



# Trade Agreements Briefing Note

## The use of “Local” in the bid process

By Buy Social Canada  
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A frequently asked question by organizations beholden to the trade agreements for certain procurements is “Can you include questions about, or requirements for, local employment or procurement where the trade agreements apply?”

Here are a few different considerations for determining what language is appropriate for your bid.

### Disclaimer

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### You cannot ask a business if they are local and award points for them being local

- ✗ “Are you a local business?”  
Yes/No Score (Yes 3 points, No 0 points)

This confers a preference on a local business and is in conflict with trade agreement requirements where they apply to a purchase.

## **You likely can include local in the social value objectives of your organization and then not include the term in your weighted criteria**

BC Housing RFP for junk removal (RFP 1070-2122/001)

- In 1.5(b)(2) on page 5 they refer to local labour forces as being an area considered under sustainability priorities.
- Appendix 6 (page 32) and Appendix 1, 2(D) (page 22) do not reference or give weighting to local which is in line with rules around local preferences

## **You likely can apply a requirement to hire locally or buy locally as a condition that applies to the successful proponent's delivery**

- ✓ There is a requirement of 10% local hiring and 10% local purchasing in the delivery of this contract. The successful proponent will be required to deliver and report on these targets.

The recent case law on the issue of local labour requirements is the New West Partnership Bid Protest Mechanism Arbitration HWY-20126, Saskatchewan: [West-Can Seal Coating Inc v Ministry of Highways and Infrastructure for the Province of Saskatchewan](#) (Judicial Review application dismissed by the Queen's Bench February 2022). This case included a nuanced set of facts that led to the finding that the community benefits criterion related to local labour breached Trade Agreements (specifically the CFTA). In the case there were additional exhibits of preference for local beyond the community benefits criterion.

- ✗ The local labour criterion in this case required 100% of **all labour** used on the project be local, not just new hires, in order to receive maximum points.

The finding in this case is distinct from requiring a percentage of **new hires** to be local as all proponents will have the ability to hire **new hires** locally (as distinct from their existing workforce which would give preference to local businesses as stated in the case findings.)

Additionally, the percentage of local labour required for maximum points in this bid included a very high percentage for points (full points required 100% local labour while less than 60% scored 0). It is important to consider a fair and reasonable scoring criterion if targets are included.

## **You likely can apply a requirement to employ locally with a focus on employment of disadvantaged groups**

- ✓ There is a requirement that 10% of employees be from disadvantaged groups, and in particular, residents of the local market who are from disadvantaged groups on the delivery of this contract. The successful proponent will be required to deliver and report on these targets.

It is likely that you can include requirements around employment of disadvantaged groups within the local market so long that it supports the achievement of a legitimate objective. The Canadian Free Trade Agreement describes legitimate objective as “any of the following objectives pursued within the territory of the Party:... (g) programs for disadvantaged groups.”<sup>1</sup>

## **Examples of applying these requirements**

*City of Winnipeg*

*North End Sewage Treatment Plan (NEWPCC) Upgrade: Biosolids Facilities Project*

On February 24, 2022, City of Winnipeg Council directed that social procurement requirements are to be considered and evaluated in future tenders of the NEWPCC Upgrade: Biosolids Facilities Project:

- Specific information on its intended partnerships or self-directed plans to secure a skilled project labour workforce.
- Estimated numbers of and classifications of skilled tradespersons to be employed.
- Specific commitments to engage skilled labour including targets for employment of Indigenous peoples and other under-represented groups within the Manitoba market.
- Proposed plans and partnerships with organizations to promote employment and training initiatives for Indigenous and other under-represented groups within the Manitoba market.

## **You likely can apply a weighting to questions about current local hiring or procurement – with a caveat**

- ✓ Do you currently practice local hiring or local procurement practices?
- ✓ Please describe your current local hiring and local procurement practice

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<sup>1</sup> [Canadian Free Trade Agreement](#) – April 8 2024

Note: This area may be trickier. In the weighting and scoring of these responses it could be perceived to confer a benefit on a local business that is more likely to already be doing this than a business in, for example, Spain

To mitigate this concern, when scoring responses, you could give the same points to responses whether it is a local business in the project or organizations' community or a business in Spain practicing local hiring or procurement in *their* local community in Spain.

This approach meets the objective of giving points to organizations with social value business practices.

There is no current case law finding *against* this type of language.

## Examples of applying these requirements

*District of Squamish*

*Request for Proposals (RFP) for New Reservoir Design and Contract Administration (R21-92)*

### Proponent Environment and Social Impact (10 points)

1. What steps, actions and/or procedures does the proponent have in place to reduce greenhouse gas (GHG) emissions and waste? Relevant strategies and undertakings relating specifically to this project to minimize GHG emissions can be presented here.
2. Do you have any policies demonstrating commitment to social sustainability initiatives or supporting social enterprises that re-inject value into local communities & economy?
3. Does your organization utilize **local labour**? Local Labour is work performed by an individual who has a permanent residence preferably in Squamish or the Sea to Sky Corridor and is directly employed by the proponent or subcontractor.
4. Does your organization provide training opportunities for youth or marginalized individuals?

### **You likely can apply a weighting to questions about local knowledge**

There are examples across Canada, including in Ontario by Infrastructure Ontario and in BC, of applying a "local knowledge" weighting in the bid process.

## Examples of applying these requirements

*District of Sechelt*

*Request for Supplier Qualifications (RFSQ) for Consulting Services 2021 – 2023 (RFSQ#2021-09)*

**Local Knowledge** – The Proponent can use this section to display their knowledge of geographical, socio-economic, political, and environmental factors unique to the Sechelt area. A discussion of any unique market and logistical challenges can be discussed. Also, how relationships with important stakeholders like the Sechelt Indian Government District can be fostered. This section is an opportunity for proponents to differentiate themselves from others through a firm grasp of what are the unique considerations about Sechelt for the completion of successful projects. – **15 points**

*Infrastructure Ontario, FAQ (<https://www.infrastructureontario.ca/P3s-Frequently-Asked-Questions/>)*

**“What is Infrastructure Ontario’s local knowledge requirement for bidders?”**

For infrastructure projects to be successful, the companies delivering them must have a sound understanding of Ontario's business and regulatory landscape. Local knowledge includes familiarity with local building code requirements, health and safety regulations, and other regulatory measures.