures. The review also does not revisit the rationale for the YFNPP or repeat the already well documented findings concerning the additional barriers faced by Indigenous businesses and workers interested in participating in government procurement in Canada¹. The review documents and summarizes data identifying the impacts arising from the establishment and application of BVR measures, looking in particular for any unintended consequences. It is not a full formative or summative evaluation of the BVR measures, as that would require assessing all implementation measures as well as the associated outcomes (which could include, for example, the impact of contract awards on the success of YFN businesses, the extent and quality of partnerships established, and the benefits derived by YFN workers). A Performance Measurement Framework that will support a more robust evaluation is currently under development (see YFNPP s.11(11)) and the YFNPP requires an evaluation of the policy after five years (s.11(12)d)vi).

The review is based on both quantitative data describing the uptake and application of BVRs, and qualitative data describing the lived experience of those whose work has been impacted as a result of this new policy provision. There are several data challenges or gaps, which leave some questions unanswered in this review. Those gaps are identified in the relevant sections of the report. The assessment is conducted in the context of the objectives of GAM 2.6, including the objectives and principles established as part of the Yukon First Nations Procurement Policy (i.e., GAM 2.6 ss. 11(1) and 11(2), provided in Appendix 2).

Engagement and Data Collection

As the introduction of BVRs impacted both the “buyer” and “supplier” sides of procurement, the review considers how processes and outcomes have impacted both:

- a) government staff participating in the design/conduct of procurement and the management of contracting outcomes, and
- b) businesses that are deciding whether and how to bid on contracting opportunities, participate in subcontracting activities, and manage the resulting work.

Between May 1st and June 21st, a total of 21 engagement sessions (focus groups and interviews) were held to obtain direct input from 55 individuals representing Yukon government staff, Yukon businesses (both First Nation and non-First Nation), and Yukon First Nations governments. Survey responses were received from 14 Yukon First Nation (YFN) businesses and 48 Yukon non-First Nation businesses (a copy of the survey is included in Appendix 3)

¹ See, for example, [Standing Committee on Government Operations and Estimates \(2018\)](#); and [Canadian Council for Aboriginal Business – Procurement Summary Paper \(2021\)](#)

along with a written submission providing input on behalf of eight First Nation governments. The review is therefore based on the input received from 125 individuals and organizations².

To encourage participants to share details of experiences that might include naming people and businesses involved in specific procurements, all engagement was conducted directly by the consultant and the survey enabled respondents to remain anonymous. The specific examples offered by participants have been helpful to illustrate how the concerns arise in the course of the procurement process, however no information identifying specific procurements, companies or individuals will be presented in the report. Although the survey and in-person engagements focused on gathering qualitative data, where possible the report includes an indication of the frequency of the main themes provided in responses. Quantitative data reflecting the application of BVR measures between October 2021 and February 2023 was provided by Procurement Support Centre staff.

Report Organization

The Report is divided into three main sections. The first provides background information concerning how BVR measures are designed and implemented in the context of the Yukon First Nation Procurement Policy. The second section summarizes the data available from the Yukon government that describes the use of BVR measures to date, and provides some analysis of the information to address the purpose of the review. The third section summarizes the input received through the engagement carried out for the review. Topics are grouped to reflect the part of the procurement process that they primarily impact (i.e. procurement planning & bidding; evaluating & awarding contracts; and contract implementation, monitoring & compliance), and are further divided to report on “findings”, i.e., the information obtained from participants about their experiences working with BVR measures, and “discussion” of that information, which includes analysis and any suggestions for consideration identified. There are four main topics for consideration, relating to: 1) data and resource requirements; 2) training and communications; 3) additional analysis required, and 4) support for contract managers. Suggested considerations identified in each section are linked to one of these main headings (a consolidated list of considerations is provided in Appendix 1), and in several cases, the same suggestion is applicable in more than one section.

Overview of the Bid Value Reduction (BVR) Measures Contained in the Yukon First Nation Procurement Policy (YFNPP)

A Bid Value Reduction (BVR) is a mechanism used to decrease the dollar value (price) that is submitted by an eligible bidder for the purposes of evaluating their bid. In the YFNPP, there are

² there may be some overlap between these types of input, e.g., one individual may have participated in a focus group and completed a survey

three types of BVR, each intended to encourage greater participation of Yukon First Nation businesses and workers in Yukon government contracting. An overview of the BVR measures contained in the YNFPP is provided here, and each of these measures is explored more fully in later sections of the report.

The three types of BVR measures are:

- 1) Ownership – provides a 5% – 15% reduction to the bid price depending on the extent of First Nations ownership of the participating company(ies), that applies only to the portion of the work being carried out by the First Nations company(ies). If the bid includes Yukon First Nation labour (item 3 below), the “ownership” BVR is not applied to that value;
- 2) Location – provides a 5% reduction to the bid price for the portion of the work carried out by a Yukon First Nation business if that business has its primary operations located outside of Whitehorse and if the work being conducted is located in the traditional territory in which the Yukon First Nations business is located; and
- 3) Labour – provides a 15% reduction to the dollar value of any labour that will be carried out by newly hired and existing Yukon First Nations employees.

BVR measures are applied to all tenders, whether they are public or invitational, and include supply arrangements as well as individual contracts. BVRs are one tool among several introduced in the YFNPP, each with different strengths and limitations in their ability to contribute to the YFNPP objectives.

BVRs can motivate new partnerships as well as new entrants to the government procurement market, and can encourage employment of Yukon First Nations workers. They signal that the Yukon government believes there is value obtained through increasing the participation of YFN workers and businesses that outweighs the price differences that the application of the BVRs may enable. They also establish the government’s commitment to the use of procurement to support reconciliation and economic development for Yukon First Nations.

Working with the Bid Value Reduction Measures

This section provides further description and several examples of how the BVR measures are defined and applied.

The “Ownership” Bid Value Reduction Measure

The “ownership” BVR measure can support increased participation of Yukon First Nation owned businesses in Yukon government contracting by:

- Acknowledging the additional barriers (and related costs) that YFN businesses face in establishing and growing business enterprises; and

- Increasing the incentive for partnerships between Yukon First Nations businesses and non-Indigenous members of the Yukon business community

The Ownership BVR provides a 5% – 15% reduction to the bid price depending on the extent of First Nations ownership of the participating company(ies). Specifically, a Yukon First Nations business that is:

- At least 50% Yukon First Nation-owned will receive a 5% reduction to its price
- At least 75% Yukon First Nation owned will receive 10% reduction to its price
- 100% Yukon First Nation owned will receive a 15% reduction to its price.

The reduction only applies to the dollar value of the work in the bid that is being conducted by a Yukon First Nation owned business. A non-Yukon First Nations Business is also eligible for this bid value reduction on the dollar value of their bid that will be subcontracted to a Yukon First Nation Business (following the same percentages for ownership structure as above). Similarly, if a YFN business is subcontracting work out to a non-Yukon First Nation business, bid value reductions will not apply to the portion that has been subcontracted out. If the bid includes YFN labour (see below), the “ownership” BVR is not applied to that value.

In order to be eligible for ownership BVRs, a company must be registered on the Yukon First Nation’s Business Registry, which is managed by the Yukon First Nations Chamber of Commerce. An example of how the ownership BVR is applied is presented in scenario 1 below, which depicts a bid opportunity that will be evaluated only on the basis of price (i.e., the lowest priced bid wins the contract). The scenario assumes that only the ownership BVR is applied.

Scenario 1: Application of Ownership BVR (only) to a Price Driven Contract

Table 1 provides an example in which three companies are bidding on a project that will be evaluated solely on the basis of the prices they submit for doing the work (often referred to as a “price-driven” contract).

Company A: has 0% ownership by Yukon First Nations and bids \$105,000.

Company B: has 100% Yukon First Nations ownership and bids \$120,000.

Company C: has 75% Yukon First Nations ownership, and will complete 70% of the work itself, and will subcontract the remaining 30% of the work to a company with 51% Yukon First Nations ownership. Company C submits a total bid of \$115,000.

Company D: has 0% ownership by Yukon First Nations and will complete 60% of the work itself, and will subcontract the remaining 40% of the work to a company with 75% Yukon First Nations ownership. Company D submits a total bid of \$110,000.

Table 1: Application of the ownership BVR (only) to a price-driven contract

	Bid Price	Ownership Reduction for Prime Contractor	Ownership reduction for sub-contractor	Bid Price for Evaluation
Company A	\$105,000	N/A	N/A	\$105,000
Company B	\$120,000	$(0.15 \times \$120,000) = \$18,000$	N/A	\$102,000
Company C	\$115,000	$(0.10 \times \$80,500) = \$8,050$	$(0.05 \times \$34,500) = \$1,725$	\$105,225
Company D	\$110,000	N/A	$(0.10 \times \$44,000) = \$4,400$	\$105,600

In this example, Company B would win the contract as a result of having the lowest price for evaluation. The contract awarded to Company B would be for the value of their bid price (\$120,000).

The “Location” Bid Value Reduction Measure

As noted above, there are three conditions that need to be met in order for the 5% business location reduction to apply.

- The first is that the business needs to be registered on the Yukon First Nations Business Registry
- The second is that the primary operations of the Yukon First Nations business are located in a Yukon community other than Whitehorse.
- The third is that the contract activities are taking place in the traditional territory where the Yukon First Nations Business is located.

Scenario 2: Ownership and Location BVRs applied to a price-driven contract

This scenario takes the same information as presented in Scenario 1 and adds in an example of how the location BVR might be included. The contracted work will occur within the traditional territory of one of the Yukon First Nations.

Company A: cannot receive the Location BVR as there is no YFN-owned business participating in the bid.

Company B: is based in Whitehorse, and therefore is not eligible for the location BVR

Company C: is based within the traditional territory where the work will take place, although their sub-contractor is not. This results in the location BVR being applied to the 70% of the work the prime contractor will carry out (see Scenario 1).

Company D: is not a YFN business, but their subcontractor is, and the work is taking place within the traditional territory of the subcontractor, making their portion of the contract eligible for the location BVR.

Table 2: Ownership and Location BVRs applied to a price-driven contract occurring entirely within a YFN Traditional Territory

	Bid Price	Ownership Reduction for Prime Contractor	Ownership reduction for sub-contractor	Location BVR	Bid Price for Evaluation
Company A	\$105,000	N/A	N/A	N/A	\$105,000
Company B	\$120,000	$(0.15 \times \$120,000) = \$18,000$	N/A	N/A	\$102,000
Company C	\$115,000	$(0.10 \times \$80,500) = \$8,050$	$(0.05 \times \$34,500) = \$1,725$	$(0.05 \times \$80,500) = \$4,025$	\$101,200
Company D	\$110,000	N/A	$(0.10 \times \$44,000) = \$4,400$	$(0.05 \times \$44,000) = \$2,200$	\$103,400

In this example, Company C would win the contract as a result of having the lowest price for evaluation. The contract awarded to Company C would be for the value of their bid price (\$115,000).

The “Labour” Bid Value Reduction Measure

The Labour BVR is a reduction of 15% applied to the proportion of the contract that will be carried out by Yukon First Nations workers. The portion of a bid reflecting the cost of the YFN workers is not eligible to receive the ownership or location BVRs. Scenario 3 below adjusts the information used in the first two Scenarios to include some examples of bids that contain amounts eligible for the labour BVR.

Scenario 3: Ownership, Location, and Labour BVRs applied to a price-driven contract

As in Scenario 2, the contracted work will take place entirely within the traditional Territory of a YFN.

Company A: has 0% YFN ownership and bids \$100,000, which includes \$20,000 for YFN workers

Company B: is 100% YFN owned, is located in Whitehorse and bids \$120,000, which includes \$20,000 for YFN workers. The portion of their bid eligible for the ownership BVR is therefore reduced by \$20,000, and the Labour BVR is applied to that amount.

Company C: has 75% YFN ownership and will complete 70% of the work itself – within the Traditional Territory where the company’s primary operations are located. Company C will subcontract the remaining 30% of the work to a company with 51% Yukon First Nations ownership. Company C submits a total bid of \$115,000, of which \$20,000 is for YFN workers to be hired by the prime contractor. The portion of their bid eligible for the ownership and location BVRs is reduced from \$80,500 to \$60,500.

Company D: is not a YFN-owned business and includes \$20,000 for YFN workers within their portion of the bid.

Table 3: Ownership, Location and Labour BVRs applied to a price-driven contract occurring entirely within a YFN Traditional Territory

	Bid Price	Ownership Reduction for Prime Contractor	Ownership reduction for sub-contractor	Location BVR	Labour BVR	Bid Price for Evaluation
Company A	\$105,000	N/A	N/A		(0.15 x 20,000) = \$3,000	\$102,000
Company B	\$120,000	(0.15 x \$100,000) = \$15,000	N/A		(0.15 x \$20,000) = \$3,000	\$102,000
Company C	\$115,000	(0.10 x \$60,500) = \$6,050	(0.05 x \$34,500) = \$1,725	(0.05 x \$60,500) = \$3,025	(0.15 x \$20,000) = \$3,000	\$102,925
Company D	\$110,000	N/A	(0.10 x \$44,000) = \$4,400	(0.05 x \$44,000) = \$2,200	(0.15 x \$20,000) = \$3,000	\$100,400

In this example, Company D would win the contract as a result of having the lowest price for evaluation. The contract awarded to Company D would be for the value of their bid price (\$110,000).

Note: A company that is eligible for the full ownership reduction has no BVR-related incentive to apply for the labour BVR (e.g. Company B in this example), and Company C's bid price for evaluation is higher in this scenario than if they hadn't included YFN labour.

Data Describing the Application of BVR Measures

The Yukon government has started collecting data that describes the participation of YFN businesses and labour in government contracting. A performance measurement framework is under development and questions concerning what data to collect, as well as how to collect, manage and use it, are still under discussion. Part of the role of this review is to consider the data that is available now, and identify whether there are gaps in information that might be useful to address to support future decision making related to the YFNPP. A high-level overview of the key data findings is provided in the box below.

Quick Facts

(all data from between October 4, 2021 and February 28, 2023)

- Invitational and Public Tenders closed: 852
- Tenders with BVR applied to one or more bids: 174 (20%)
- Proportion of contracts awarded to YFN businesses from tenders with BVR measures applied: 18%
- Proportion of tenders with BVR measures applied by category:
goods = 20%; services = 50%; construction = 30%
- Proportion of total tenders re-ranked as a result of BVR measures:
2.2%

Data Overview

Proportion of Tenders Impacted

The data indicates that between October 2021 and February 2023 a total of 852 tenders were issued that could have BVR measures applied. These tenders include both public and invitational opportunities as well as procurement conducted by the Yukon Housing Corporation. Bidders included BVR components in 174 (or just over 20%) of those 852 tenders. Approximately 50% of the tenders with BVR measures applied were for services, 20% were for goods, and 30% for construction. Approximately 85% of the tenders with BVR measures applied were price-driven, with the remaining 15% being value-driven³. Yukon First Nation businesses were awarded approximately 18% of the number of contracts awarded from tenders that had BVR measures applied. Data describing subcontracting and labour participation is not currently available.

The “ownership” BVR was applied to just under 13% of the total number of tenders (i.e., 108 of 852), while the “location” BVR was applied to just under 3% of tenders and the “labour” BVR was applied to approximately 15% of tenders. The ownership BVR measure was more commonly applied to bids for goods, while the labour and location BVRs were more common in bids for services and construction (note the location BVR does not apply to projects occurring within Whitehorse).

³ Note this number refers to only those tenders for which one or more bids had a BVR applied (i.e., the 174 tenders under review for this report); the proportion of price driven vs. value driven will be different for the total number of tenders (852)

Application of BVRs to Supply Arrangements

Tables 4 and 5 below describe the participation of YFN businesses in Standing Offer Agreements and 3rd party rental agreements.

Table 4: Participation of YFN Businesses in Supply Arrangements

Supply Arrangement	Total # of Agreements	# of Agreements Including YFN Businesses	# of YFN Businesses Participating
Standing Offers - Goods	46	5	6
Standing Offers - Services	23	0	0
3 rd party rental	1	64	12

Table 5: YFN Business Call-Ups from Supply Arrangements

Supply Arrangement	# YFN Businesses receiving call-ups	Total # call-ups for YFN businesses	Value of all call-ups for YFN businesses
Standing Offers - Goods	2	4	\$169,050
Standing Offers - Services	0	0	0
3 rd party rental	4	12	\$242,044

While several YFN businesses have successfully qualified to be included in some supply arrangements and a sub-set of those businesses are receiving contracts, the data available doesn't provide context concerning whether YFN businesses applying for supply arrangements or obtaining contracts have had success rates comparable to non-YFN businesses. We don't know, for example, whether no YFN businesses applied to participate in SOAs for services, or whether there were unsuccessful applicants. Because the actions to help remedy those two circumstances are different, it would be useful to track that data in future. Similarly, we don't know whether YFN businesses are receiving a comparable number and value of contracts to non-YFN businesses, although there can be many factors that influence that data (e.g., whether locations requiring goods or services are served by businesses listed).

BVRs Leading to Re-ranking of Tenders

In 11% of the tenders in which BVRs were applied (i.e., 19 of the 174 tenders), their application resulted in a change in the ranking of the bids. Re-ranking occurred in six tenders for goods, nine tenders for services, and four tenders for construction. In three cases where re-ranking occurred, the contract was not awarded to any bidder (one case involving a goods tender, and

two cases involving services)⁴. Overall, the application of BVR measures to tenders issued during the period resulted in 2.2% of tenders being re-ranked.

Although the number of times that re-ranking occurs attracts interest when reporting on the BVR measures, it is important to note that in tenders where no re-ranking occurred, the winning bid may still include BVR commitments. **The number of times bids were re-ranked does not, therefore, indicate the total number of tenders in which BVR measures led to increased YFN participation.** The number of times bids were re-ranked indicates the *minimum* number of tenders in which BVR measures led to increased YFN participation. The maximum number of tenders in which BVR measures may have led to increased YFN participation is 174, or 20% of the total number of tenders issued during this period.

The maximum impact is not assessed in this review as it requires searching other databases (the Contract Registry and/or Bids and Tenders website) to identify the successful bidder and matching it to the data provided to determine whether that business included BVR measures in their bid. This analysis was carried out for the tenders that were re-ranked (n=19), but not the remaining 155 tenders. This review, therefore, cannot describe whether BVR measures were included in winning bids for tenders not affected by re-ranking, impacted the cost of those bids or the extent of increased YFN participation that arose from BVR measures

Analysis of Re-ranked Contracts

An estimate of the total value of the contracts arising from procurements where a re-ranking occurred is \$5.53M. Of the 19 tenders for which the application of the BVR measures resulted in a re-ranking of the bids, Yukon First Nation businesses won 10, all of which were awarded. The value of the contracts awarded to YFN businesses as a result of the re-ranked tenders is approximately \$1,738,000. The YG data provided indicates that the total value of contracts awarded to Yukon First Nation businesses during the period is \$108.7 Million⁵, meaning the contracts arising from re-ranking accounted for approximately 1.6% of the total value of contracts won by Yukon First Nation businesses. In the majority of these 10 cases, the outcomes appear to identify contracts that would not have been awarded to YFN businesses without the application of the BVR measures, although in one case the competing bidders were all also Yukon First Nations companies.

The tenders that were re-ranked as the result of BVRs and were won by non-YFN businesses will also have provided value to Yukon First Nation businesses and workers. However, it isn't

⁴ The reasons that contracts were not awarded were not included in the data. For context, a similar proportion of contracts were not awarded among contracts that were not re-ranked as a result of BVR measures. Although it is possible these decisions were related to the cost of the project exceeding available budget, which may have been influenced by the application of BVR measures, it isn't possible to draw those conclusions from this data, and there are other reasons which may have led to the cancellation of the work.

⁵ Note this is a significant increase from the \$48M identified in the MRC's 2023 annual report, and may need to be confirmed.

possible to identify from the data provided the dollar value of the work that flowed to YFN businesses as subcontractors nor the YFN labour expenditures that were committed to as part of those bids. The Yukon government data does indicate that the total value of YFN labour commitments included in all contracts during this period (i.e., not just those to which a labour BVR was applied) is approximately \$11.8M.

During the engagement, several participants commented on the figure of 2.2% of tenders having been re-ranked, with some suggesting that this figure represents too small of an impact and that the BVR measures are not making the desired difference. Others suggested the impacts were too great. It is worth re-stating that the number of procurements to which BVR measures were applied was 174 (representing approximately 20% of the tenders issued during the period). The data doesn't identify whether the winning bids contained BVR measures, so it isn't possible to assess the total number of tenders that generated increased YFN participation because of the BVR measures. However, the number of contracts impacted is most certainly higher than 2.2%, and no more than 20%.

Value of BVR Measures Applied

The data required to assess the cost of BVR measures applied can be compiled manually (at this point) through the bids and tenders system and the contract registry for publicly tendered contracts, but is more challenging to obtain for invitational tenders and supply arrangements. The value of the BVR measures applied does not represent their cost, as the BVR value may have been significantly greater than the price difference between the bids. For example, a bid containing \$5,000 of YFN labour could have had a bid price \$100 higher than the lowest bidder. The data would identify the value of the BVR measure as \$5,000, but the "cost" of the measure would be \$100.

Data enabling the assessment of the "cost" of BVR measures was available to the consultant for eight of the 19 re-ranked procurements. The total value of these eight contracts is approximately \$2,182,000. The data indicates that the cost increase incurred by YG as a result of not awarding these contracts to the lowest bidder was \$153,489, and the value of the BVR measures included was \$345,694. The additional cost (\$153,489) represents an average increase of 7% in the price of the contracts awarded, while the value included in the bids is more than double that figure.

Assessment of Unintended Consequences

The review is intended to look for evidence of unintended consequences, in particular whether there has been:

- Significant impacts on the Yukon government's operating budget
- Market domination by one or more businesses or partnerships in a sector, or

- Evidence of “gaming” the BVR measures or use of loopholes that undermine their objectives

With the cost of the BVR measures arising from re-ranked procurements October 2021 and February 2023 estimated at 7% of their contract value, this represents 0.06% of the \$630.8M contract value during that period, the measurable cost impact is arguably not significant⁶. The BVR reductions available range between 5%-20% of a bid price, and the average reduction applied to the bids that underwent re-ranking is 7%, which is towards the lower end of the potential rate of reductions that could be applied.

The data provided does not enable an assessment of how frequently any one firm or partnership has won a contract that included BVR measures (this requires information about the name of the winning bidder for each contract awarded when BVR measures were applied). Several participants suggested that a limitation on the number of times a business could win a contract by virtue of re-ranking could be imposed to reduce the risk of market domination by one firm. This idea could be explored further during the five –year review of the YFNPP, if data collection can be put in place now to enable that assessment.

While the quantitative data reviewed for this report does not address whether “gaming” is taking place, the survey indicated it is a significant concern within the business community (both YFN and non-YFN businesses). When asked whether BVR measures had generated any unintended consequences, the largest number of responses in the survey identified concerns related to ‘gaming’ and shell companies. More specifically, 22% of responses identified risks of fraudulent behaviour and perceived loopholes in the policy as unintended impacts, while 16% identified greater complexity in bid preparation and contract management, including a lack of clarity concerning contract holdbacks and enforcement, and 2% noted challenges with the Yukon First Nations Business Registry⁷. These topics are discussed further in the following sections of the report.

Data Challenges and Caveats

In addition to the data challenges noted above, it is worth noting that value-driven tenders would also have 20% of the total points assigned to the hiring of Yukon First Nations labour, making it possible for the combination of BVR and Labour participation scores to impact the award. As noted above, approximately 15% of the procurements with BVR measures applied were value driven. Evaluation of the labour level measure is outside of the scope of this review, and it is only noted here due to its potential impact in connection to BVR measures.

⁶ This estimate is derived by applying the 7% average cost of BVR measures to the value of all contracts for which re-ranking occurred (\$5.53M), which equals \$387,100, which is 0.06% of \$630.8M.

⁷ Several other topics were mentioned by survey respondents that arguably do not represent “unintended consequences”. These include: concerns about increased prices (18%), greater challenges for non-YFN businesses to be competitive (12%); and challenges working with new or less experienced subcontractors (2%).

The data provided does not include information about the application of Labour participation measures, or who the successful bidder was, their bid price, the price of the lowest bidder, or the awarded contract value. In some cases this data can be manually obtained through a search of the Bids and Tenders and Contract Registry sites, however the time available restricted the opportunity to undertake this search beyond exploring the data for the re-ranked procurements. Finally, the BVR measures are applied to the number of Yukon First Nation workers the bidder employs and proposes to hire, and the amount of work proposed to be completed by YFN-owned businesses. It is possible that the actual amount of labour and work completed by YFN businesses could be more or less than what was proposed.

Although it is useful to consider the quantitative data identifying some aspects of how BVR measures have been applied to date, it is important to not oversimplify any analysis in a traditional cost/benefit type of methodology. Such approaches amplify the easily quantifiable data often at the expense of the fact the outcomes sought are not easily counted. Similarly, with respect to this review, the numbers alone only provide a limited part of the story.

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- a) finalize and implement a Performance Measurement Framework that includes the data collection plans and resources necessary to support the evaluation of BVR measures as part of the five-year review of the YFNPP. Data collection might include:
 - The value of BVR measures contained in winning bids
 - Whether re-ranking impacted who won the contract
 - Whether the combination of BVR measures and other YFN participation measures in value-drive procurement changed the outcome

Experiences to Date with BVR Implementation

This section summarizes the main findings obtained from the engagement sessions and the on-line survey. Information is organized under three main headings (reflecting whether the impacts described relate to the planning and bidding phase of a procurement; the bid evaluation and award phase, or the contract monitoring and award phase) with subheadings to list the main topics raised. Some topics cross these boundaries and are referred to in multiple sections.

“Findings” that describe the key input obtained during the engagement are provided in each section. A brief discussion follows to provide analysis of the input provided and, where appropriate, suggestions for potential changes in practice are proposed.

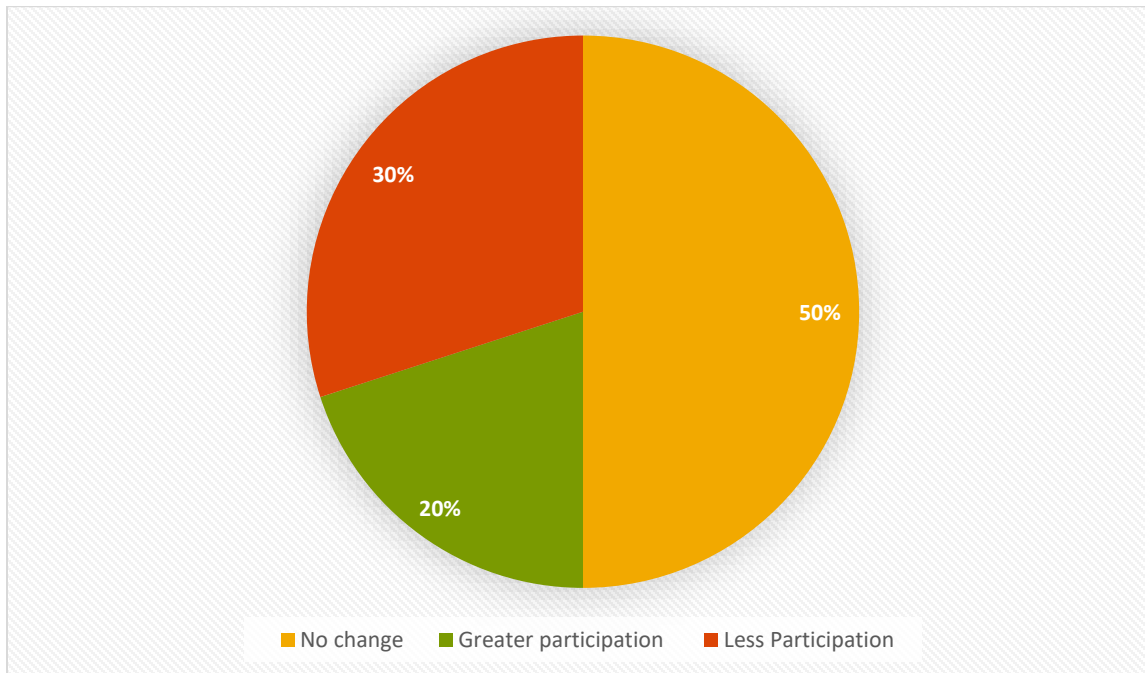
A. Impacts Related to Procurement Planning and Bidding

1. Changes in Participation of First Nations' Businesses and Workers

Findings

It is clear from both the survey and the engagement sessions that there have been changes in the frequency and composition of First Nations' participation in Yukon government procurement since the introduction of the BVR measures. Of the First Nations businesses that participated in the survey, 50% indicated that their participation in procurement opportunities had increased since BVR measures were established, while 30% said there had been no change and 20% indicated they had participated in fewer tenders (with one company noting there had been fewer opportunities to bid) (see Figure 1).

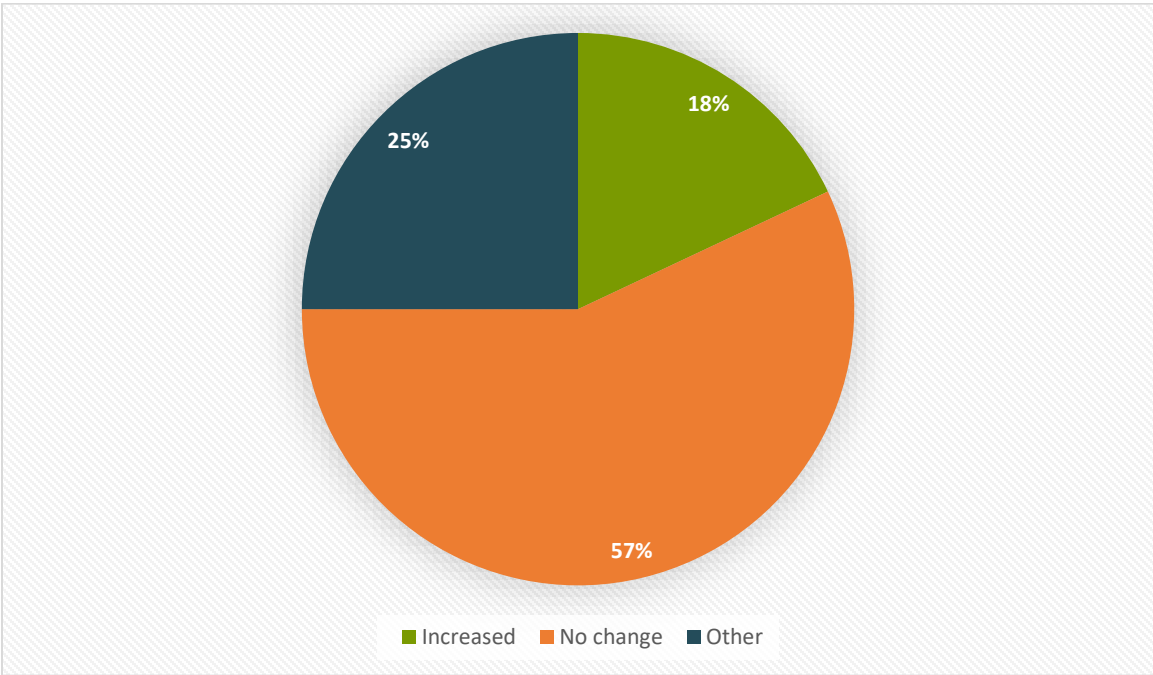
Figure 1: Survey responses identifying change in participation in Yukon government procurement since the introduction of BVR measures



Several Yukon First Nation businesses commented that the BVR measures were an important incentive in their decision to submit a bid. One YFN business noted that after becoming a successful bidder as a result of the application of BVR measures, the business experience they gained enabled them to win a subsequent contract as the lowest bidder (i.e., without the application of any BVR discounts). Input from YG staff also indicated an increase in the number of YFN bidders and contractors, at least in some business areas.

Both the interview responses and survey data also indicate that there have been changes in the number and structure of partnerships being pursued between businesses as a result of the YFNPP. Approximately 18% of survey respondents indicated that the policy has led to increased partnership activity between First Nations and non-First Nations businesses, while 57% indicated the policy had no impact on their approach to partnerships (with some commenting that they already had established relationships with Yukon First Nation businesses) (see Figure 2). The responses included in the “other” category (25%) were comments on whether partnership opportunities were available, or whether respondents agreed with the YFNPP’s objectives.

Figure 2: Survey responses indicating changes in partnership activity as a result of BVR measures

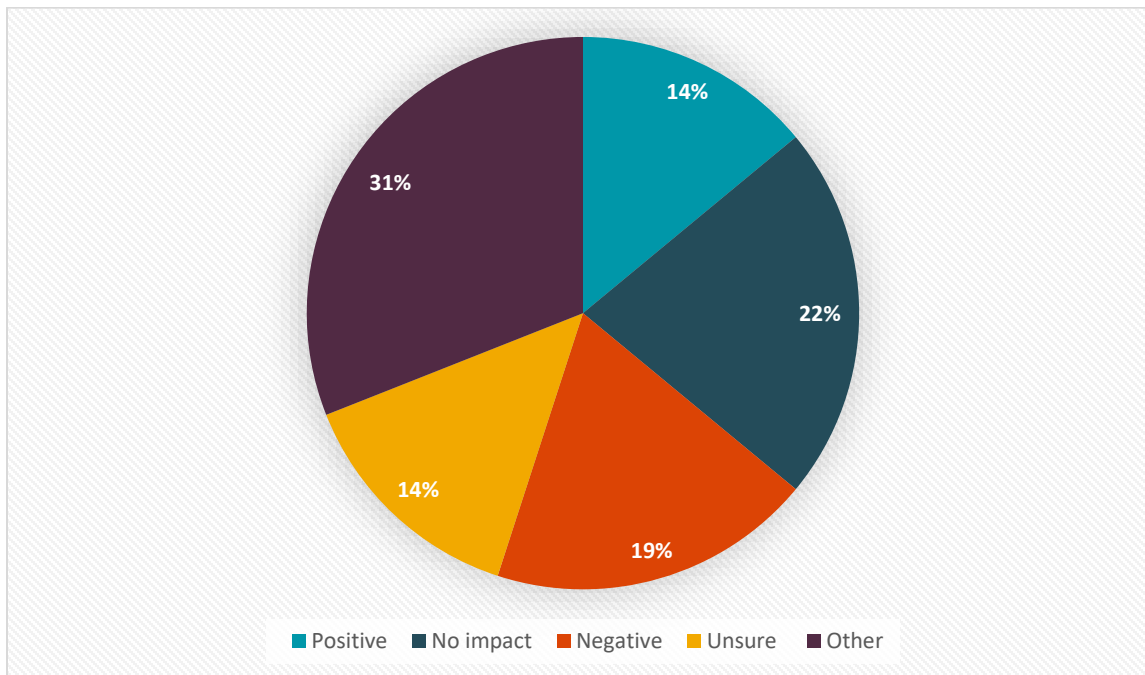


Individual businesses and business organizations noted that the BVR measures had increased the incentive for YFN and non-YFN companies to work together, and provided examples where YFN businesses and partnerships are bidding on projects they would not have in the past. Both YFN and non-YFN businesses participating in partnerships also commented that they felt the BVR measures increased their likelihood of success in obtaining government contracts. First Nation governments noted a substantial increase in the number of contacts being made by companies seeking advice on potential partnerships and in the quality of input being sought during the design of subcontracting opportunities and bid preparation. Several participants

identified examples where the policy has created opportunities where long-standing relationships between prime and sub-contractors had previously limited interest in new arrangements.

Among all of the survey respondents that had submitted bids since the introduction of the BVR measures, 14% felt the BVR measures had a positive impact on the outcome of the process, while 22% felt they had no impact on the outcome, 19% felt the impact of BVR was negative and 14% indicated they were not sure what role BVR measures may have played (see Figure 3).

Figure 3: Survey responses indicating perceived impact of BVR measures on procurement outcomes



Many participants commented that they believe Yukon businesses are still adapting to the policy, and that they expect exploratory talks and newly formed partnerships to continue to evolve and be tested. Several participants noted that they had become more wary of participating in partnerships because either:

- a) as a YFN business, there are concerns that the work would not materialize as it was proposed in the bid, or
- b) as a prime contractor, there is a risk of paying a financial penalty if a proposed YFN subcontractor was unable to complete the work.

These concerns are further discussed in sections B1, C1, and C2 below.

Several participants questioned whether larger and well-established firms needed the incentive provided by BVR measures to establish new partnerships. In some cases this question was directed specifically towards YFN development corporations, while in others it was raised in the context of the Yukon construction sector. Others suggested that a cap should be established that would limit the amount of a BVR that could be applied to a bid. Some participants, including YFN governments, expressed an interest in seeing additional effort made to “unbundle” large contracts in order to both mitigate large BVR impacts and to support “right sizing” contracting opportunities to match the capabilities of local and Yukon First Nations businesses.

Discussion

Given that one of the objectives of the BVR measures is to support partnership creation (see YFNPP section 11(2)(f)), it seems reasonable to provide the incentive to businesses that can support the objective irrespective of their size or tenure. Some of the partnerships that have emerged since the introduction of the BVR measures involve larger businesses, which suggests the BVR measures were an incentive in forming those relationships as otherwise they would have arisen before. It is possible that some of the questioning about whether larger firms should have access to BVR measures is more linked to:

- the size of the contracts that larger businesses are able to bid on, potentially leading to large values of BVR discounts on bid prices, or
- a lack of confidence that the YFN business partner is receiving an appropriate portion of the contracting benefit.

The data available does not currently indicate that a significant number of high-value contract awards have been impacted by BVR measures (only one contract valued over \$1M was impacted by a re-ranking of bids). Other jurisdictions (e.g. the governments of the Northwest Territories and Nunavut) do impose caps on the amount of a price discount available, and regularly engage with suppliers about whether these caps create disincentives for larger opportunities. At this relatively early stage in the life of the YFNPP, it may be preferable to focus efforts on ensuring the YFN participation proposed in a bid is reasonable, includes appropriate partners, and is delivered according to plan. Unbundling larger contracts can be a very effective mechanism to support business development, but requires the resources within YG to have the necessary market knowledge and time to structure procurement opportunities to best align with project needs and supplier capabilities. The commitment to unbundling is already present within the YFNPP⁸.

⁸ Section 11 (7.10) Project Unbundling (a) The Government shall, where reasonable, make best efforts to structure contracts, on both Settlement Land and Non-Settlement Land, so that they are of a size manageable by Yukon First Nations Businesses.

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- b) support the “right sizing” of contracts and the “unbundling” commitment within the YFNPP (s.11(710)), to promote YFN business development and participation in government contracting;
- c) include an assessment of the dollar and percentage amounts of BVR discounts applied to contracts, as well as the impact of allowing both the labour BVR and Labour Levels in value driven bids, in the five-year review of the YFNPP in order to inform whether a cap on the dollar value of eligible contracts should be considered.

2. Understanding of BVR Measures

Findings

Many participants from both industry and Yukon government staff described challenges in understanding how to apply Bid Value Reductions, in particular during the initial implementation of the measures. Some attributed these challenges to what was described as a relatively quick roll out of the BVR provisions, while others suggested a lack of planning and testing how the measures would work in different procurement scenarios have continued to generate problems.

The wide reach of BVR measures across almost all procurement activity creates a requirement for education and training for a large number of staff and bidders. Many participants from First Nations businesses, non-First Nation businesses, First Nations governments and Yukon government staff indicated that their understanding of the measures has improved since the date they were introduced, however, many also suggested that issues pertaining to understanding how to effectively apply the measures persist.

For example, almost 24% of respondents to the survey indicated they do not feel they have an adequate understanding of BVR measures and how they are applied (48% of respondents felt they did have an adequate understanding, while 28% noted they understood some of the measures - see Figure 4). In addition, a significant proportion of Yukon government staff identified that they are still working on clarifying their understanding of how certain elements of BVRs are to be managed (this topic is discussed more fully in sections B and C below).

68% of all survey respondents also indicated that their understanding of YG procurement policies was either unchanged (41%) or improved (27%) since the introduction of BVR measures, while 32% felt their understanding had decreased (see Figure 5). Among Yukon First Nations businesses that responded to the survey, 71% indicated their understanding had either improved (21%) or was unchanged (50%), while 29% felt their understanding had decreased.

Figure 4: Survey respondents' understanding of BVR measures

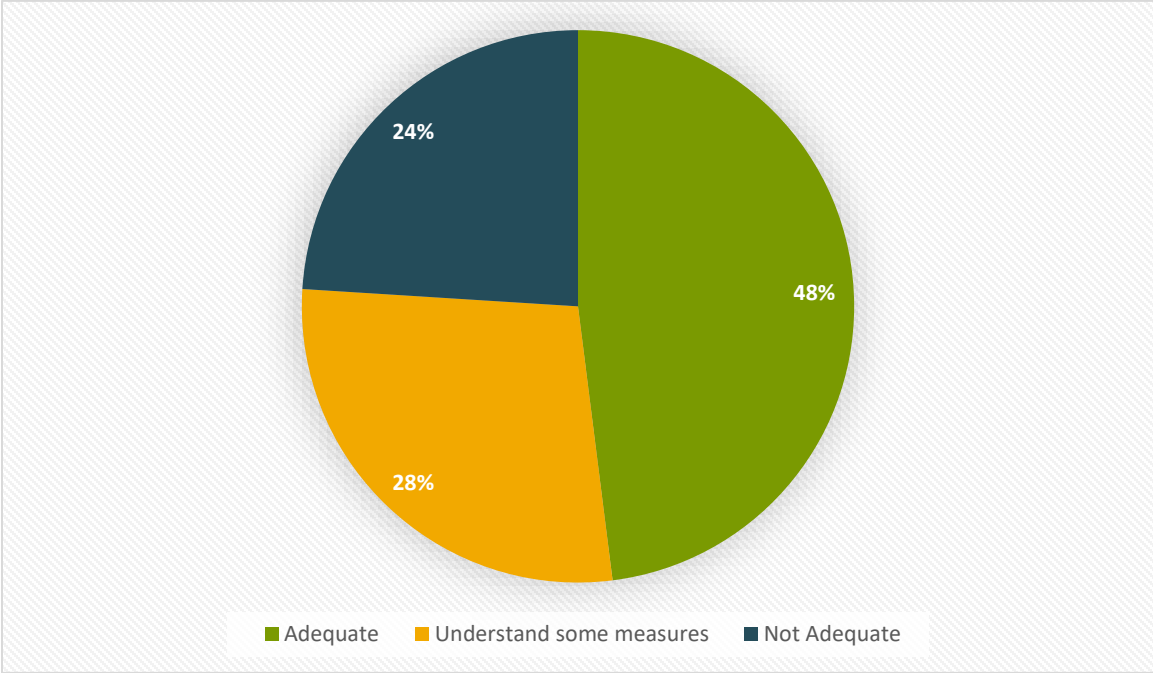
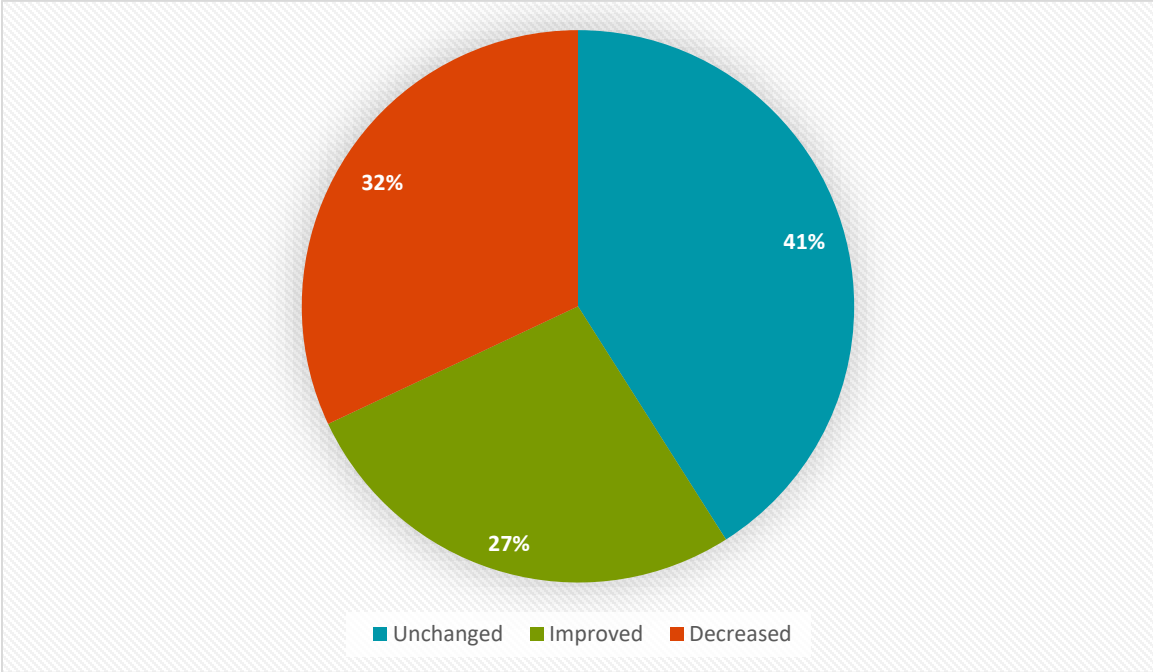


Figure 5: Change in survey respondents' understanding of YG procurement policy since the introduction of BVR measures



Discussion

While the data suggests that the majority of participants feel they understand BVR measures, an important proportion (roughly one third of respondents) indicated that additional communication and guidance are required. The need for greater understanding extends beyond the technical application of BVR measures and into the objectives of the YFNPP itself. There is merit in continuing to provide guidance and resources to those still working to understand how supporting social equity and economic reconciliation are not “reverse discrimination”.

YG staff also noted that they would value greater guidance and communication related to the implementation of BVR measures, and in particular increased sharing of any updates in practices that have occurred in relation to contract monitoring and compliance enforcement. As YG staff provide an ongoing communication connection to the supplier community, there is significant value in ensuring that staff are able to respond to questions and effectively administer the policy.

Suggestion for Consideration 2: that YG ensure effective training and communication mechanisms are in place to:

- a) increase awareness among procurement/contract managers and suppliers about the objectives and implementation of BVR measures

3. Complexity of procurement documents and processes

Findings

Issues related to complexity were described as arising in two main ways:

- For YG staff, in determining how to structure some procurements to enable effective application of BVRs, and
- For bidders, working through and accurately following the instructions provided to complete their bids.

YG procurement and contract managers are spending significant time to integrate BVR measures into their procurements. Quite a few YG staff indicated that they have made one or more adaptations to their procurement documents to effectively incorporate BVR measures, and some indicated those adjustments are still underway. In some cases, staff felt that changes to procurement documents or approaches created additional complexity that may have led to a reduced number of bidders.

The procurement of goods, and in particular the creation supply arrangements such as Standing Offer Agreements (SOAs), were identified as presenting some unique challenges.

Because SOAs do not provide commitments for contracts, it is difficult for vendors to make commitments concerning YFN participation without certainty about when, whether and how large a call-up will arise. Application of the labour BVR measures can be problematic, as determining the proportion of labour involved in the distribution of individual items can be difficult, as can the ownership contributions and the application of multiple locations that may want to draw from a supply arrangement.

Several YG staff directly involved in managing goods procurement noted their perception that fewer SOAs were being created as a result of this complexity, and questioned whether government may be incurring increased costs as a result of a loss of the discounted prices they were previously able to obtain. Some YG staff also noted their perception that there have been a larger number of Qualified Source Lists established, some of which may have replaced goods or services previously provided through SOAs. The data provided did not enable verification of any changes in the numbers of SOAs or Qualified Source Lists in place, nor the potential impacts on the number of suppliers participating or any changes in government benefits.

YG staff in some departments indicated that they now have bidding processes in place that businesses seem to be responding to without errors, indicating that a significant portion of their learning curve has been addressed with respect to bidding. Other areas within YG feel that adaptation is still occurring and ongoing learning and adjustments are required as modifications continue to be made to in procurement documents and contract management processes.

Discussion

Some of the complexity noted may be addressed as YG staff and Yukon businesses become more familiar with the bid documents incorporating BVR measures. However, even as the level of experience and clarity in communication increase, there is no doubt that the complexity of the process for both YG staff and bidders has increased. This likely translates into an ongoing requirement for additional time and the need for support to prepare and evaluate procurement documents for YG staff, and for bid preparation for bidders. The review did not assess the support mechanisms in place for bidders and staff conducting procurement, but it was clear that there is a strong interest among staff in having more resources available to support the additional work and complexity.

The challenges identified in apply BVR measures to supply arrangements appear significant, and may be an example of where the cost of implementing these measures is outweighing the benefits gained.

Suggestion for Consideration 3: that YG work with Yukon First Nations to collaborate on an analysis to:

- a) consider whether to revise or remove the application of BVR measures to supply arrangements, in particular to Standing Offer Agreements

4. Challenges Applying the “Ownership” BVR

Findings

The definition of “ownership” and the operation of the Yukon First Nations Business Registry are outside of the scope of this review, however the issues identified by participants relating to how operationalization of the definition is impacting the application of the BVR measures are included here to ensure key challenges impacting the success of the BVR measures are captured.

A significant issue identified by a high proportion of participants is the belief that the definition of a Yukon First Nation business has enabled companies that appear on paper to be “First Nation majority owned”, but are not in reality managed or beneficially owned by the First Nation individuals, to obtain the ownership BVR in their bids. There is a strong belief among many participants that new businesses are being created (sometimes described as “shell companies”) with a majority of owners identified as Yukon First Nations individuals solely to take advantage of the BVR discounts on bid prices. In addition to creating an uneven playing field among Yukon businesses (for both YFN and non-YFN businesses), the use of shell companies was described as making it easier for companies based outside of Yukon to obtain government contracts. It is clear that Yukon government staff and the YFN Chamber of Commerce (who administers the Yukon First Nations Business Registry on behalf of YG) are well aware of the concerns and are working on refining definitions and registration processes to mitigate this issue.

Participants from all groups raised questions about whether the inclusion of the middle category of the ownership BVR (i.e., providing 10% for companies that are 75%-99% YFN owned) increased the incentive for the creation of shell companies.

A number of participants from the business community and YG staff noted that there have been ongoing challenges getting First Nations businesses successfully listed in the Registry. Issues identified included the complexity of the application process (in particular for small and new business owners), the online-only registration format, and the criteria for confirming ownership not applying to all forms of business structures. Some participants also commented that the current Registry lacks functionality that would be useful, such as the ability to search by business area (i.e. the types of goods or services provided).

Discussion

The potential for “gaming” the application of BVR measures is a significant source of frustration for all parties as it risks manipulation of the policy to provide benefits to those not intended to receive them, and of undermining confidence in the procurement process. The issues arising from this concern appear during bid evaluation, when evaluators have doubts that the proposed ownership of a company or distribution of work are genuine, as well as during contract management when YG staff are trying to confirm that the contract is being implemented as awarded (discussed further in sections B1, C1 and C2 below).

The risks to the credibility of the policy that arise from the concerns about gaming warrant a clear indication from the Yukon government that action will be taken. Progress towards the YFNPP objectives depends significantly on cultivating collaboration among the partners involved, which in turn requires acknowledgement by all parties of the issues raised. With respect to the need to revisit the ownership definition and related structure of the ownership BVR, that acknowledgement and interest has been demonstrated through the review. Given that the YFNPP is a relatively new policy, there is also a need to balance caution about implementing any significant changes without adequate evidence against the clear need to take action to reduce the most significant challenges that implementation has encountered.

This review did not include an examination of the proportion of companies that fall into the different ownership categories or the related distribution of bids or contracts, however it is reasonable to consider that the middle category may be attracting the majority of gaming behaviour, as:

- The BVR incentive for YFN ownership of less than 75% is relatively small (i.e. 5%)
- It is more difficult to create a plausible partnership description and operating model for a company purporting to be 100% YFN owned, in particular if there is involvement from non-YFN parties, and
- a smaller number of businesses are likely prepared to risk their business reputation and conflicts with their personal values to establish the more extreme ‘false front’ of a 100% owned YFN company

Nevertheless, without specific evidence that this middle category is in fact contributing to the majority of gaming behaviour, it would be important for those responsible for defining YFN businesses and managing the YFN Business Registry to reach agreement on courses of action to address the concerns related to gaming. This could include (perhaps on an interim basis) removing the 75% ownership category to help reduce the challenges associated with implementation and monitoring, although it must be recognized that this move would not eliminate all incentives for gaming. The rationale for considering an interim measure is that there are a number of other potential actions (in particular related to contract monitoring and compliance) that the parties may feel would be more effective in addressing the concerns about

potential gaming activity, but which may take longer to put in place. The review did not identify any specific data that would provide support for this analysis, however those responsible for developing and managing the definition of ownership may have additional insights.

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- d) support the analysis and management of gaming behaviour, including that associated with “flow through” practices used to inflate the participation of YFN businesses

Suggestion for Consideration 3: that YG work with Yukon First Nations to collaborate on an analysis to:

- b) review whether the BVR percentage structure is increasing potential gaming behavior.

Procurement policies in other jurisdictions have also faced challenges establishing definitions that align with a policy intention to support either Indigenous or local businesses. Some policies, for example the federal [Procurement Strategy for Indigenous Businesses](#), require bidders to certify in their bid that they continue to meet the required definition and include an undertaking that the business will continue to meet the criteria throughout the performance of the contract. The certification is subject to audit, both before and after contract award. Audits mandatory for contracts valued at \$2M or more, and are otherwise conducted on a random basis.

Although the current definition in Yukon does not capture all of the possible business structures that include significant participation of YFN businesses or citizens, it is suggested that the primary focus with respect to the ownership definition should, at least in the short term, remain on managing the issues associated with gaming.

Making it as simple and quick as possible for YFN businesses to become registered is highly desirable as it not only enables those companies to access BVRs and potentially become contractors for the Yukon Government, it helps potential partners to find them. Non-YFN businesses often commented during the engagement that there are no YFN partners available in their line of work, and the Registry can play a role in increasing awareness of the companies that exist.

Suggestion for Consideration 3: that YG work with Yukon First Nations to collaborate on an analysis to:

- c) explore mechanisms to increase the resourcing available to manage and maintain the Yukon First Nations Business Registry, including potentially an ongoing audit function to confirm the accuracy of registration information.

B. Impacts related to Evaluating Bids and Awarding Contracts

1. Challenges forecasting and evaluating First Nations' participation in bid documents

Findings

One of challenges most frequently raised by Industry representatives is the difficulty in confidently estimating YFN participation for an upcoming project, in particular with respect to the number of new Yukon First Nations workers that might be hired. In some cases, the exact start date of a project is unclear, making it more difficult to secure commitments in advance – especially if unemployment is low and subcontractors are in high demand.

This lack of certainty led quite a few participants to suggest that the labour BVR should be replaced with something similar to YG's Business Incentive Program, which provides rebates to businesses working on eligible YG contracts for hiring Yukon workers⁹. This approach enables the financial benefit provided to a business to match the hiring that actually occurred.

In projects where there is a higher likelihood that bidders can identify the specific individuals they propose to include in the work, for example as is often the case in management consulting or professional services, this may be less of an issue. In other areas, such as construction-related projects, contractors are more likely to propose hiring a larger number of workers and to not necessarily have specific individuals known at the time of bidding.

Although the incentive provided through the labour BVR encourages proponents to aim high for new First Nations workers, uncertainty concerning whether and how they will be penalized if they don't successfully hire the proposed number (discussed further in section C) also creates some risk aversion. A similar but less frequently raised challenge arises if a proposed Yukon First Nation subcontractor for a project becomes unavailable sometime after bids are submitted and before a project is completed. Several YG staff shared examples of bids that they believe included proposed hiring of new First Nations workers that was at best ill-informed, and at worst willful misrepresentation of plausible Yukon First Nations labour availability. Many staff are unclear about whether they have the authority or the responsibility to address these concerns when they see them arise, i.e., when they think a proposal may contain unrealistic estimates of components of YFN participation. Their concerns include the potential for:

- awarding a contract to a firm based on commitments they feel present a significant risk of being unfulfilled (i.e., concerns about fairness)
- the project to be delayed or cancelled if the winning proponent can't gather the required workers and equipment

⁹ See [this link](#) for information

- increased administrative burden associated with either contract management to enforce unfulfilled commitments, or to re-tender the work if that becomes necessary.

Although those concerns are not directly linked to carrying out the actual evaluation of a bid, they describe the key reasons staff identified as to why it is important that the evaluation is conducted in a manner that mitigates or prevents these issues to the extent feasible.

Yukon First Nation governments related that there have been instances where YFN businesses or citizens were included in bids without the knowledge of those businesses or individuals. Staff from some areas within YG noted that they ask for supporting documentation (such as a letter of commitment from other businesses or organizations that will be supplying labour or equipment) to help demonstrate that the bidder has a reasonable plan in place to access the proposed resources. Staff also noted that this approach doesn't work well in all circumstances, and that it was more widely practiced prior to the introduction of the YFNPP. Many staff indicated a strong preference that confirmation of plans to fulfill YFN participation measures should occur prior to contract award, in order to reduce the risks of both contract management issues and of retendering.

There is also some confusion concerning whether the evaluation of the YFN labour component should be based on the wages actually paid to workers or the rate at which they are charged out in the proposal. In addition, obtaining accurate wage information can be challenging for bidders if, for example, the YFN labour will be hired by a sub-contractor, or if wage rates are considered confidential or proprietary information because of what they can reveal about a business model.

Several industry representatives suggested that bid evaluations were being conducted inconsistently on this matter, in spite of whether the tender documents make it clear which approach is to be followed. Participants offered rationales supporting a variety of approaches, including the use of:

- billing rates, because they reflect the overall proportion of the project more closely,
- actual wages, because they reflect those funds actually being directed to FN workers, and
- the proportion of total hours, because they also reflect the overall proportion of the project work being carried out by YFN workers and businesses.

Discussion

Some of the uncertainty in estimating YFN participation levels in bids may reflect a learning curve for businesses, especially new businesses and new participants in government procurement. However, there will always be an element of uncertainty when proposing the resourcing for some projects, as changes in the availability of labour and subcontractors is

always a possibility. An advantage of the BVR approach is that it encourages bidders to seek out potential YFN participants in advance, and rewards that effort and planning with a discounted bid price. This is arguably a stronger incentive for establishing relationships with YFN businesses and workers and for including YFN participation in projects than an approach that offers an offset to labour costs to those employers who elect to participate. Nevertheless, if significant challenges persist in evaluating proposed YFN participation in bids, it may be useful to assess the relative merit of a BIP-like approach against the labour BVR during the 5-year review of the YFNPP.

Part of the frustration described by businesses concerning estimating YFN participation arises from the uncertainty about whether their competitors will inflate their YFN participation estimates, and whether those inflated estimates will be taken (and evaluated) at face value. YFN participation may be inflated by either overstating what is actually expected, or by using a YFN business as 'flow through' mechanism to generate an appearance of greater YFN involvement (this latter issue is discussed in section B4). Each of the approaches suggested for evaluating the proportion of YFN labour in a project has advantages and disadvantages, and each retains some risk of being inflated in proposals and will require monitoring during contract performance. It is possible that different approaches are better suited to different types of work, and this review has not undertaken an assessment of those possible variations.

Suggestion for Consideration 2: that YG ensure effective training and communication mechanisms are in place to:

- b) provide staff involved in bid evaluation with clearly defined roles, responsibilities and processes to enable them to obtain adequate assurances commitments proposed in bid documents are reasonable, and carry out consistent approaches to bid evaluation; this may include:
 - i) ensuring information requirements that will verify the proposed YFN participation (e.g. the experience and confirmed availability of subcontractors, the scope of work for subcontractors, the commitments for or sources of proposed workers) are included in bid requirements and contracts;
 - ii) requiring bidders to submit a YFN content plan that demonstrates how they will achieve their commitments made to obtain BVR measures, and
 - iii) requiring all businesses to provide a project reference from any past public or private project when submitting a bid

2. Impact of Labour BVR and Labour Participation Measures

Findings

Several participants stated that in industries where bid prices are typically quite close together, they felt that the rate of discount offered by the labour BVR was too high, believing that a small

amount of Yukon First Nations participation would change the outcome. Others stated that a small amount of YFN participation enables a bidder to significantly elevate their price and still be successful, generating unnecessary costs to Yukon government and taxpayers.

Discussion

It is important to reiterate that one of the purposes of the policy is to enable otherwise similar bids to be differentiated on the basis of how significantly they contribute to the employment and contracting of Yukon First Nations workers and businesses. Concerns that the BVR measures perform that function is more a criticism of the YFNPP's objectives than of how the BVRs are implemented.

An example in scenario 4 below explores how changes in amounts of Yukon First Nations labour participation impact the ranking of closely priced bids.

Scenario 4: Effect of the "Labour" BVR on bid prices

	Bid Price	Proportion of work to be carried out by YFN Labour	Labour BVR	Bid Price for Evaluation
Company A	\$100,000	0%	N/A	\$100,000
Company B	\$101,000	5% (= \$5,050)	$(0.15 \times \$5,050) = \757.50	\$100,242.5
Company C	\$102,000	10% (= \$10,200)	$(0.15 \times \$10,200) = \$1,530$	\$100,470
Company D	\$102,000	15% (= \$15,300)	$(0.15 \times \$15,450) = \$2,295$	\$99,705
Company E	\$104,000	25% (= \$26,000)	$(0.15 \times \$26,000) = \$3,900$	\$100,100

The scenario shows that a proponent would need to include 15% more Yukon First Nations workers to still win the contract with a bid price 2%, higher than the lowest bidder. If a proponent submitted a bid price more than 2% higher than the lowest price, they would require more than 15% First Nations labour to be the successful bidder. This indicates that more than a few percentage points of First Nations labour participation are required before the BVR measures will have an impact on the ranking of the otherwise low bid.

Bid Value Reduction measures can, however, have a compounded effect when multiple measures under the YFNPP apply, and participants frequently mentioned that the labour BVR in conjunction with the Labour Levels provisions in the YFNPP (section 11 (7.2)), can have a larger impact on bid prices. This "double impact" of First Nations labour participation (from both BVR measures and the Labour Level measures) may have been what some participants were intending to refer to when raising questions about the impacts of relatively small differences in the amount of YFN labour.

Although this review does not include any assessment of the Labour Levels components of the YFNPP (section 11 (7.2)), it is important to note that a significant number of participants from

within Industry and YG staff raised the topic of the combined impact of the labour BVR and Labour Levels in value-driven tenders. YG staff highlighted the challenges of ensuring technical qualifications were still adequately addressed (with a greater proportion of the overall score now directed towards YFN participation), and of finding the budget for higher priced contracts; while industry participants emphasized the increased challenges in competing against bids containing different approaches to and amounts of FN participation (in particular in conjunction with the 'double impact' point above). YG staff also pointed out that Labour Levels are only applied on value-driven procurements, which reduces the impact of BVRs as they apply to price, which makes up a smaller component of the overall bid score.

Some industry, staff and Yukon First Nation government participants identified this “double dipping” topic as one they were hearing about but noted they had not seen any clear evidence that it was a significant problem in terms of whether either the frequency or scope of impact was as significant as it has sometimes been described. As the Labour Level measures are outside the scope of this review, and support a wider range of labour development activities, it will be useful to consider this topic as part of the 5-year review.

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- c) include an assessment of the dollar and percentage amounts of BVR discounts applied to contracts, as well as the impact of allowing both the labour BVR and Labour Levels in value driven bids, in the five-year review of the YFNPP in order to inform whether a cap on the dollar value of eligible contracts should be considered;

3. Concerns about the transparency of bid evaluation

Several construction industry businesses indicated they felt the application of BVR measures had reduced transparency in the procurement process. Transparency refers to actions that prevent governments from concealing discriminatory behaviour in procurement. The evaluation of price-driven procurements (referring to contract awards based only on the lowest price received from a qualified bidder) is commonly highly transparent, as each bidder's total price is made public shortly after the closing time for bids. BVR measures require additional time to evaluate, and although the specific reductions applied from individual BVR measures to each bid are not enumerated when results are posted, the total BVR amounts applied in public tenders are published on the Bids and Tenders website along with the price for the winning bidder. The evaluation of BVR measures is not subjective; they are formulas applied to numerical values provided in bid documents. While the longer time between bid closing and publication of prices is a modest change in practice, not publishing individual BVR impacts for each bid does not represent a significant issue with respect to transparency. In the past, competitors have only ever known each other's total bid price, and not a breakdown of specific

cost components. Specifically adding the BVR reductions applied in fact represents additional transparency.

The discomfort among bidders about not being able to see the precise BVR content of each proposal may in part be linked to concerns that competitors are inflating their intended YFN participation content. This uneasiness is exacerbated by concerns that inflated YFN content in bids is not being adequately addressed during either bid evaluation or contract monitoring and enforcement. The compounding effect of these issues is an emerging loss of trust in the fairness of YG's procurement processes. This is a concern requiring attention, as a loss of trust among the supplier community can lead to a reduced willingness to participate in government procurement. Good faith participation of Yukon businesses (both YNF and non-YFN) is a key requirement for the success of not just the YFNPP, but of the Yukon government's procurement more broadly. These issues are discussed in sections B4, C1 and C2 below.

4. Issues Related to Goods and Services “Flowing” Through YFN Businesses and People Findings

Many participants from all participants groups raised concerns that YFN businesses and people appear to be used in some circumstances as a mechanism to make it appear there is greater YFN participation in a project, when in fact the YFN business is only acting as a flow-through for materials or services acquired elsewhere. For example, a proposal reflecting a YFN business as the provider of goods enables the proportion of the price bid related to those goods to become eligible for the application of the Ownership BVR measure. If the role of the YFN business is to acquire the goods from elsewhere and ‘resell’ them to the project, the value of the YFN business participation is questionable, but the impact on the bid price may be significant. It is possible that a YFN business or individual providing a coordination or oversight role adds genuine value to the project, but it is also possible that in some cases it is used as a loophole to enable an inflated measure of YFN participation.

Many participants indicated that it is their understanding that the objective of the YFNPP is to support capacity and workforce development, and that this requires that the YFN participants to be carrying out the work (i.e., making the goods or directly providing the services) and not acting as a broker for the goods and services of others. Yukon First Nation governments suggested including a requirement that prime contractors cannot subcontract out more than 50% of a project to help prevent “flow through” arrangements. Others questioned whether it had been clearly communicated to contractors that flow-through arrangements were not acceptable for BVR measures.

Discussion

The use of YFN businesses or citizens as a “flow through” mechanism exaggerates the value of the local benefits obtained and the benefit to the YFN owned business. It may also discourage companies from establishing the genuine capacity development initiatives anticipated under the policy, which can take substantial time and effort to arrange, because they can’t compete against a flow-through arrangement if it is awarded BVR discounts. It is not necessarily simple to determine which arrangements in a bid represent genuine capacity development and which are “brokers”, however, the suggestions offered in the Evaluation section (B1) above may be applicable to this issue as well. In considering this topic, the Canadian Council for Aboriginal Business¹⁰ suggested establishing a requirement that an Indigenous owned Joint Venture should be defined as 51% Indigenous owned and an attestation be provided stating that 51% of the gross profit margin being retained by the Indigenous partner.

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- d) support the analysis and management of gaming behaviour, including that associated with “flow through” practices used to inflate the participation of YFN businesses.

C. Impacts related to Contract Compliance and Monitoring

The YFNPP establishes that commitments made in proposals that obtain BVR measures will be integrated into any resulting contract (s.11(9)(b)). One of the concerns raised most frequently by participants from all groups relates to ensuring that these commitments are delivered during contract performance. Challenges identified during the review centre on:

- Defining and obtaining the information needed to confirm compliance
- Determining and carrying out appropriate measures in cases of non-compliance (i.e. detecting and distinguishing ‘gaming’ and ‘best efforts’)
- The administrative and relationship impacts for YG staff and government contractors.

Data identifying the number of contracts that contain commitments arising from BVR measures was not readily available, however the maximum number is 174 (as that is the total number of tenders between October 2021 and February 2023 that received bids containing BVR content. Concerns raised by YG staff reflect in part that similar issues exist with contracts that contain other measures from the YFNPP (e.g., Labour Levels and Workforce Development plans).

1. Defining and obtaining compliance data

Findings

Project managers from across YG identified challenges in obtaining the information necessary to ensure compliance with the YFN participation commitments contained in contracts. Concerns

¹⁰ Canadian Council for Aboriginal Business (2021). Transforming the Indigenous Procurement Process in Canada, p.11.

relate to verifying both that the hiring of new YFN workers has taken place and that sub-contracting arrangements are fulfilled as proposed. The issues raised include determining what information to seek, from who and when/how frequently.

YG staff and Yukon businesses noted that confirming that workers are Yukon First Nations citizens must be carried out in a manner that respects personal privacy and is consistent with the Yukon government's obligations under the *Access to Information and Protection of Privacy Act*. Several examples were provided of both contracts for which obtaining compliance information was very challenging or unsuccessful, and contracts for which the necessary information was readily obtained. Staff indicated their preference for compliance monitoring requirements to be clearly identified in contract documents, and for bidders to understand the steps they will need to take during contract performance. Data requirements can be complicated, for example potentially including information related to the tasks, hours of work, overtime, and wages for individual workers, and whether work is taking place in specific locations if the "location" BVR was applied.

YG staff noted that the Procurement Support Centre has been making modifications to:

- Procurement and contract documents to ensure bidders / contractors are:
 - aware of what information will be required from them to support monitoring
 - required to provide the information, and
- guidance for contract managers to help address the uncertainties.

The modifications were described by many as improvements in defining data requirements in procurement documents, however YG staff indicated that changes have not always been effectively communicated and that there is an ongoing need for additional guidance and support to assist with their implementation. YG staff participating in the procurement of goods noted that some of the improvements in obtaining compliance related data did not apply to goods procurement (e.g. the use of statutory declarations), which they feel leaves this area particularly vulnerable as there is not mechanism for follow up and effective monitoring.

Discussion

There are different approaches to compliance monitoring unfolding in different parts of the government. Although there is likely some need for different approaches in order to effectively monitor different types of work and contracts, it appears that greater coordination of, and communication / training related to monitoring measures would lead to efficiencies for both staff and the contracting community.

Suggestion for Consideration 2: that YG ensure effective training and communication mechanisms are in place to:

- b) provide staff involved in bid evaluation with clearly defined roles, responsibilities and processes to enable them to obtain adequate assurances commitments proposed in bid documents are reasonable, and carry out consistent approaches to bid evaluation; this may include:
 - i) ensuring information requirements that will verify the proposed YFN participation (e.g. the experience and confirmed availability of subcontractors, the scope of work for subcontractors, the commitments for or sources of proposed workers) are included in bid requirements and contracts;

Suggestion for Consideration 4: that the DM of HPW lead a collaboration among departments to assess opportunities to improve supports for contract managers to increase consistency and capacity to deliver successful contract management and compliance with BVR commitments.

2. Identifying and addressing non-compliance

Findings

A related issue is ensuring that appropriate actions are taken when information is obtained that indicates BVR-related contract commitments are not fulfilled. Instances of non-compliance can arise because of poor planning or inflated estimates of YFN participation but also because of circumstances beyond the contractors' control. For example, if a YFN subcontractor that had intended to work on a contract becomes unavailable, the prime contractor has the challenge of not just finding another subcontractor for that work, but one that is also a YFN business. YG staff noted that many contractors readily disclose challenges that they encounter meeting their BVR-related commitments, and make significant efforts to ensure contract compliance. Yukon First Nation governments have expressed a desire to see clear consequences established to deter prime contractors from including YFN subcontractors in their bids to obtain BVR discounts, and then not actually providing them with the work proposed.

YG staff indicated that hold-backs are being used in some circumstances as a mechanism to encourage compliance or penalize non-compliance, although YG staff are not always clear whether, when and how they are to be administered. Staff noted there is a need to balance the ability to use discretion to match the particular circumstances surrounding contract performance with a need for reasonable consistency, as enforcement actions will establish expectations for future performance in the contracting community.

Several participants expressed interest in adopting an approach they described as part of the federal government's Procurement Strategy for Indigenous Business that allows contractors to document changes in circumstances that were beyond their control but that impacted the planned Indigenous participation, along with the steps they have taken to mitigate those changes, as a tool to manage contract compliance.

Discussion

The ability to identify when non-compliance is occurring depends in part on how clear a contractor's plan is concerning when the YFN participation elements will occur, as well as the quality and timeliness of reporting. Including requirements for participation plans (as suggested in Consideration 2b) would also help identify when non-compliance is occurring.

Suggestion for Consideration 2: that YG ensure effective training and communication mechanisms are in place to:

- c) enable staff to clearly communicate and manage the information requirements to establish when a contractor has made adequate effort to address changes in circumstances that impacted planned YFN participation.

Suggestion for Consideration 4: that the DM of HPW lead a collaboration among departments to assess opportunities to improve supports for contract managers to increase consistency and capacity to deliver successful contract management and compliance with BVR commitments.

3. Administrative and relationship impacts for YG staff and government contractors

Findings

YG staff identified that implementing the BVR measures had generated a substantial new workload related to both designing procurements and monitoring the resulting contracts. In many cases, the amount of work currently required to implement the BVR provisions was described as having decreased when compared to the initial launch. However, the ongoing demands are considered significant, in particular where staff still feel unsure of how to address questions concerning bid evaluation or contract monitoring and enforcement. Many staff suggested that additional resources and ongoing training and support are needed to improve coordination and to share practices, in particular among contract managers.

Some staff expressed concern that there were increased tensions with suppliers as contract managers take on a greater presence in compliance monitoring and enforcement. These concerns were more acute when staff felt that the monitoring process and requirements had not been well defined in advance. A number of unsuccessful bidders and suppliers that do not support the YFNPP or are unclear about how BVR measures impacted their bid also challenge procurement and contract managers to explain the policy or to justify contract award decisions. In some parts of YG, the increased workload coupled with the need for greater guidance and more challenging interactions with contractors have left staff feeling it is difficult to support the YFNPP.

Discussion

As noted in the section describing the increased complexity in procurement arising from implementation of the BVR measures (section A3), there is additional work arising for procurement staff and contract managers as a result of implementing the YFNPP. Although responsibility for supporting contract managers, as described in the Yukon Government Procurement Policy (GAM 2.6), is primarily the responsibility of each Deputy Minister¹¹, the department of Highways and Public Works (HPW) also holds responsibility for oversight of the YFNPP and for supporting constructive relations with suppliers. Suppliers are likely to continue to seek explanations about how the BVR measures are applied for some time, and it is important that YG staff are able to provide clear and consistent information to both build confidence that the YFNPP is being capably administered and to help educate and support suppliers to maintain successful relationships with YG and within the supplier community.

Although HPW staff provide guidance and advice across government through the Procurement Support Centre, there is no similar entity that provides coordinated advice and support on contract management matters. Although Procurement Support Centre staff are providing assistance where they can, there appears to be a need for greater coordination and support for the variety of contract management needs across government. Ensuring staff are well positioned to support the implementation of the YFNPP will contribute to increased understanding of the policy's objectives and greater efficiency in contract administration.

Suggestion for Consideration 4: that the DM of HPW lead a collaboration among departments to assess opportunities to improve supports for contract managers to increase consistency and capacity to deliver successful contract management and compliance with BVR commitments.

¹¹ Section 1(5) of GAM 2.6 establishes that the DM of each department is responsible for ensuring their staff have the skills and training to effectively manage the procurements and contracts over which they have authority, and ensuring adherence to the terms and conditions of contracts.

Appendix 1 – Summary of Suggestions for Consideration

Suggestion for Consideration 1: that YG continue working with Yukon First Nations to identify the data and resources required to:

- a) finalize and implement a performance measurement plan that includes the data collection plans and resources necessary to support the evaluation of BVR measures as part of the five-year review of the YFNPP. Data collection might include:
 - The value of BVR measures contained in winning bids
 - Whether re-ranking impacted who won the contract
 - Whether the combination of BVR measures and other YFN participation measures in value-driven procurement changed the outcome
- b) support the “right sizing” of contracts and the “unbundling” commitment within the YFNPP (s.11(710)), to promote YFN business development and participation in government contracting;
- c) include an assessment of the dollar and percentage amounts of BVR discounts applied to contracts, as well as the impact of allowing both the labour BVR and Labour Levels in value driven bids, in the five-year review of the YFNPP in order to inform whether a cap on the dollar value of eligible contracts should be considered;
- d) support the analysis and management of gaming behaviour, including that associated with “flow through” practices used to inflate the participation of YFN businesses

Suggestion for Consideration 2: that YG ensure effective training and communication mechanisms are in place to:

- a) increase awareness among procurement/contract managers and suppliers about the objectives and implementation of BVR measures
- b) provide staff involved in bid evaluation with clearly defined roles, responsibilities and processes to enable them to obtain adequate assurances commitments proposed in bid documents are reasonable, and carry out consistent approaches to bid evaluation; this may include:
 - i) ensuring information requirements that will verify the proposed YFN participation (e.g. the experience and confirmed availability of subcontractors, the scope of work for subcontractors, the commitments for or sources of proposed workers) are included in bid requirements and contracts;
 - ii) requiring bidders to submit a YFN content plan that demonstrates how they will achieve their commitments made to obtain BVR measures
 - iii) requiring all businesses to provide a project reference from any past public or private project when submitting a bid

- c) enable staff to clearly communicate and manage the information requirements to establish when a contractor has made adequate effort to address changes in circumstances that impacted planned YFN participation.

Suggestion for Consideration 3: that YG work with Yukon First Nations to collaborate on an analysis to:

- a) consider whether to remove the application of BVR measures to supply arrangements, in particular to Standing Offer Agreements
- b) review whether the BVR percentage structure is increasing potential gaming behavior.
- c) explore mechanisms to increase the resourcing available to manage and maintain the Yukon First Nations Business Registry, including potentially an ongoing audit function to confirm the accuracy of registration information.

Suggestion for Consideration 4: that the DM of HPW lead a collaboration among departments to assess opportunities to improve supports for contract managers to increase consistency and capacity to deliver successful contract management and compliance with BVR commitments.

Appendix 2 - YFNPP Objectives

11(1) Objectives

(a) The Government is committed to:

- (i) Providing Yukon First Nations People with opportunities to participate in the Yukon economy and develop economic self-reliance as part of broader efforts to achieve equality of outcomes for Yukon First Nations People.
- (ii) Ensuring Procurement processes are undertaken in accordance with the provisions of Yukon First Nation Final Agreements.
- (iii) Advancing reconciliation, renewing the relationships with Yukon First Nations, and respecting treaty and Aboriginal rights and title, based on respect, cooperation and partnerships.

11(2) Yukon First Nations Procurement Policy Principles

To help guide decision-making and to contribute to the success of the Yukon First Nations Procurement Policy, the following principles have been established:

- (a) Reconciliation: The Government is committed to adopting and implementing substantive measures that advance reconciliation with Yukon First Nations People.
- (b) Community: The Government recognizes the value of its purchasing power to effect positive social change in Yukon First Nations communities as part of strengthening the well-being and self-sufficiency of Yukon First Nations People.
- (c) Opportunity: Policy measures, designed to stimulate growth in Yukon First Nation owned businesses and provide employment opportunities to Yukon First Nations People, will lead to job creation, reduce inequalities, and advance socio-economic and other outcomes for Yukon First Nations People.
- (d) Planning and Early Notification: The Government recognizes the importance of making information on its capital investments and procurements available to Yukon First Nations in a timely fashion to assist Yukon First Nations Businesses, People and communities to plan for and respond to Government Procurement opportunities.
- (e) Local Benefit-Open Access: Each Yukon First Nation derives direct benefits from Procurement within its traditional territory and has access to opportunities external to its traditional territory.
- (f) Partnership: Strengthened relationships between Yukon's business community and Yukon First Nations Businesses and workforce will produce more effective partnerships, which will increase the scale and capacity of Yukon businesses, resulting in a greater share of Procurement benefits and a stronger territorial economy.
- (g) Balance: The Government remains committed to Procurement processes that are competitive, deliver value for money and contribute direct benefits to communities throughout the territory

Appendix 3 - Survey

Bid Value Reduction Measures Questionnaire - for Businesses

This survey will support the review of the impacts of the Bid Value Reduction (BVR) measures introduced by the Yukon government in 2021 as part of the First Nations Procurement Policy. Responses will be combined with input from in-person sessions and quantitative data to help describe experiences to date, as well as any concerns and suggestions for improvement. You may answer some or all questions. Individual responses are only viewable by the consultant (Leslie Anderson, Corvid Consulting), and information about respondents is not being collected. Responses must be submitted by May 18, 2023 to be included in the review.

Would you describe your business as (check all that apply):

- Providing goods
- Providing services
- Providing construction related goods or services
- A First Nations business
- Operating primarily in Whitehorse
- Operating in one or more locations outside of Whitehorse

Have there been changes in the number or type of bids you have submitted in the last three years (e.g., greater or fewer bids overall; for Standing Offer Agreements? Qualified Source Lists? RFPs? Tenders? As a prime or sub-contractor?)? If yes, please describe.

Do you feel your understanding of Yukon government procurement processes has changed since the introduction of the First Nations Procurement Policy?

- My understanding has improved
- My understanding has decreased
- No change

Do you feel you have an adequate understanding of BVR measures and how they are applied?

- Yes
- No
- I understand some of the measures

Do you have any suggestions to improve understanding of BVR measures (e.g. are there particular areas that would benefit from greater clarity)?

Has the introduction of BVR measures changed how you approach partnerships in bidding? If so, please describe how (e.g. has it affected who you partner with? how frequently you seek partners? any other aspects of your relationships with other suppliers?)

Has the introduction of the BVR measures impacted how you engage with Yukon government staff when preparing a bid or carrying out a contract? If so, please describe how.

Do you believe there are unanticipated consequences connected to the BVR measures? If so, please describe (including whether you are aware of any instances where that consequence occurred).

Are there aspects of the BVRs that you believe are working well? If so, please describe.

Can you suggest any key barriers or supports that are impacting the success of BVR measures?

Have you registered with or used the Yukon First Nation Business Registry?

- Yes
- No

Are there any strengths or challenges arising from the Yukon First Nation Business Registry you would like to highlight?

Have you participated in any Yukon government bids or tenders as, or with, a First Nations business since the introduction of the BVR measures?

- Yes
- No

If you answered “yes”, was/were your bids related to

- Goods
- Services
- Construction

Did you participate as

- A sole respondent
- Prime contractor
- Subcontractor
- Other

Was/were your bid(s) successful?

- Yes
- No
- One or more were successful and one or more were not

What role, if any, do you think BVR measures played in the outcome of your bid(s)?

Do you have any other comments, suggestions or concerns related to BVR measures you'd like to raise?