Buying Canadian: Recent developments in Canadian public procurement

May 30, 2025

Canada is currently facing an erratic and expansive trade disruption with its closest trading partner. The first executive order signed by the President of the United States on Feb. 1, 2025, set out a blanket tariff rate of 10 per cent on all imports from Mexico and Canada. The President has since imposed higher rates on certain goods, including a 25 per cent rate on non-CUSMA compliant Canadian vehicles and on steel and aluminium products. Following this latest imposition, tariffs have been paused, altered, and expanded to encompass most of the world's economies and several countries, including Canada, have imposed their own tariffs on the U.S.

Against this rapidly fluctuating economic backdrop, Canada's federal, provincial and municipal governments have signalled key policy shifts, targeting reductions on barriers to internal trade and shifting public sector procurement priorities and procedures to an approach favouring Canadian suppliers. These policy shifts have thus far culminated in numerous changes to public procurement at all levels of government, raising questions of which entities qualify as a U.S. or a Canadian supplier, how the changes impact entities from other countries and whether these changes are likely here to stay.

Federal Response

a. Removing Exceptions to the Canadian Free Trade Agreement

The *Canada Free Trade Agreement* ("CFTA") has historically included certain exceptions where federal and provincial governments are permitted to impose barriers to internal trade, or where *CFTA's* uniform rules for government procurement processes will not apply. On Feb. 21, 2025, the federal government announced it would remove 20 of the 39 remaining federal exceptions under the *CFTA*, the majority of which relate to the procurement. By reducing federal procurement exceptions to the *CFTA*, the number of government entities and the types of procurements that must adhere to the *CFTA's* requirements for open, transparent, and non-discriminatory access to covered procurement processes is increased. Overall, the removal of these *CFTA* exceptions increases the areas where Canadian suppliers from all provinces will be able to compete under the same uniform rules in federal procurement processes.

Certain federal exceptions to the *CFTA's* procurement rules, largely relating to national security, economic policy, and regional interests, do remain in effect and are unlikely to be entirely removed in the future.

b. Proposed Changes to Defence Procurement

Canada's Prime Minister pledged during the 2025 federal election that he would create a new defence procurement agency. The proposed agency would centralize military purchasing, reduce reliance on U.S. defence imports by diversifying supply sources, and encourage the use of Canadian steel, aluminium, and critical minerals in defence related contracts and projects. It is contemplated that this agency will have greater discretion to waive competitive bidding requirements to prioritize Canadian suppliers in defence-related procurements.

Provincial Response: Public Sector Procurement Restrictions on U.S.-Businesses

a. Ontario: The Procurement Restriction Policy

Ontario has recently instituted the Procurement Restriction Policy (the "Policy"), which will apply retroactively from March 4, 2025, into the future.

The Policy requires public sector entities to exclude U.S. businesses from their procurement processes. The sole exception to the exclusion is where a procurement cannot be delayed and where a U.S. business is the only viable source for the good or service in question, in which case a request for an exception must be made and approved at the deputy-minister level. Examples of when a U.S. business may qualify as the "only viable source" are listed in the "Frequently Asked Questions" companion to the Policy.

For the purposes of this Policy, a "U.S. business" is one that has its headquarters or main office situated in the U.S. and has fewer than 250 full-time employees in Canada at the time of the procurement process.

Notably, Canadian subsidiaries still qualify as a U.S. business if their parent company has its headquarters or main office in the U.S. and there are less than 250 full-time employees in Canada. However, the Policy does not apply to subcontractors, suggesting that a Canadian or international company would not be affected if it intended to use U.S. subcontractors.

The scope of the Policy is quite broad, covering procurements issued by all provincial ministries, all provincial agencies, Ontario Power Generation, and the Independent Electricity System Operator. Certain designated "broader public sector" organizations are also included, which includes hospitals, school boards, universities and most colleges and other post-secondary institutions, children's aid societies, and certain publicly funded organizations. That said, the Policy does not apply to municipalities, although several Ontario municipalities, including the city of Toronto, have already announced their own procurement measures to prioritize Canadian suppliers.

Most importantly, the Policy does not apply to procurements “already in progress” where a procurement document has already been issued, and similarly does not apply to contemplated contract extensions or existing Vendor of Record arrangements. Additionally, the Policy states that should U.S. tariffs be lifted, the Policy “may be adjusted or rescinded.”

b. Quebec: Regulation to Impose Conditions for the Awarding of Certain Supply Contracts by Municipal Bodies

On March 6, 2025, Quebec enacted a regulation that affects supply contracts for computer hardware and software, medical supplies and equipment, pharmaceutical products, and scientific instruments. This regulation imposes an evaluation penalty of 25 per cent on the submitted price of bidders “having an establishment” in the U.S. and not in Quebec, or a territory covered by an applicable inter-governmental agreement. Calls for tenders by written invitation may only be made to enterprises having an establishment in Quebec or an applicable territory and not in the U.S., except with prior authorization by the municipal body’s council.

“Establishment” refers to a place where an enterprise carries on its activities on a permanent basis, which is clearly identified under its name and is accessible during regular business hours.

c. British Columbia: The Economic Stabilization (Tariff Response) Act (Bill 7)

B.C. has tabled legislation (Bill 7) that would address both internal trade barriers and certain aspects of public procurement. This bill would enable the province to issue directives for the procurement of goods or services by “government procurement entities”, which includes government organizations and any other corporations or organizations listed by regulation.

Bill 7 would insulate government procurement entities from legal proceedings in relation to actions taken or omitted when complying with issued procurement directives and requires the provincial government to indemnify such entities for their costs or expenses in any such proceedings.

Notably, these government procurement directives may relate to a whole range of matters, including to “procurements, goods, services, circumstances, matters, or other things”. Any directives issued before June 30, 2025, may also be made retroactive to Feb. 1, 2025. Additionally, to the extent that any directive conflicts with an enactment, the directive prevails.

To date, Bill 7 completed its second reading on April 3, 2025, but has yet to be enacted.

d. Alberta: Pause on Government Procurement Response

In early March, Alberta announced that it would stop contracting with U.S. companies and directed other public entities, including Crown corporations, municipalities, and school boards to prioritize Albertan and Canadian suppliers as well as non-U.S. international suppliers in procurement processes.

Evidencing the volatility of the times, on April 17, 2025, Alberta's Premier announced that the province would be pausing some of the procurement measures imposed in March, due to certain pauses being placed on further U.S. tariffs.

e. Saskatchewan: Tariff Response Related to Capital Projects and Procurement

On March 5, 2025, Saskatchewan's Premier announced several procurement measures, with the stated goal of "prioritizing Canadian suppliers" while "reducing or eliminating U.S. procurement." To date, Saskatchewan has set out a series of Guiding Principles to achieve these aims as well as an exception request process.

The Guiding Principles provide that the use of Canadian (or non-U.S.) goods and services should be promoted "wherever feasible" and alternative suppliers should be explored. While existing contracts and standing offers are to be honoured, future procurements should assess the involvement of U.S. suppliers on a case-by-case basis, while taking into consideration economic impact, feasibility, and project impact.

To this end, Saskatchewan is developing a new clause to incorporate into competitions for upcoming procurements and new evaluation criteria will be added, with changes to weighting based on the amount of U.S.-based content.

In the construction sphere, contractors will be asked to begin reporting on the use of U.S. products on projects and will be asked to present Canadian and non-U.S. alternatives to reduce the use of U.S. products.

Saskatchewan defines "Canadian businesses" as having a Canadian headquarters and being majority Canadian owned and operated, or if internationally headquartered, having 50 or more employees in Canada, or if there are fewer than 50 total international employees, having 51 per cent of its global workforce in Canada. "U.S. business" is defined as being headquartered in the U.S. while not falling into the category of a Canadian business. Definitions of U.S. products and services are also provided.

f. Manitoba: The Buy Canadian Act (Bill 42)

Manitoba has tabled a bill that would amend the *Government Purchases Act* (the "GPA") to specify that "whenever possible", purchases are to be made from a Canadian supplier and that preferential treatment may be given to Canadian suppliers when purchasing goods pursuant to the GPA.

This amendment also mandates that the provincial government institute a "buy Canadian policy."

To date, this bill has yet to be enacted, but it passed the committee stage on March 26, 2025.

g. Yukon: Direction to Update Territorial Government Procurement Policies

On April 3, 2025, Yukon's Premier announced that the territorial government would be directing the Department of Highways and Public Works to update procurement policies

to “encourage” the purchase of more goods and services from local businesses and non-U.S. companies.

h. Northwest Territories: Commitment to Review Procurement Policies

On March 4, 2025, the Northwest Territories’ Premier confirmed that the territory would be reviewing procurement policies to “reduce or eliminate purchases from U.S. companies where possible.”

i. Nunavut: Commitment to Procurement Strategies that Prioritize Canadian Suppliers

On March 4, 2025, Nunavut confirmed that it would be supporting procurement strategies that “minimize risk, maintain project stability, and prioritize Canadian suppliers wherever feasible."

j. Newfoundland and Labrador: Commitment to Review & Stop U.S. Procurement

On March 4, 2025, Newfoundland and Labrador’s Premier announced that the province would be “reviewing and stopping immediately, where possible, procurement from the U.S.”

k. New Brunswick: Promoting “N.B. Made” Products

To date, New Brunswick has not announced any measures specifically focused on public procurement processes but has promoted buying products made in New Brunswick and has supported efforts to reduce internal trade barriers.

l. Prince Edward Island: Commitment to Limit US-Based Procurement

On Feb 2, 2025, P.E.I. announced that it would be “limiting procurement with U.S. based companies” and would review current procurement with U.S. companies. Wherever possible, the province has indicated that it will limit commerce with U.S. companies and entities, including cancelling existing contracts and limiting the ability of U.S. companies to bid for future contracts.

On March 4, 2025, the province announced its Tariff Response Plan, which includes undertaking a review of all existing and future contracts with U.S. businesses and organizations and limiting future procurement with U.S. entities.

m. Nova Scotia: Limiting U.S. Access to Public Procurement

On March 4, 2025, Nova Scotia’s Premier announced that the province would be “immediately” limiting access to provincial procurement for U.S. companies and exploring options for cancelling existing contracts and rejecting future U.S. companies’ bids.

Takeaways from the “Buy-Canada” Trend in Public Procurement

The adjustments being made to Canadian public procurement processes have brought several issues to the forefront, particularly for prospective bidders who have offices, employees, or affiliates located in both Canada and the U.S. Certain entities may be treated as Canadian or U.S. suppliers depending on which province’s procurement policy applies, and being treated as a U.S. supplier may effectively preclude participation in a procurement or may result in a penalty at the evaluation stage. In many provinces, the proposed changes are not yet fully effective. Significant uncertainty persists in how subcontractors and sub-suppliers will be treated, with Ontario’s approach suggesting subcontractors may not be addressed, whereas Saskatchewan’s approach suggests that some suppliers may be asked to use a non-U.S. supply chain, wherever possible.

Most provinces’ approaches neither favour nor disfavour suppliers who are not considered Canadian or American. On a practical level, there may be reduced competition if U.S. suppliers are disqualified or weighted differently in a procurement evaluation process. Accordingly, non-U.S. entities may face reduced competition in the bidding process and may not be significantly disadvantaged relative to Canadian suppliers.

Finally, although some measures, such as the proposed federal defence procurement agency, are likely of a more permanent nature, several of the provinces’ procurement policies are clearly intended as a response to the current trade tensions. Ontario’s policy, for example, expressly states that it is up for reconsideration should U.S. tariffs be removed. As these policies shift, most provinces have been careful to specify that policy changes will not affect existing procurements, which provides a measure of certainty to affected suppliers. However, as Ontario’s policy evidences, provinces may well decide to make their policies retroactive to March 2025.

Suppliers participating in an existing procurement process would likely be able to challenge that process if the rules and criteria suddenly change; however, all suppliers should be aware of the available legal remedies under the relevant trade policies or agreements, as the window to commence a challenge is often very narrow (particularly under the Canadian International Trade Tribunal process). Most provinces have also not signalled any interest in cancelling awarded contracts, but concerned awardees should review the terms of their contracts, particularly the provisions addressing early termination, to gain an understanding of their rights and routes of recourse.

Reframing procurement processes to favour Canadian suppliers on an ongoing basis would likely require a more in-depth review of legislative priorities and calibration of those priorities with Canada’s existing commitments, including under the *WTO Agreement on Government Procurement* (“*WTO Agreement*”). There are signals that the current policies and proposals will be subject to re-evaluation. Furthermore, avenues still exist for U.S.-suppliers to compete in Canadian procurements, for example if they do not meet the definition of a “U.S. business”, fall within an “only viable source” exception, or are permitted to compete against other suppliers despite being affected by changed weighting at the evaluation stage (i.e. in Saskatchewan).

By contrast, in areas where there are already exceptions to the transparency and non-discriminatory requirements set out in existing procurement agreements, such as the exceptions to the CFTA or the *WTO Agreement*, efforts to prioritize Canadian suppliers may consolidate and persist. For example, the federal government has retained exceptions to the procurement rules set out in the CFTA relating to some aspects of national security and exceptions to the *WTO Agreement* relating to a wide variety of Department of National Defence procurements, in addition to the national security exceptions provided in the agreement's main text. Accordingly, in areas like national security and defence, executive policies and other discretionary measures to emphasize Canadian suppliers may be more easily implemented with less concern for legal recourse by non-Canadian suppliers.

Conclusion

As procurement policies and requirements shift, both Canadian and non-Canadian suppliers will need to have an in-depth knowledge of their rights and avenues of recourse within procurement processes to navigate a fluctuating landscape. As provinces enact new procurement policies, it will be important to assess from the outset whether a supplier will be treated as Canadian, American, or neither. While some of these procurement policy changes are currently framed as temporary, a more entrenched turn to Canadian-based procurement may be underway in the realm of national security and defence or even other areas, making it important for businesses to have an in-depth understanding of the rules, frameworks, or exceptions that may apply in these contexts.

BLG is poised to help with your unique procurement needs and strategy amidst these changing policies and requirements. Our teams are here to help assess risk, revise your supply chain approach and position your bid for success. Reach out to the authors or key contacts below with any questions you my have.

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