



# COMMUNITY BENEFITS AND SOCIAL PROCUREMENT POLICIES A Jurisdictional Review

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# THE PROSPEROUS PROVINCE: STRATEGIES FOR BUILDING COMMUNITY WEALTH

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Commissioned by the Atkinson Foundation, this report from the Mowat Centre is intended to support informed discussion and guide decision-making in the emerging field of community wealth-building. The report is part of a research series, **The Prosperous Province: Strategies for Community Wealth**.

THE MOWAT CENTRE undertook the study as part of its commitment to better understand and communicate trends and innovations in economic development, especially those that promote inclusive growth.

THE ATKINSON FOUNDATION is supporting the study because of its commitment to evidence-based public discourse on issues related to social and economic justice.

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# FOREWORD

This paper is the third in a series on community wealth building strategies that the Atkinson Foundation has commissioned from the Mowat Centre. These papers are briefing notes for an important mission — making Ontario's economy work for everyone who lives here.

Increasingly, this mission is shared by residents and community organizers, politicians and public servants, trade unionists and business owners, and philanthropists, academics and others — some who have been pursuing it for a long time and many more who have been recently seized by its urgency.

If this series is building a strong foundation for discussion about two key strategies — community benefits and social procurement policies — then this jurisdictional review is a load-bearing wall.

There is a lot to learn from colleagues around the world with whom we share a vision and the responsibility for local economic development even though our contexts are different. By looking over our neighbour's fence, we can avoid making the same mistakes, accelerate the learning process, and demonstrate what is possible when ideas are taken to scale.

This review looks to the United Kingdom, United States, Australia, New Zealand and Canada as well as leading regions, provinces and municipalities in every country for signs of progress and success. It uncovers good practices and provides evidence to support an investment in this approach.

It has revealed that public dollars are already doing double duty — delivering social and economic returns — in Canadian communities hardest hit by the 2008 recession. Our challenge is to use this information to build on these experiences and to fuel a broader and deeper conversation about what's needed and what works. If we accept it, then we can expect to see improvements in the lives and livelihoods of working people.

More decent work, less precarious employment. Great career ladders, fewer dead ends. Renewed public infrastructure and stronger, more resilient communities too. A province known as world-class because its economy is equitable, inclusive and prosperous.

I look forward to working with you to realize these ambitious goals.

COLETTE MURPHY  
Atkinson Foundation

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# 1 INTRODUCTION

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## WHAT ARE 'COMMUNITY BENEFITS AND SOCIAL PROCUREMENT POLICIES'?

In the context of this review, community benefits and social procurement policies (or community and social benefits, for short) cover any government legislation, policy, process or strategy that seeks to generate social and economic value through public spending on goods, services and infrastructure. The three general approaches include:

1. Embedding community benefits clauses into public contracts
  2. Developing community benefits agreements
  3. Purchasing directly from suppliers that deliver a social benefit
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In response to fiscal pressures and broader societal trends, many governments are seeking to unlock greater value from their infrastructure investments and procurement spending. Through community benefits and social procurement policies, which align spending and purchasing activities with broader public policy objectives, governments are changing the way they do business to reap greater social and economic benefits.

In Canada, the federal government, the province of Ontario, and the City of Toronto together spend upwards of \$23.5 billion per year procuring goods and service, including construction.<sup>1</sup> By embedding community and social benefits criteria into public contracts, governments can leverage this vast public spending to support important socio-economic goals, including poverty reduction, improved labour conditions, and greater equality of income.

Businesses, too, are demonstrating greater willingness to meet rising contractual obligations to secure valuable government contracts and sharpen competitive advantage. At the same time, a growing social economy sector and the explosion of social enterprises is creating a new landscape for socially-driven procurement. In many jurisdictions, this has led to a unique window of opportunity to pursue transformational community benefits and social procurement policies.

This jurisdictional review examines the current context of community benefits and social procurement policies in Canada, U.S., UK, and Australia. It reviews the trajectory of the policies, their structure and their impact, where supporting evidence is available. It analyzes the objectives, scope, and strengths of the policies and concludes with key challenges and strategies for success from leading jurisdictions.

## 2 COMMUNITY BENEFITS AND SOCIAL PROCUREMENT POLICIES AROUND THE WORLD

Leveraging public spending to achieve broader policy objectives is not new. Since around the 1970s, many governments have used procurement set-asides to target business and economic development goals. What is new is the gradual shift to social policy objectives in procurement and public infrastructure projects, which has been building over the last decade. In a number of cases, social objectives have been integrated into expanded sustainability goals, which can include consideration of both environmental and social impacts. Across jurisdictions, the notion of “value for money” is also evolving to include a social dimension.

Below, current community benefits and social procurement policies from a variety of jurisdictions are explored.

### Piloting, Planning, or Early Implementation

- Quebec – Social Economy Action Plan
- Montreal – “L’économie sociale, j’achete!”
- Manitoba – Social Enterprise Strategy
- Ontario – Metrolinx Community Benefits Framework
- Ontario – Infrastructure for Jobs and Prosperity Act
- Ontario – Social Enterprise Purchasing Strategy
- Toronto – Social Procurement Framework

### Implemented

- Canada – Procurement Strategy for Aboriginal Business
- Nova Scotia – Sustainable Procurement Policy
- Manitoba – East Side Road Authority CBAs
- British Columbia – Social Impact Purchasing Guidelines
- UK – Public Services (Social Value) Act
- Scotland – Procurement Reform Act
- Wales – Community Benefits in Public Procurement
- Northern Ireland – Northern Ireland Public Procurement Policy
- EU – Socially Responsible Public Procurement
- Australia & New Zealand – Framework for Sustainable Procurement
- New South Wales – Social Procurement Policy
- US – Small Business Act

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## CANADA

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- **FEDERAL:** The Government of Canada's **Procurement Strategy for Aboriginal Business** has mandatory set-asides which are designed to encourage greater numbers of aboriginal firms to participate in the federal procurement process. The program was established in 1996 and, since then, has awarded more than 100,000 contracts to aboriginal firms, totalling \$3.3 billion in value.<sup>2</sup> In 2009, the Federal Framework for Aboriginal Economic Development was launched which includes a Set-Aside Program for Aboriginal Business. Through the Set-Aside Program, only aboriginal businesses can bid on certain contracts – particularly procurements that are worth more than \$5,000 and in which aboriginal populations are the main recipients. Federal government departments can also voluntarily incorporate set-asides as part of their procurement processes.
- **NOVA SCOTIA:** In 2009 the province developed a **Sustainable Procurement Policy**, which requires public sector entities to consider social factors such as “inclusiveness and fair wage” in the tendering process. The policy was legislated in 2011 through the **Public Procurement Act**, with additional objectives to support social enterprises and businesses that employ under-represented populations. The Act also established a Chief Procurement Officer with the authority to enforce compliance. It currently applies to 238 public sector entities, including municipalities, universities, health authorities and school boards. However, a recent Auditor General report found that government “carries out limited monitoring” and fails to properly address noncompliance. The report concludes that “the province does not do a good job of assessing effectiveness of the procurement process in meeting the objectives” of the Act.<sup>3</sup>
- **QUEBEC:** **The Social Economy Action Plan** aims to strengthen social enterprise and the broader social economy in Quebec through more than 20 targeted measures and \$100 million in government investment (partner organizations are investing a further \$400 million). The plan established a cross-ministry working group, led by the Ministry of Economic Development, Innovation and Export Trade, to integrate social benefits criteria in the public tendering process. The government will also develop an awareness campaign to promote social procurement across ministries, public agencies and municipalities. The plan is the result of the 2013 **Social Economy Act**, which formally recognizes the positive contribution of the social economy, and directs Ministers to take the social economy into consideration in existing measures and programs, as well as in developing new ones.

- MONTREAL: “**L’économie sociale - j’achete!**” was a two-year pilot project (2013 to 2015) to encourage the local public sector to purchase directly from social enterprises. The initiative was launched by the Ministry of Municipal Affairs with the participation of seven local public institutions, including the City of Montreal. Over the course of the pilot, 200 contracts with a combined value of \$2.5 million, were awarded to 27 local firms.<sup>4</sup> Planning for a second phase of the pilot is underway, with a view to mobilizing more social enterprises and public sector clients, and targeting bigger contracts.
- ONTARIO: Ontario has a number of community benefits and social procurement initiatives underway. In April 2014, Metrolinx (Greater Toronto and Hamilton Area’s transportation agency) co-signed a **Community Benefits Framework**<sup>5</sup> with the Toronto Community Benefits Network, a coalition of communities impacted by the construction of the Eglinton Crosstown LRT. The Framework provides for employment, training, apprenticeship, and social procurement opportunities for local residents and businesses.<sup>6</sup> It also outlines guiding principles, roles and responsibilities, as well as expectations for the creation of a monitoring and compliance model. The Eglinton Crosstown Light Rail Transit (LRT) is Metrolinx’s first community benefits program and will serve as a test case for application across future transit projects.

The **Infrastructure for Jobs and Prosperity Act**, passed in June 2015, supports long-term infrastructure planning and investment in Ontario and also states that the government will consider principles such as community benefits, local job creation and training opportunities as it makes decisions and plans regarding infrastructure. Additionally, the law specifically states that, during the procurement process, a plan must be developed that outlines the number of apprentices that will be involved, as well as information on how they will be supported – particularly highlighting women, newcomers, at-risk youth, veterans, and aboriginal populations. Few details are currently available on whether there will be consultations between the public sector and communities or how benefits will be tracked.

Finally, the Ministry of Economic Development, Employment and Infrastructure (MEDEI) had piloted a **Social Enterprise Purchasing Strategy** for the July 2015 Pan Am games, with the support of the Social Purchasing Project, an intermediary that assists social enterprises to build capacity and connect with public tendering opportunities. While generally well-received, the strategy has been criticized for launching after the majority of the contracts had already been awarded, and for providing limited capacity to connect diverse local suppliers and social enterprises with bidders from the private sector.<sup>7</sup>

- **TORONTO:** The City of Toronto began developing its **Social Procurement Framework** in 2013, with the objective of including more minority-owned and social enterprises on its vendors' list for lower-value contracts, as well as increasing access to job opportunities for underemployed and unemployed residents in disadvantaged communities through higher-value projects. The Framework is a key component of the City's poverty reduction strategy and several pilot projects are already underway. The Framework is currently set to go to Council in April 2016.
- **MANITOBA:** The **Manitoba Social Enterprise Strategy**, co-developed in early 2015 by the province and several community organizations, seeks to reduce poverty and strengthen job creation via social enterprise development. A key pillar of the strategy involves increasing access to public procurement opportunities, including by doubling the amount spent on social enterprise contracts by Manitoba's Housing Authority. The strategy also makes a recommendation to mandate departments and Crown corporations to partner with social enterprises and create targeted opportunities for procurement.<sup>8</sup>

In 2010, Manitoba's **East Side Road Authority (ESRA)** also launched a series of CBAs with First Nations communities affected by the 30-year development projects. The ESRA CBAs provide contracts and training to community-owned construction companies for preconstruction work on the East Side Road. The CBAs establish hiring requirements in construction tenders that require 30 per cent of total in-scope contract hours be worked by east side residents for road construction and 20 per cent for bridge construction. To date, ESRA has invested more than \$80 million into First Nation communities and around 600 job opportunities have been created.<sup>9</sup> These efforts align with the province's Aboriginal Procurement Initiative, which aims to increase aboriginal involvement in Manitoba's procurement processes.

- **BRITISH COLUMBIA:** BC's **Social Impact Purchasing Guidelines** are an effort by the Ministry of Social Development and Innovation to encourage staff to incorporate social benefits in purchasing decisions. The first step occurred in 2011 with the establishment of the BC Social Innovation Council. In 2014, the province released a report that recommended encouraging ministries with socially-driven mandates to "take a leadership role to encourage purchasing that meets their objective" and helps the government support its broader social objectives.<sup>10</sup>

Social procurement is also a consideration in other parts of the public sector in the province, including through Vancouver's Healthy City Strategy which

outlines a plan to develop a strategic framework for social procurement and community benefits agreements (CBAs).<sup>11</sup>

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## UK AND EU

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- The 2004 **European Union Procurement Directive** states that contracting authorities are able to impose “special conditions relating to the performance of a contract” that may, in particular, “concern social and environmental considerations.”<sup>12</sup> In 2010, the EU also issued guidelines for **Socially Responsible Public Procurement**, which promote employment opportunities for minorities and youth, decent work, and social inclusion, among other objectives. Though a 2011 evaluation by the EU commission on the effectiveness of public procurement found there is growing interest among member states in using procurement to promote social policy objectives, it also found that contracting authorities have limited experience in integrating socially responsible objectives in their practices compared to standard processes.<sup>13</sup>
- UK: The **Public Services (Social Value) Act** was enacted in 2012 to promote social benefits through public sector procurement. According to the Act, a commissioning authority must consider how the purchase might “improve the economic, social and environmental well-being of the relevant area.” A recent review of the Act found that, despite growing awareness in the public sector, consideration of social value in procurements is “relatively low.”<sup>14</sup> The lack of a specific definition for “social value” and the lack of clarity on how to incorporate it in the procurement process appear to be key issues. Furthermore, while a majority of commissioners believed the Act had positive effects on local communities, the review indicated a need for better measurement tools to quantify social outcomes and the government has committed to addressing shortcomings with measurement. At a municipal level, efforts to promote social benefits in procurement have been undertaken in Birmingham through its Business Charter for Social Responsibility.<sup>15</sup>
- SCOTLAND: In 2003, Scotland began to pilot the inclusion of community benefits in government contracts with the introduction of the **Community Benefits in Procurement** program in five cities. The program focused on targeted training and employment outcomes. Building on the success of the pilots, the Scottish government formally incorporated the use of Community Benefits (CB) clauses into its procurement policy in 2008. A recent third-party evaluation determined that two-thirds of surveyed public organizations used CB clauses between 2009 and 2014, and that

individuals from targeted communities were benefiting from increased employment and training opportunities.<sup>16</sup>

To encourage further use of CB clauses, the **Procurement Reform (Scotland) Act 2014** requires the procuring organization to “consider during the design of the tender whether to impose CB requirements” for contracts valued at £4 million or above. The Act further requires public sector contracting authorities to consider how procurement at any level can be leveraged to “improve the economic, social, and environmental wellbeing” of the local area, and how the process can be made more accessible to small and medium-sized enterprises (SMEs), non-profits and social enterprise. As part of these efforts, authorities must monitor performance and report back on their achievements on a yearly basis.

In addition, new procurement guidance issued in 2015 indicates that Living Wage Employers should be considered more favourably during the bidding process. The Scottish government itself is an accredited Living Wage Employer.

- **WALES:** The Welsh **Community Benefits in Public Procurement** initiative began with a pilot project in 2003, which was designed to award contracts to suppliers who delivered community benefits through their projects. The pilot focused on construction and aimed to incentivize contractors to employ and train a percentage of its workforce who would have otherwise been unemployed.<sup>17</sup> The first guidance document on community benefits in Wales was published in 2010. Of the first 35 projects worth £465 million, 85 per cent has been reinvested in Wales, with £124 million directly impacting the salaries of citizens and £366 million towards businesses in Wales. Additionally, 562 disadvantaged people were helped into employment, with 15,460 weeks of training.<sup>18</sup> While community benefits have not been enacted in legislation, the Welsh Minister for Finance states that adoption is not optional and legislation will be considered if needed.
- **NORTHERN IRELAND:** The **Northern Ireland Public Procurement Policy** was first approved in 2002 by the Northern Ireland Executive. In 2008, the Executive approved guidance that would incorporate sustainable development in procurement processes - worth a total of £3 million annually.<sup>19</sup> It has since developed guidance documents and toolkits for boosting social benefits through public procurement. In recent guidance, the need to take into account outcomes and objectives was highlighted as part of a revised strategic plan, including requirements to set targets, monitor compliance with social clauses, and report quarterly on results.<sup>20</sup> In 2014, the Northern Ireland Assembly undertook an effort to implement social clauses in all public procurement contracts.<sup>21</sup>

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## AUSTRALIA

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- AUSTRALIA & NEW ZEALAND: The **Australian and New Zealand Government Framework for Sustainable Procurement** provides a set of national principles to help state, territorial and commonwealth jurisdictions in Australia and New Zealand incorporate social outcomes and sustainability in the procurement of goods and services. Released in 2007, it aims to provide a common understanding of procurement in the region and the benefits of incorporating sustainability in procurement processes.<sup>22</sup> The Framework has helped several jurisdictions develop their own procurement policies, including New South Wales. In New Zealand, the Framework was released alongside efforts to adopt minimum standards and targets for specific types of goods and services as part of its Sustainable Government Procurement Project.<sup>23</sup>
- NEW SOUTH WALES: In New South Wales (NSW) the **Social Procurement Policy** was laid out through guidelines in 2012. The guidelines indicate that, while it may not be specifically stated, social outcomes and benefits are part of local and state procurement regulations as part of requirements to achieve value for money.<sup>24</sup> Additionally, the most recent update of the NSW Government Procurement Policy Framework — which outlines procurement processes for all NSW government agencies — similarly states that agencies must ensure value for money in procurement, which includes sustainable procurement taking into account social benefits.<sup>25</sup> It also suggests that agencies develop their own policies, guidance material, training and tools, as well as support socially-responsible businesses. NSW now has initiatives designed to provide specific benefits, including to encourage aboriginal participation in the workforce and to support businesses that employ those with disabilities.<sup>26</sup>
- VICTORIA: Victoria's Department of Planning and Community Development issued a **Social Procurement Guide for Local Governments** in 2010. It assists local councils with planning and the process involved in using social procurement – to help them use the purchasing power of Victoria's 79 local councils to create positive social outcomes.<sup>27</sup> Since it was released, local councils have used the guide as a basis for incorporating social impact goals in purchasing decisions. In 2013, a toolkit was also developed to further aid local governments.

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## U.S.

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- **FEDERAL:** The U.S. has targeted small business growth through procurement since 1953, when it launched the **Small Business Administration (SBA)**, a department dedicated to supporting small businesses in America. Building on a long list of previously legislated targets, in 2013, the **Small Business Act** set out statutory procurement goals for all federal executive agencies. Key targets include 23 per cent of prime contracts to small businesses, 5 per cent to women-owned small businesses, and 5 per cent to small disadvantaged businesses. The SBA works with agencies to ensure compliance and, in 2014, calculated the government-wide performance at 105 per cent of the 23 per cent goal, though other evaluations have not been as favourable.<sup>28</sup> The SBA also delivers the Business Development Program for helping socially and economically disadvantaged entrepreneurs “gain a foothold in government contracting”<sup>29</sup>. The program is divided into two stages – a four-year development phase followed by a five-year transition stage.

Furthermore, it is worth noting that certain states have specific policies surrounding enterprises owned by diverse populations. For instance, in New York State, the Division of Minority and Women’s Business Development ensures access to contracting opportunities for firms that are part of the program as part of efforts to support equal opportunity.<sup>30</sup>

- **MUNICIPAL:** In 1994, Baltimore was the first city in the U.S. to enact a living wage ordinance. Roughly 150 other cities have since followed suit. While conditions vary from city to city, the ordinances generally require employers contracting with government or otherwise benefiting from public financial assistance, to pay wages and/or benefits above the federal minimum wage.

Certain U.S. cities have also attached clauses on community benefits to development projects, including the Park East Redevelopment Compact (PERC) in Milwaukee. As part of PERC, 25 per cent of construction jobs in the redevelopment process must originate from enterprises classified as Disadvantaged Business Enterprises/Minority Business Enterprises, and five per cent from Women’s Business Enterprises. PERC also has requirements on training and apprenticeships for low-income residents.<sup>31</sup>

- **CALIFORNIA:** Los Angeles was one of the first cities to successfully incorporate community benefits into contracts and agreements. Coalitions in Los Angeles have negotiated several CBAs since 2001, obtaining benefits ranging from living wage requirements within projects to investments in parks and recreation.<sup>32</sup> In early 2012, the Los Angeles

County Metropolitan Transit Agency adopted measures targeted at hiring for all projects as part of a 30-year, multi-billion transit initiative. The measures were adopted through a Construction Careers Policy and a Project Labor Agreement to allocate 40 per cent of construction jobs and provide training to low-income populations.<sup>33</sup>

San Francisco has also championed CBAs through two city-led initiatives. The first, launched in 2011, allows large tech companies (businesses with payroll expenses greater than \$1 million) to claim up to six years of payroll tax exemptions in exchange for new jobs created in San Francisco's most economically depressed areas through a CBA. The City Administrator's office facilitates the CBA, helping to liaise with local residents and other community stakeholders and identify local priorities. Compliance is monitored by the city, and companies must achieve 80 per cent of their stated objective to continue being exempt from the payroll taxes.

Also in 2011, San Francisco's Public Utilities Commission (SFPUC) passed a community benefits policy that embeds community benefits criteria in Requests for Proposals (RFPs) valued at more than \$5 million. The commission defines community benefits "as those positive effects on a community that result from the SFPUC's operation and improvement of its water, wastewater and power services." The policy calls for strong public involvement in priority setting and sufficient resources to measure and report results.<sup>34</sup> The SFPUC Contractors' Assistance Center has been praised for its proactive efforts to assist and engage with local businesses by supporting their development through technical and financial assistance, training, counseling and guidance.<sup>35</sup>

# 3 ANALYSIS

## Community benefits and social procurement policy approaches

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Community benefits and social procurement policies seek to generate economic and social value, well-being or benefits across regions or in specific communities. In many cases, the meaning of these terms is vaguely defined, but overall encompasses objectives such as inclusivity, greater equality of income, improved labour conditions, skills development, and empowered communities.

Studies have shown that employing populations that face barriers to employment can have significant economic benefit.

When successfully implemented, social procurement offers an opportunity to enable investments to go further and have a significant impact on social and economic objectives. For instance, studies have shown that employing populations that face barriers to employment can have significant economic benefit. Indeed, examples in Winnipeg and Toronto indicate that such efforts can result in savings across a number of policy areas, including health care and the justice system.<sup>36</sup>

Jurisdictions approach community and social benefits policies in three general ways:

- I. Embedding community benefits clauses into public contracts;
- II. Developing community benefits agreements; or
- III. Purchasing directly from businesses that generate a social benefit.

The first two approaches usually have a strong focus on delivering training and employment opportunities, and appear to be more frequently applied to public infrastructure contracts. The three approaches are described in greater detail below.

### I. Embedding community benefits clauses into public contracts

Community benefits clauses require suppliers contracting with a public sector body to meet specific conditions or criteria, such as local hiring, subcontracting to social enterprise or paying a living wage to secure the contract. Contracting authorities can develop the criteria on their own, request that a potential supplier propose what it can reasonably deliver, or work together to determine what community benefits will be imposed through the contract. In some cases, communities impacted by the project are also consulted in developing the criteria, though few jurisdictions have publicly released materials that demonstrate to what extent this occurs in a consistent way across departments and projects. In a few cases, jurisdictions set thresholds at which the clauses must be considered in the pre-procurement stage (e.g. contracts valued at more than £4 million in Scotland or £2 million in Wales), which helps to provide additional direction and clarity for contracting authorities. Generally, higher-value contracts — which are typically awarded to large suppliers with greater capacities — are targeted for community benefit clauses.

## **II. Developing community benefits agreements (CBAs)**

Traditionally, CBAs have been designed as one-off contracts negotiated between a private developer and a community impacted by the development, with local government serving as an intermediary. Now, jurisdictions including Ontario, Manitoba and San Francisco, are seeking to embed the CBA process into standard practice for specific infrastructure projects. For example, Metrolinx's community benefits framework, developed with input from impacted communities along the Eglinton Crosstown LRT line, is a procurement model that will require its main construction supplier to maximize opportunities for workforce development, subcontracting, and community improvement. It is likely that the eventual agreement between Metrolinx and the consortium that is building the Crosstown will serve as a blueprint for future LRT projects.

Note that the key difference between CBAs and community benefits clauses is that CBAs are usually attached to a single department or project (i.e. public utilities in San Francisco or East Side Road construction in Manitoba) whereas community benefits clauses are broadly applicable across the public sector and different types of contracts.

## **III. Purchasing directly from suppliers that generate social benefits**

Many jurisdictions use smaller, lower-value contracts as an opportunity to buy directly from businesses that are majority-owned by a target group (e.g., minority, aboriginal, veteran) or that serve a social purpose (i.e. social enterprise). Governments may work under procurement thresholds to sole-source from such businesses or require contracting authorities to obtain at least one bid from a supplier that delivers social benefits. In this report, the U.S. is the only jurisdiction with statutory goals for the share of procurement contracts that must be awarded to businesses owned by certain historically disadvantaged groups. Because smaller businesses usually possess limited know-how or capacity to work with large public institutions, capacity-building through special funding, training and development programs is an important extension of this approach.

## **Strength and Scope of Policies**

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Few jurisdictions have mandatory or well-enforced social benefits policies. Most policies (legislated or otherwise) use non-compulsory language that encourages contracting authorities to seek out social value through spending activities and contract criteria, rather than explicitly obligating them to do so. For example, policies are often worded to "require" that contracting authorities "consider" the use of community benefits clauses or to purchase from a social enterprise.

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## A NOTE ON LIVING WAGE POLICY COMPLIANCE

The living wage movement in Canada is slowly building momentum. New Westminster, B.C. was the first city to establish a living wage ordinance in 2011 for city employees and contractors, while Vancouver has recently passed a motion, in July 2015, to implement a living wage for its workers and some contractors. Other places, such as Ottawa, have considered adopting living wage policies as well in recent years. Meanwhile, evidence from the U.S., where roughly 150 cities have living wage laws, indicates that such policies affect very few workers directly. According to most studies, no more than three percent of the bottom-tenth of wage earners are covered by living wage laws.<sup>38</sup> The Brookings Institute suggests that poor compliance structures are to blame and that living wage laws are, currently, better placed to raise awareness of income disparity rather than fixing it.<sup>39</sup> Recent research from the UK found that weak penalties has limited the deterrent effect of some wage laws, which has prompted calls for alternative models for enforcement such as developing an “enforcement council” comprised of employers’ associations and trade unions which could provide oversight over members.<sup>40</sup>

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One of the reasons jurisdictions use non-compulsory language is to minimize the risk of trade disputes that may arise from potentially unjustifiable local preference criteria – though there have also been efforts to focus on certain types of demographics and populations in light of these concerns. Another reason is that a requirement may have a limited legal basis. For example, in Scotland’s procurement guidelines, contracting authorities are asked to consider suppliers who pay a fair wage more favourably. EU’s Socially Responsible Procurement guidelines also specify the provision of “decent work” as a key consideration when awarding contracts. However, because EU courts have ruled that companies under public contracts are not required to pay workers the minimum rates set by collective agreements, no jurisdiction in the EU (including Scotland) can legally enforce such criteria.<sup>37</sup>

The strength of community benefits and social procurement policies can also depend on how precisely “social value” or “social benefit” principles or objectives are defined. Most jurisdictions offer somewhat unclear interpretations, leaving many contracting authorities in the dark when it comes to understanding the purpose or expectations of the policy. In the UK, for instance, a recent review of the Public Services (Social Value) Act, links lower use of social procurement among contracting authorities to the legislation’s inadequate definition of “social value.”<sup>41</sup>

There are valid reasons why jurisdictions tend to rely on ambiguous definitions of “social value”, “social well-being”, “social benefit,” and the like. More than half of the policies in this scan cover the purchasing activities of entire public sectors at the city, regional or national level. In these cases, narrower definitions may be impractical or cause undue burden for some departments or communities. Given the uniqueness of community benefits and social procurement policies, fewer details may also provide a greater degree of flexibility, allowing for more experimentation and for building an evidence base of what works. This tension between the need for both specificity and flexibility is a key issue.

## Challenges and Key Success Factors

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### I. Legal Barriers and Misconceptions

Community benefits and social procurement policies operate within a highly-complex legal environment, defined by domestic public procurement and business discrimination laws as well as international trade treaties. However, while real legal challenges exist, misconceptions and misinterpretations of the law can act as greater deterrents to wider use of these policies. A recent survey of social procurement practices around the world concluded that legislative barriers are proving “more apparent than real.”<sup>42</sup> Furthermore, as the cases in this report demonstrate, community and social benefits policies are largely

Clear guidance, communication and training on legislative boundaries and effective implementation are important to overcoming break barriers as well as misconceptions.

designed to complement rather than replace existing legislation or processes, therefore minimizing the risk of operating outside of legislative structures.

In Canada, international trade agreements are a frequent source of concern, but currently do not apply to sub-federal procurement and contain numerous exemptions and exceptions that allow provincial and broader public sector contracting authorities to have greater flexibility in procurement. Canada's Agreement on Internal Trade (AIT) also contains various exemptions that allow sub-federal public entities to pursue "affirmative action programs for disadvantaged groups" or "regional economic development" through procurement.<sup>43</sup> The AIT is now in the process of being revised. The Ontario-Quebec Trade and Cooperation Agreement, which was also recently revised, includes language about the goal of public procurement "to respond to public demand for governments to be environmentally, economically and socially responsible."<sup>44</sup>

With the introduction of the Comprehensive Economic Trade Agreement (CETA) with the EU, however, sub-federal procurement in Canada would, for the first time, be covered by an international trade agreement. But with the language in CETA yet to be finalized, it is impossible to speculate on the precise range of coverage or strength of enforcement mechanisms. In any case, this should not discourage the public sector in Canada from exploring community benefits and social procurement practices that complement existing procurement policy frameworks. British Columbia, Ontario, Quebec and Manitoba are all already taking steps in this direction and realizing positive social gains.

Experience from leading jurisdictions demonstrates that clear guidance, communication and training on legislative boundaries and effective implementation are important to overcoming real barriers as well as misconceptions. Most jurisdictions publish publicly-available toolkits and guides to community benefits and social procurement policies, which also help to educate suppliers, intermediaries and other stakeholders about key legal considerations. In Ontario, such guidance would be essential to overcome the current uncertainty regarding the *Broader Public Sector Procurement Directive* and the *Ontario Discriminatory Business Practices Act*, as well as lack of clarity over the degree of risk each poses to public entities pursuing community benefits or social procurement policies.<sup>45</sup>

## II. Capacity Building and Partnerships

Many jurisdictions seek to generate social value by buying from businesses that serve a social purpose, are majority-owned by members of a historically disadvantaged group, or are located in economically depressed areas. Contracting with government puts these businesses on more financially-stable footing and spreads wealth more broadly.

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## SOCIAL PURCHASING PROJECT — CAPACITY ASSESSMENT TOOL

MEDEI's Social Purchasing Project is developing a tool for social enterprises that will help them evaluate operational strengths and weaknesses, as well as assist them in preparing for tender-ready certification.

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However, for many SME suppliers, doing business with government can be prohibitively complex and costly. Complicated tendering processes and RFP language, longer contract payment cycles, and larger contract sizes make it difficult for many small business owners to bid on or fulfill project requirements. Furthermore, contracting authorities themselves often have limited knowledge of the social enterprise landscape or how to locate tender-ready, local small businesses.

Lessons from other jurisdictions show that supply-side initiatives, which focus on building the capacity of smaller suppliers to access public contracts and deliver on requirements, are essential to success. Simplifying and streamlining tendering to reduce the burden on business is an important first step in many cases. For example, Scotland now allows businesses bidding on public contracts to store answers to regularly asked questions and has accelerated payment of contracts through a national e-invoicing solution.<sup>46</sup> Similarly, a streamlined Short-Form RFP has been developed in British Columbia to acquire goods and services less than \$250,000 from small businesses.<sup>47</sup>

Working directly with smaller suppliers to develop business management skills and other competencies is another tried approach. As part of the U.S. Small Business Act, for instance, the federal government has launched several business development programs for female-, minority- and veteran-owned small businesses, which support fledgling entrepreneurs for up to nine years. In Ontario, as part of its Social Enterprise Strategy, MEDEI funds the Social Purchasing Project, an intermediary organization that helps social enterprises bid on government contracts.

Supply-side initiatives are equally important to ensure social benefit requirements imposed on larger contracts and suppliers are realistic and achievable. For instance, if a CBA demands that 10 per cent of the project workforce is hired from a target community, there must be a supply of qualified local workers (or plans to train them) to fulfill the requirement.

Partnerships with intermediary organizations, such as the Social Purchasing Project, are critical on all these fronts. Intermediaries serve as a crucial link between communities and suppliers and government strategies. They play a key role in helping SMEs and social enterprises navigate the tendering process, deliver development and training programs to individuals and businesses, and connect contracting authorities to vetted suppliers and skilled local workers. Intermediaries do not conform to a specific organizational type. For example, community and civil society organizations, supplier certification bodies, social purchasing advocate groups, and workforce development networks can and do serve as intermediaries.

Local organizations play a key role in building capacity and engaging communities regarding opportunities through social procurement and community benefits agreements.

Scotland provides a strong example of intermediaries which have been identified as being particularly successful for building relationships between social enterprises, government, and purchasing departments within the private sector. It also encourages social procurement among the partners with which it works.<sup>48</sup> Robust government support and dynamic policies on procurement have further helped to strengthen the market for intermediaries in the country.

Furthermore, jurisdictional experience underscores the importance of highly-visible and meaningful partnerships with intermediaries (generally civil society organizations) in shaping community and social benefits policies from the outset. In the majority of cases reviewed in this paper, groups like the Chantier d' économie sociale in Quebec or the Canadian Community Economic Development Network in Manitoba, serve as key advisors to government and participate in co-creation of new policies. Partnering with these organizations is paramount to developing a shared understanding of the social benefits sought, as well as augmenting the collective capacity of government, suppliers and communities to successfully deliver on them.

Local organizations also play a key role in building capacity and engaging with communities regarding opportunities through social procurement and community benefits agreements. Through this role, organizations such as the Toronto Community Benefits Network – a network of residents and community groups – engage with residents and coordinate with governments to push for improvements to social and economic impact. Indeed, TCBN worked with Metrolinx to develop its Community Benefits Framework document.<sup>49</sup>

### **III. Change Management and Organizational Buy-in**

Like any transformational policy, community benefits and social procurement policies pose a number of change management challenges for governments. These challenges are further compounded by the complex legal considerations and misconceptions that surround such policies, as well as the increasing number of competing priorities that procurement departments have had to balance over the past several years (e.g., cost, efficiency, greater accountability and transparency, environmental sustainability, etc.). The imprecise nature of “social value” goals embedded within new policies can also act as a barrier to wider adoption.

As with any major policy shift, political will is critical to success. Senior leadership from both the political and civil service is needed to secure dedicated resources and cut through complex procedural barriers associated with institutional procurement. Other champions of change throughout the supply chain are also essential to ensure new processes are understood and consistently applied. These can include leaders in other parts of the public sector, such as in hospitals and universities.

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## LEADING CHANGE IN SCOTLAND

To support successful implementation of its 2014 Procurement Reform Act, Scotland launched the Public Procurement Reform Board, led by a cabinet minister and comprised of senior government executives, evaluation experts, and community and industry leaders. The Board, which has recently evolved into the Ministerial Strategic Group on Procurement, is responsible for setting a clear direction to all public sector bodies, implementing policies, and monitoring progress on the reform agenda.

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The importance of incremental implementation to organizational buy-in is another clear lesson. Successful, longer-standing community benefits and social procurement policies, like those in Wales or Scotland, have taken more than a decade to transform from small-scale pilots to policies covering all purchasing activity within their respective regions. In the City of Toronto's case, its smaller experiments in local hiring and social procurement also helped to provide a proof-of-concept and lay the groundwork for the current Social Procurement Framework, which is slated to go to Council in April 2016.<sup>50</sup> Starting small and building on what works allows for more flexibility along the path to a bigger, transformational strategy. It also gives departments, suppliers and partners more time to internalize new practices and learn from experimentation.

Again, because the operating environment for community and social benefits policies is marked by complexity and competing priorities, proper training, guidance materials, and tools such as supplier databases, are necessary to organizational buy-in. Guidelines and toolkits in particular are becoming increasingly standard practice across jurisdictions from British Columbia to the Australian State of Victoria, providing useful information on contract language, evaluation methods, engagement with partners and intermediaries, and legal issues that may arise. These supports help provide a clear path of action for contracting authorities and build greater confidence in new processes.

Finally, setting public targets (e.g. the share of public contracts that must be awarded to social enterprise) can be an effective way of promoting new policies across the organization and galvanizing governments, supplier networks, intermediaries and communities around the new strategy. In this scan, the U.S. is the only jurisdiction that uses highly-visible statutory targets, built into its Small Business Act. The public targets have pushed the U.S. government to build stronger rules and better guidance, provide more technical and accountability supports, and review its business development programs to ensure goals are met.<sup>51</sup>

## IV. Tracking Compliance and Impact

Assessing the effectiveness of community benefits and social procurement policies has, in many cases so far, proven difficult. The challenge is two-fold: governments must first devise appropriate monitoring systems that augment policy compliance and, second, find meaningful indicators and methods to evaluate outcomes.

Leading jurisdictions such as Scotland and the U.S. federal government have more rigorous monitoring systems and performance targets. Both jurisdictions require contracting authorities to produce annual procurement strategies and report back against their goals on a yearly basis. In the U.S., if stated goals are not met, the federal agency must appear before Congress to explain why it failed to reach its objectives and how it will avoid doing so in

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## WALES – COMMUNITY BENEFITS MEASUREMENT TOOL

Wales has developed a helpful measurement tool for contracting authorities to improve data gathering and consistency. The tool provides a consistent format for contractors to record and report key information. There are six specific categories related to local employment recorded by the measurement tool.<sup>54</sup>

1. Total value of contracts
2. Specific value spent on local staff and labour costs
3. Value of revenue spent on local businesses
4. Value of revenue specifically to local small businesses
5. Number of previously unemployed people who were employed
6. Number of weeks training provided to unemployed people who were recruited

The Welsh Government includes information on how the tool should be used in guidance documents. It also offers a one-day training course that provides insight on practical implementation of the tool. Guidance documents recommend that the tool be used on a regular basis at contract management meetings – providing an opportunity to track progress, revise metrics and objectives, and identify any problems.<sup>55</sup>

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the future. Furthermore, the U.S. Small Business Administration publishes an annual scorecard that rates the federal government’s procurement activities, including whether it has met goals for contracts with small disadvantaged businesses, businesses owned by women, and certain other populations.<sup>52</sup> Through the Small Business Act, statutory procurement objectives are outlined for all federal executive agencies. The Small Business Administration coordinates with each agency to determine prime and subcontracting objectives, on which grades for the scorecard are based.

While these jurisdictions benefit from stronger monitoring mechanisms, it is important to highlight that these processes also require considerable resources and expertise. For example, in the U.S., federal agencies receive substantial support from the Small Business Administration, a body that is mandated to assist agencies in developing procurement plans and tracking results. In Scotland, contracting authorities have expressed concern about the burden of conducting wide-ranging consultations.<sup>53</sup> Moving forward, jurisdictions, especially those still in the beginning phases of their initiatives, must carefully consider how performance tracking can promote greater compliance without creating undue burdens on contracting authorities or suppliers.

The bigger challenge jurisdictions face, however, is measuring outcomes. While a number of governments do collect data on job creation (e.g. 600 jobs generated through Manitoba’s CBAs) or on the number and value of contracts awarded to suppliers (e.g. \$2.5 million to 27 social enterprises through Montreal’s pilot), data gathering is often inconsistent or fails to sufficiently capture broader impacts. Developing the right indicators to measure “social value” or “social well-being” is at the core of the challenge. The extended timeframe needed to track social and economic impacts, such as improved labour market attachment or poverty reduction, also makes it difficult to assess how well these policies are currently performing.

Governments should look to jurisdictions with longer-standing initiatives, such as Wales, for examples of outcomes measurement tools and strategies. However, they should ultimately focus on the local context and partnering with communities, suppliers and intermediaries in their regions to develop appropriate indicators and evaluation techniques.

## 4 CONCLUSION

Determined senior leaders are needed to continuously push through a web of organizational, procedural and legal considerations.

The past 10 years have seen steady growth in community benefits and social procurement policies around the world. Although, so far, some governments have resisted strictly enforcing the policies, community and social benefits practices have continued to grow in sophistication and scope. In some places, they are slowly becoming a new normal for doing business with government.

International experience underscores the importance of political will and committed leadership in advancing these transformational initiatives. Community benefits and social procurement policies may take years to properly design and scale, and determined senior leaders are needed to continuously push through a web of organizational, procedural and legal considerations.

Meaningful partnerships with intermediary organizations, such as those working on behalf of the social and community economic development sector or helping build small business capacity, are also crucial. Strong partnerships with diverse organizations and communities are required to develop a shared understanding of 'socio-economic value' and common goals around which key players can focus and align their strategies. Partner organizations also support critical supply-side and capacity-building measures, without which community benefits and social procurement policies are unsustainable.

Finally, as more initiatives reach scale, it will become increasingly important to properly evidence outcomes to ensure mechanisms are being effectively implemented. Evidence of the impact of community benefits and social procurement policies in delivering social value and cost efficiency will be valuable in strengthening support for these tools for creating more decent work and sharing prosperity.

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