



July 10, 2024

Premier Ranj Pillai
Government of Yukon
Box 2703
Whitehorse, Yukon Y1A 2C6

Dear Premier Pillai,

Re: Vendor Performance Review Program

The Yukon Contractors Association (YCA) is calling for immediate suspension of the Yukon Government's (YG) Vendor Performance Review Program (VPR).

The YCA has been actively engaged in consultations with YG over the past three years as the VPR was being developed and implemented in phases. Despite efforts by the YG team at the Procurement Support Centre (PSC) to solicit and incorporate industry feedback, it has become clear that the VPR in its current form will not be an effective tool to review Vendor Performance.

Background

In 2010-2011, YCA endorsed the development of a program that would enable YG to disqualify or penalize entities that consistently fail to deliver on contract obligations. In other words, a means of eliminating 'bad actors'. The current VPR is significant departure from the original intent and imposes additional work and costs, creates uncertainty, and amplifies the adversarial environment that currently exists between YG and contractors.

Our Key Concerns

1. Model Framework

- The VPR is based on the Alberta Vendor Performance Management program (VPM). This program has been evolving since its implementation in January 2020 and is currently under a critical review of the evaluation process due to conflicts with industry.
- The Alberta VPM includes a performance review of consultants' work which was not incorporated into the Yukon VPR. This is a fatal flaw.
- The Yukon VPR does not adequately consider the size, complexity, and resources required to undertake broad-based VPR.

2. Subjective Evaluations

- Hearing from industry, the PSC amended the evaluation criteria to be more objective by converting *'Exceptional, Good, Satisfactory, Satisfactory with Minor Concern, Satisfactory with Major Concern, Unacceptable, N/A'* to *'Yes, No, N/A'*. However, applying these assessments is often subjective, e.g., "Did the Vendor follow communication and/or notice procedures as outlined in the contract?". What if the performance was 'some of the time' or 'most of the time' – is the assessment Yes or No?



- Due to the size and intimate nature of our small community in Yukon, the model is rife with the opportunity for implied conflicts of interest, favouritism and even kickbacks.
3. Burden on YG Project Managers
- The VPR adds an additional burden on Project Managers (PM) with little or no additional resources or support.
 - A key objective is to build a healthy and productive working relationship between YG and contractors as it will result in better project outcomes. Requiring PMs to undertake the VPR props up an already extremely adversarial working environment.
 - YG has and will continue to experience challenges recruiting and retaining experienced PMs which inevitably results in inconsistent approaches and application of VPR assessment criteria.
4. Performance of Consultants
- The performance of some consultants has been abysmal with no accountability for huge cost overruns, multiple pages of addenda and time delays.
 - YCA contends that YG has a responsibility to make ‘bad actor’ consultants accountable for their work and subject to sanctions for poor performance.
5. Performance of the Owner – YG
- The core objectives of the VPR are to provide support managing, tracking, and assessing the performance of contracted vendors, supporting fiscal responsibility and stewardship of Yukon’s public finances.
 - A critical component of the performance of vendors is tied to the quality and reliability of the project scope and deliverables prepared/supplied by YG. There are many instances where the tender documents are inadequate, resulting in multiple addenda, change orders, project delays, and cost overruns.
 - YG is obliged to provide capable and competent project management – the performance of YG’s project managers and other project team members should be assessed and discussed with a focus on continuous improvement.
 - If a project is not successful for whatever reason, YG is requiring the YG Project Manager who was responsible for the project to review the contractor’s performance. It is unrealistic for a YG Project Manager to provide an unbiased review if a portion of the project failures were as a result of his/her management of the project.
6. Contract Management
- Other governments in Canada manage vendor performance through the contract they have in place for the project.
 - When YG and a vendor enter into a contract, both parties have legally binding obligations that are outlined in the terms and conditions of the contract.
 - Taking a diligent management approach to vendor performance holds vendors accountable for their obligations.



- If a project is managed and enforced properly utilizing the contract it will hold vendors accountable for poor performance.
- YCA contends that vendor performance should be managed through the project contract.
- The building of an entire program that affects all government contractors is an unnecessary step, when YG has the tools within its contracts to hold vendors accountable.
- YG PM's simply need to get better at monitoring, assessing and managing performance over the course of the contract.

7. Bias Against Yukon Businesses

- The proposed approach to the impact of evaluations is biased against Yukon contractors. e.g. an 'outside' contractor who receives a poor performance rating and is assessed penalties can just move on to other work in their own jurisdiction, while a Yukon-based contractor suffers direct impact on future contract access and evaluations.
- This program does nothing to stop poor performers from other jurisdictions from participating in Yukon tenders.

8. Yukon First Nations Procurement Policy – Vendor Performance

- YCA continues to support the goals and objectives of the Yukon First Nations Procurement Policy (YFNPP).
- YCA supports a vendor performance review of commitments made to access incentives and benefits of the YFNPP.
- The YFNPP includes a Performance Measurement Framework that YCA proposes should be the tool to assess vendor performance of commitments and deliverables in a Yukon First Nations Participation Plan, and not an independent VPR.

9. Resources

- The development and implementation of a VPR is a complex undertaking that requires a commitment of significant human, financial, and other resources.
- The YCA does not support dedicating the significant ongoing resources that would be required to deliver a VPR program that would only serve to increase the cost and complexity of projects.
- The YCA proposes that any increased investment should be made in updating YG's procurement processes, contract documents, RFP/RFQs, contract management, and contract enforcement.



In Closing

It is YCA's position that the proposed VPR program is fraught with challenges – many of them arising from a YG procurement and contracting regime that is badly in need of updating, alignment with best practise, innovation, and strategic resourcing. YCA and our members stand ready to participate in the development of a sensible, fair, and transparent YG procurement process including addressing vendor performance management as an integrated component of the contracts between YG and the contractor.

Again, YCA is calling for the immediate suspension of the program.

We look forward to discussing these matters with you and your Cabinet colleagues at your earliest convenience.

Yours truly,

Terry Sherman

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