

# Procurement Policy Restriction (U.S. Businesses)

## Frequently Asked Questions

### Background

#### 1. What are tariffs?

A tariff is a form of tax or customs duty imposed by one country on the imports of goods or services from another country – see [Tariffs, rules and regulations](#). In general, tariffs raise the price of imported goods and services, privileging domestic products.

#### 2. Why is Ontario implementing the Procurement Restriction Policy (the “Policy”)?

Ontario is implementing this Policy in response to tariffs imposed by the United States on Canadian products, which are expected to negatively impact Ontario's economy. The Policy's intent is to exclude U.S. businesses from participating in Ontario's procurement processes.

### The Policy

#### 3. What is the Procurement Restriction Policy?

The Policy, issued by Treasury Board / Management Board of Cabinet (TB/MBC), restricts Ontario Public Service (OPS) and designated Broader Public Sector (BPS) organizations from procuring from U.S. businesses. Should the U.S. remove tariffs imposed on Canadian products, this could be rescinded by TB/MBC.

#### 4. Who does the Policy apply to?

This Policy applies to all public sector entities, which means government entities and all designated BPS organizations, unless otherwise specified. This includes:

##### Government Entities

- all ministries

- all provincial agencies
- the Ontario Power Generation (OPG)
- the Independent Electricity System Operator (IESO)

### **Broader Public Sector (BPS)**

Designated BPS Organizations that are subject to the [BPS Procurement Directive](#)

## **5. When does the Policy come into effect?**

The Policy becomes effective on **March 4, 2025**, for both OPS and BPS organizations.

## **6. What are the requirements of the new Policy?**

The day this Policy comes into effect, the Policy requires that:

All public sector entities exclude U.S. businesses from participating in all new procurements of goods and services.

This applies to all new procurements, regardless of the estimated value or the procurement method used (invitational, open competitive, non-competitive, etc.).

## **7. What is out-of-scope for this policy?**

The Policy does not apply:

- To any procurement **already in progress** at the time that the policy is effective, (i.e., a procurement document has already been issued).
- When public sector entities use an existing Vendor of Record arrangement (VOR) or other available arrangements.
- To unforeseen situations of urgency.

## **8. What is the U.S. Business definition?**

A U.S. business means a supplier, manufacturer or distributor of any business structure (includes a sole proprietorship, partnership, corporation or other relevant business structure) that:

- has its headquarters or main office located in the U.S., and
- has fewer than 250 full-time employees in Canada at the time of the applicable procurement process.

If a bidder or vendor is a subsidiary of another corporation, part 1 of the definition above is met if that bidder or vendor is controlled by a corporation that has its headquarters or main office located in the U.S

A public sector entity can rely on a business's representation that it does not meet the definition of a U.S. business. This means that a public sector entity does not need to independently verify that the bidder is not a U.S. business, but it can ask a bidder to attest that it does not meet that definition.

Sample language has been provided in the guide that can be used in a procurement document in support.

**9. Would a bidder or vendor that is a subsidiary of a US supplier be considered a U.S. business?**

Yes, a Canadian subsidiary of a U.S. supplier is considered a U.S. business if it is controlled by a corporation whose main office or headquarters is in the U.S. and the subsidiary has fewer than 250 employees in Canada at the time of the applicable procurement process.

## Scope of Application

**10. Does the Policy apply to municipalities?**

The Policy does not apply to municipalities.

**11. Does this Policy apply to subcontractors?**

Subcontractors are not covered by the Procurement Restriction Policy.

**12. Does this Policy apply to contract extensions?**

No, the Policy does not apply to the exercise of option(s) to extend a contract term under an agreement, as set out in the form of agreement included in the procurement document and approved as part of the original business case. The Policy applies, however, to the extensions to the term of the contract (including all options to extend the contract) beyond what is set out in the procurement document, which are considered non-competitive procurements.

### **13. Does this Policy apply to non-competitive procurements?**

Yes, the Policy applies to non-competitive procurements. When conducting a non-competitive procurement public sector buyers must not procure from or contract with a U.S. business unless prior approval is sought, as set out in the Procurement Restriction Policy.

### **14. Does the Policy apply to the second stage selection process in Vendor of Record Arrangements?**

The Policy does not apply when public sector entities use an existing Vendor of Record arrangement (VOR) or other available arrangements.

## **Exceptions and Exemptions**

### **15. Are there any exceptions?**

Procuring from a U.S. business is allowed only if both of the following conditions are met:

- if the U.S. business is the only viable source for the good/service; **and**
- the procurement cannot be delayed (e.g. risks to public health and safety, etc.):

The decision to procure from U.S. business **MUST** be set out in a business case and approved by the Deputy Minister (DM), DM equivalent or Chief Executive Officer (CEO). This approval is required regardless of the procurement's value.

### **16. What information should be included in the business case requesting an exception?**

When seeking an exception, the business case or procurement approval document should include the following information:

- explain why a U.S. business is the only viable option and why the procurement cannot be delayed (e.g. risks to public health and safety, etc.):
- include details of any due diligence, market research, risk assessment, or compliance checks conducted.
- Note any advice from Supply Ontario.

## 17. What is meant by “only viable source” and “the procurement cannot be delayed”?

When applying the requirements of the Policy, ‘**only viable source**’ is intended to mean that obtaining the necessary goods or services from any other source is not feasible.

This could be due to various factors, such as:

- The supplier has unique skills or technology that no other supplier possesses.
- The supplier holds exclusive rights or patents, making them the sole provider.
- The supplier is the only one available in a specific area or at the time of the procurement.
- Laws or regulations strictly require using that specific supplier.
- Confidentiality obligations
- Health and safety considerations.

Each situation should be assessed on its own merits, on a case-by-case basis.

When deciding if a ‘**procurement cannot be delayed,**’ public sector buyers should consider the following:

- Is the procurement essential for business continuity or to deliver key programs.
- Are there critical health or safety concerns that this procurement addresses.
- How critical is it to obtain this good/service from a U.S business at this time.

Note:

- The situations listed are not exhaustive; other scenarios may also justify procuring from a U.S. business as the only viable option.

## 18. What supports are in place to help determine if there are other viable options to a U.S. Business?

Supply Ontario should be consulted anytime procuring from a US business is being contemplated. They will be able to assist with sector specific information and help with determining whether it is necessary to pursue an exception. Public sector entities contact Supply Ontario through [doingbusiness@supplyontario.ca](mailto:doingbusiness@supplyontario.ca).

## 19. Are there any exemptions to the Policy?

There are no exemptions to the Policy.

## Implementing the Procurement Restriction Policy

### **20. Why is the Policy limited to new procurements only?**

The Policy will apply to procurements posted after this Policy comes into effect, with the intention of minimizing impacts to existing contracts and ongoing procurement processes.

### **21. Are buyers required to verify a supplier is a U.S. Business?**

It is expected that buying entities will exercise prudent efforts to ensure that companies that meet the definition of a U.S. business are excluded from participating in their procurement processes. To ensure compliance, a public sector entity can rely on a business's declaration, among other methods, to ensure adherence to the Policy.

### **22. If the Policy conflicts with the procurement directive which one should be followed?**

The Policy is designed to minimize conflicts with the procurement directives. If conflicts arise, the Policy will take precedence over the conflicting parts.

### **23. We were planning to post a procurement next week that we have been working on for a few months. Does this Policy apply?**

Yes, if the procurement has not been posted or issued by the date this Policy comes into effect then the requirement to exclude U.S. business must be applied.

### **24. How will the Policy impact current contracts and ongoing procurement processes?**

The Policy only applies to new procurements, with the intention that existing contracts will not be impacted. The Policy will apply to procurements that have not been posted at the time the Policy takes effect.

### **25. Do the new requirements affect the application of a ministry's financial delegation?**

Ministries are still required to comply with their Delegation of Financial Management Authority (DOFMA) when seeking approval for procurements. However, they must obtain approval from the Deputy Minister (DM), DM equivalent, or CEO when seeking an exception to the Policy.

## 26. How will the policy being rescinded be communicated?

Should TB/MBC rescind the policy, appropriate communications and guidance will be provided so government entities and vendors are made aware.

## Resources

### 27. What resources do public sector entities have available to help implement the new Policy?

To help public sector entities implement the Policy, the following resources are available:

- A **Guide for Users** that provides detailed instructions on how to apply the Policy.
- **Online training** sessions.
- Supply Ontario provides a **point of contact** to answer questions, clarify any elements of the Policy, and assist in assessing the applicability of exceptions. For assistance, please email [doingbusiness@supplyontario.ca](mailto:doingbusiness@supplyontario.ca)

### 28. When will training be available and how will our organization get enrolled in it?

Details on training sessions and how to implement the requirements of the Policy can be found at [Supply Ontario](#).

### 29. Are we required to update our RFx documents?

To ensure transparency in our procurement processes, buying entities should ensure that where relevant their procurement documents are updated to inform all potential bidders about the restriction on U.S. business participation.

### 30. Where can I find the applicable language to include in my procurement document?

Sample language for buying entities to consider for use in their procurement documents, with necessary modifications, is available in the Procurement Restriction Policy: Guide for Users. Buying entities are encouraged to work closely with their procurement and legal advisors when reflecting the requirements of the Policy in their procurement documents.

### 31. Where can I submit questions related to the Policy?

Questions can be submitted to [doingbusiness@supplyontario.ca](mailto:doingbusiness@supplyontario.ca)

## Vendors

### 32. How will businesses be made aware of the Policy?

Ontario businesses will be made aware of the Policy through engagement and education that supports businesses about how to find procurement opportunities.

## Reporting and Information Requests

### 33. What are the reporting requirements?

#### General Information Requests

As set out in the Policy, public sector buyers must provide information to Supply Ontario, the Ministry of Public and Business Service Delivery and Procurement (MBPSDP), and the Treasury Board Secretariat (TBS) if and when requested.

Any request would outline what information is required and who the information should be provided to.

Public sector buyers are encouraged to maintain records related to procurements conducted while the Policy is in effect, including when the Policy was applied, when exceptions were made, procurement value, etc.

#### Exception Requests

Public sector buyers must notify Supply Ontario of their final Deputy Minister (or equivalent) decision for all exception requests including the associated PRRF number, regardless of the outcome by sending them to [SCO.Reporting@supplyontario.ca](mailto:SCO.Reporting@supplyontario.ca) each week.