

WHAT'S NEW

Procurement Restriction Policy (US Businesses): A Guide for Public Sector Buyers – Effective June 2025

Note: Changes have been made to the 'Procurement Restriction Policy (US Businesses): A Guide for Public Sector Buyers' ('the Guide') to enhance clarity and readability. **The Procurement Restriction Policy remains unchanged.**

Area of Change	Procurement Restriction Policy: A Guide for Public Sector Buyers Version date: March 4, 2025	Procurement Restriction Policy: A Guide for Public Sector Buyers Version date: June 23, 2025	Summary of Change
Version Date (page 1)	March 4, 2025	June 23, 2025	Version date updated.
Effective Date (page 3)	The Policy becomes effective on March 4, 2025, for both OPS and BPS organizations.	The Policy is effective on March 4, 2025, for both Government Entities and BPS organizations.	Effective date wording clarified.
Scope (page 4)	<ul style="list-style-type: none">to unforeseen situations of urgency<ul style="list-style-type: none">for the OPS, refer to section 4.4.6 of the OPS Procurement Directive for direction.	<ul style="list-style-type: none">to procurements needed to address a situation that is both urgent and unforeseen (i.e., emergencies) Organizations should follow their internal procedures to effectively	Wording and process clarified for urgent <u>and</u> unforeseen procurements.

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	<ul style="list-style-type: none"> ○ for the BPS, refer to section 5 of the BPS Procurement Directive. 	<p>manage these emergency procurements.</p> <ul style="list-style-type: none"> ○ The OPS Procurement Directive sets out rules and provides flexibility when there is an emergency (see section 4.4.6). ○ The BPS Procurement Directive provides BPS organizations with the ability to determine their own processes in emergency situations. <p>Note that documentation is required for every procurement, including emergency procurements.</p>	

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<p>Process for Exceptions (page 5)</p>	<p>Process for Exceptions:</p> <p>1. Seek Guidance:</p> <p>If contemplating an exception to the Policy, public sector entities are strongly encouraged to contact Supply Ontario for advice and guidance on procurement design and when considering buying from a U.S. business by submitting a Procurement Rationale Report Form (PRRF) for assessment and advice.</p> <p>2. Provide rationale:</p> <p>In a business case or procurement approval document, 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</p>	<p>Exceptions to the Requirement to Exclude U.S. Businesses:</p> <p>The Policy sets out when procuring from a U.S. business is allowed - only when both of the following conditions are met:</p> <ul style="list-style-type: none"> 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.). <p>Please see the box further below for guidance on how to determine if a procurement from a U.S. business would be allowable.</p>	<p>Wording was updated to improve clarity about when procuring from a U.S. business is allowed.</p> <p>Clarify that seeking approval to procure with a U.S. business is not a separate process from seeking procurement approval.</p> <p>Clarified that no specific approval level is required for the BPS.</p> <p>Suggestions for how internal procedures may be revised to streamline approvals.</p>

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	<p>safety, etc.), the PRRF should be included as part of the business case. Please see the box further below for details about how to determine if a procurement qualifies for an exception.</p> <p>Include details of any due diligence, market research, risk assessment, or compliance checks conducted.</p> <p>Note any advice from Supply Ontario.</p> <p>3. Obtain Approvals:</p> <p>Government Entities: Get approval from the Deputy Minister, Deputy Minister equivalent, or CEO, unless a higher level of approval is required by the OPS Procurement Directive.</p>	<p>Supporting Documentation</p> <p>The justification for procuring from a U.S. business must be clearly outlined in the organization's business case or procurement approval document and submitted through the organization's standard approval process.</p> <p>This justification should explain why a U.S. business is the only viable option and why the procurement cannot be delayed. It should also include details of any due diligence, market research, risk assessment, consultation or compliance checks conducted to support the decision.</p> <p>Public sector entities may consult with Supply Ontario for strategic</p>	

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	<p>Designated BPS Organizations: Obtain a similar level of approval.</p>	<p>procurement advice, including to support in determining whether a U.S. business is the only viable source for the required good/service. To consult with Supply Ontario, submit a Procurement Rationale Report Form (PRRF).</p> <p>Approval Requirements for Procuring from a U.S. Business</p> <p>Government Entities</p> <ul style="list-style-type: none"> For government entities that follow the OPS Procurement Directive in full, obtain approval at the level as set out in section 4.5. Where the procurement value is within an entity's delegated authority, approval by 	

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		<p>the Deputy Minister, CEO or equivalent is required.</p> <ul style="list-style-type: none"> For government entities that follow the OPS Procurement Directive in part, approval must be obtained from at least the CEO or an equivalent authority. <p>Designated BPS Organizations</p> <ul style="list-style-type: none"> No specific approval level is mandated. The intent is to support accountability through an appropriate level of approval for procurements involving U.S. businesses, based on the organization's structure. All decisions must be well-documented. 	

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		<ul style="list-style-type: none"> There is no requirement for a specific approval process. Existing internal approval processes can continue to be followed, <p>If a government entity or designated BPS organization is proposing to procure from a US business, the information required (as set out in the Policy) should be included in the business case for the appropriate approver.</p> <p>Organizations may wish to review and update their internal procedures to streamline approvals. For example, grouping procurement approvals by type of good/service could be used for multiple low-risk procurements, as</p>	

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		long as each case meets the policy criteria and is documented. This type of approach can streamline administration while maintaining the oversight required when procuring from a U.S. business.	
How to determine if procurement from a U.S. business would be allowable (page 6)	How to determine if a procurement qualifies for an exception Both conditions noted above must be met and each situation must be assessed on its own merits, on a case-by-case basis. For the purpose of the Policy, the term ' only viable source ' is intended to mean that obtaining the necessary goods or services from any other	How to determine if procurement from a U.S. business would be allowable Both of the following conditions must be met and each situation must be assessed on its own merits, on a case-by-case basis <ul style="list-style-type: none"> - The U.S. business is the only viable source. - The procurement cannot be delayed. 	Two new examples added under 'only viable source' (1. Lack of sufficient viable suppliers in cases where multiple suppliers are required and 2. where a product or service has demonstrated superior outcomes in terms of health, safety, or quality of life)

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	<p>source is not feasible. This could be due to various factors, such as:</p> <ul style="list-style-type: none"> • 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. 	<p>For the purpose of the Policy, the term '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:</p> <ul style="list-style-type: none"> • 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. 	

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	<p>When deciding if a 'procurement cannot be delayed,' public sector buyers should consider the following:</p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Confidentiality obligations. • Health and safety considerations, including organisational capacity concerns. • Lack of sufficient viable suppliers in cases where multiple suppliers are required. • Where a product or service has demonstrated superior outcomes in terms of health, safety, or quality of life. <p>When deciding if a 'procurement cannot be delayed,' public sector buyers should consider the following:</p> <ul style="list-style-type: none"> • Is the procurement needed to ensure service continuity or deliver key programs? 	

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		<ul style="list-style-type: none"> • Are there health or safety concerns that this procurement addresses? • Is this good/service needed immediately? 	
Impacts to the Procurement Process Invitational (page 7)	How to Apply the Restriction <ul style="list-style-type: none"> • When conducting an invitational competitive procurement, buyers must not include businesses that meet the definition of a U.S. business. Where feasible, buyers should ensure that these vendors are excluded before issuing an invitation to any vendor. • Additionally, to support the restriction of U.S. businesses participating in Ontario's 	How to Apply the Restriction <ul style="list-style-type: none"> • When conducting an invitational competitive procurement, buyers must not include businesses that meet the definition of a U.S. business. Where feasible, buyers should ensure that these vendors are excluded before issuing an invitation to any vendor. • Procurement documents can include a requirement for each bidder to declare whether they 	New content added to note that procurement documents can include a requirement for each bidder to declare whether they are a U.S. business when submitting a bid.

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	procurement opportunities, at the above procurement values buyers should avoid inviting U.S. businesses to submit bids or otherwise respond to the procurement opportunity.	<p>are a U.S. business when submitting a bid. Note: A public sector entity may rely on a business's representation that it is not a "U.S. business".</p> <ul style="list-style-type: none"> • Additionally, to support the restriction of U.S. businesses participating in Ontario's procurement opportunities, at the above procurement values buyers should avoid inviting U.S. businesses to submit bids or otherwise respond to the procurement opportunity. 	
Reporting and Information Requests (page 10)	General Information Requests Public sector buyers are encouraged to maintain records related to procurements conducted while the	General Information Requests Public sector buyers must maintain records related to all procurements including information such as whether	Summary of information required to be provided to Supply Ontario revised for clarity.

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	<p>Policy is in effect, including when the Policy was applied, when exceptions were made, procurement value, etc.</p> <p>Exception Requests</p> <p>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 each week.</p>	<p>or not a procurement was with a U.S. business, procurement value, vendor's name, and other relevant details.</p> <p>Exception Reporting</p> <p>Public sector buyers must notify Supply Ontario at SCO.Reporting@supplyontario.ca on a weekly basis the following information:</p> <ul style="list-style-type: none"> • A list of all exception requests submitted for approval by the Deputy Minister, CEO or equivalent. • The outcome of each request (approved or denied). 	

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		If the buyer consulted with Supply Ontario, the applicable PRRF number should be included.	