

# Procurement Restriction Policy (U.S. Businesses): A Guide for Public Sector Buyers

**Developed by:** Ministry of Public and Business Service Delivery and Procurement

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## **WARNINGS and DISCLAIMER:**

This document contains suggested terms which may be used in procurement documents issued by Ontario. Final terms used in any procurement document or contract may differ. As such, this document is not intended to be interpreted as creating any legal rights or obligations applicable to either Ontario or any of its bidders or contractors. Where such terms are at issue, they will be found exclusively in the procurement document or individual contract specifically governing the particular transaction.

This guide is provided to assist users in fulfilling their obligations under the Procurement Restriction Policy.

Users should always consult with their procurement, business, and legal advisors on proper use of this document and its content.

All questions related to the use or application of the Procurement Restriction Policy to a particular procurement should be directed to [doingbusiness@supplyontario.ca](mailto:doingbusiness@supplyontario.ca).

# 1 Purpose

This Guide is intended to provide direction to public sector buyers on how to be compliant with the Procurement Restriction Policy when conducting procurements.

## 2 The Procurement Restriction Policy

The Procurement Restriction Policy is issued under the authority of the *Management Board of Cabinet Act* and the *Broader Public Sector Accountability Act, 2010*.

The Procurement Restriction Policy (the "Policy") was established to restrict public sector buyers from procuring goods and services from U.S. businesses. The Policy was established as part of an Ontario government response to U.S. tariffs on Canadian products and services. If the relevant tariffs are removed, the Policy may be adjusted or rescinded.

Existing procurement direction continues to apply, including rules to support the Building Ontario Businesses Initiative (BOBI). For the Ontario Public Service (OPS), this means all applicable procurement directives, including the OPS Procurement Directive. For the Broader Public Service (BPS), this means the BPS Procurement Directive.

In the event of any conflict or inconsistency between any applicable procurement directive and the Policy, the Policy prevails to the extent of the conflict or inconsistency.

The Policy does not prevail over legislation.

For any clarification or questions regarding the applicability of the Policy, public sector entities should contact [doingbusiness@supplyontario.ca](mailto:doingbusiness@supplyontario.ca).

### 2.1 EFFECTIVE DATE

The updated Policy is effective on November 20, 2025, for both government entities and designated Broader Public Sector (BPS) organizations.

## 3 Application and Scope

### 3.1 APPLICATION

The Policy applies to all public sector entities, which means government entities and all designated Broader Public Sector (BPS) organizations, unless otherwise specified.

Government Entities:

- all ministries
- all provincial agencies (including any provincial agencies that are Other Included Entities under the OPS Procurement Directive)
- the Ontario Power Generation (OPG)
- the Independent Electricity System Operator (IESO)

Designated BPS Organizations:

- the BPS organizations that are subject to the [BPS Procurement Directive](#)

### 3.2 SCOPE

The Policy applies to:

- All **new**<sup>1</sup> procurements of goods and/or services (consulting and non-consulting services) at any value posted from the day the Policy, as updated November 20, 2025, comes into effect.
- Any procurement method: invitational, open competitive or non-competitive.

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<sup>1</sup> For the purpose of the Policy, a new procurement means a procurement opportunity that has not yet been posted (e.g., on an electronic tendering system), or has not yet been issued to vendors to submit a response. Procurements posted or issued prior to November 20, 2025, are subject to the previous Policy requirements as dated March 4, 2025.

The Policy does not apply:

- To any procurement that was already in progress (i.e., a procurement document has been issued or posted) before March 4, 2025. Requirements of the updated Policy, effective November 20, 2025, apply only to procurements issued or posted on or after November 20, 2025.
- When public sector entities use an **existing Vendor of Record arrangement** or other available arrangements.
- **To contract extensions** included in the original procurement.<sup>2</sup>
- To procurements needed to address a **situation that is both urgent and unforeseen (i.e., emergencies)**. In these cases, procuring entities should follow their internal procedures to effectively manage these emergency procurements.
  - 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.

### 3.2.1 Exceptions to the Requirement to Exclude U.S. Businesses:

Public sector entities must exclude U.S. businesses from participating in the procurement process. However, a public sector entity may allow participation by a U.S. business if any one of the following circumstances apply:

- the U.S. business is the only viable source for the good and/or service and the procurement cannot be delayed (e.g. risks to public health and safety, etc.)
- for service procurements<sup>3</sup>, a U.S. business may submit a bid if it commits to at least 90 percent of the required staff to deliver the contracted services will be located in Canada.

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<sup>2</sup> If the term of the existing signed contract includes optional extension terms, exercising those extension options is not considered a new procurement. However, if the signed contract doesn't include such extension terms, any extension is considered a new non-competitive procurement and the Policy applies.

<sup>3</sup> For the purpose of the Policy, when a procurement includes both goods and services, it should be treated as a services procurement if the value of the services component accounts for more than fifty percent of the total estimated value.

Please see the [boxes further below](#) for guidance on how to determine if a procurement from a U.S. business would be allowable.

### 3.2.1.1 Supporting Documentation

Public sector entities must provide a clear rationale in their business case or procurement approval document for allowing U.S. businesses to participate in a procurement. This rationale must align with one of the exceptions set out in the Policy (see section 3.2.1 of this guide) and be appropriately approved<sup>4</sup> (see section 3.2.12 on approvals below). The explanation should describe the circumstance that justify the inclusion. The business case or procurement approval document should also include details of any due diligence, market research, risk assessment, consultation or compliance checks conducted to support the decision.

Public sector entities may consult with Supply Ontario for strategic procurement advice, including support in determining the potential applicability of exceptions to the requirement to exclude U.S. businesses. To consult with Supply Ontario, submit a [Procurement Rationale Report Form \(PRRF\)](#).

### 3.2.1.2 Approval Requirements to allow U.S. Businesses to participate in the procurement Government Entities

- For government entities that follow the OPS Procurement Directive (PD) in full, obtain approval at the level as set out in section 4.5. of the OPS PD.
- Where the procurement value is within an entity's delegated authority, approval by the Deputy Minister, CEO or equivalent is required.
- For government entities that follow the OPS PD in part, approval must be obtained from at least the CEO or an equivalent authority.

### Designated BPS Organizations

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<sup>4</sup> Seeking approval to allow a U.S. business to participate in a procurement is not a separate process from seeking procurement approval.

- No specific approval level is mandated. The intention 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.
- There is no requirement for a separate approval process. Existing internal approval processes can continue to be followed.

If a government entity or a designated BPS organization is proposing to allow U.S. businesses to participate in the procurement, the information required (as set out in the Policy) should be included in the business case for the appropriate approver. Entities 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 long as each case meets the criteria set out in the Policy and is documented. This type of approach can streamline administration while maintaining the oversight required when procuring from a U.S. business.

## **ALLOWED CIRCUMSTANCE: ONLY VIABLE SOURCE AND THE PROCUREMENT CANNOT BE DELAYED**

Each situation should be assessed on a case-by-case basis, considering when and why the procurement is required.

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:

- 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 geographic area or at the time of the procurement.
- Confidentiality obligations.
- Health and safety considerations, including organizational capacity concerns.
- Lack of sufficient non-U.S. business viable suppliers in situations where multiple suppliers are required.
- Where a product or service has demonstrated superior outcomes in terms of health, safety, or quality of life.

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

- Is the procurement needed to ensure service continuity or deliver key programs?
- Are there health or safety concerns that this procurement addresses?
- Is this good/service needed immediately?

### **Note:**

- The examples listed above are not intended to be exhaustive; other scenarios may also justify procuring from a U.S. business. As subject matter experts in the goods or services they are procuring, public sector buyers are best positioned to determine what is considered "viable" based on the specific market conditions and business needs.



### **ALLOWED CIRCUMSTANCE: 90% CANADIAN STAFFING REQUIREMENT**

- **This applies to service procurements.** If a procurement includes both goods and services, it should be treated as a service procurement when the estimated value of the services component represents the majority of the total value.
- A U.S. business is eligible to submit a bid only if it commits to having at least 90% of the staff required to deliver the contracted services located in Canada. If the U.S. business is successful, public sector entities should consider ensuring that this commitment is maintained throughout the delivery of the contracted services.
- The decision to leverage this option should be based on public sector entities' informed understanding of the market. Public sector buyers must assess whether this exception is appropriate given the nature of the services and available suppliers.

#### **Recommended components for applying the exception:**

- Eligibility Requirement
  - Require bidders to attest that at least 90% of their staffing is located in Canada and that level will be maintained for the duration of the contract.
- Supporting Documentation
  - To support the attestation bidders may wish to require bidders to include in their bid a list of the proposed staff that will make up the required 90%. The list could include:
    - The total number of staff assigned to deliver the services under the contract.
    - Each role or job title involved in delivering the contracted services and where each is located.
  - Buyer should review the bidder's submission to ensure that the list of positions and locations is provided and satisfies the 90% requirement. This commitment is for contract compliance only and will not be evaluated as part of the bid assessment. However, if requested, failure to provide the staff list will render their bid non-compliant and may result in disqualification.
- Contractual Language
  - Embed explicit language in the contract stating that the vendor must maintain 90% Canadian-based staffing throughout the contract term.
  - Any changes to staffing that affect this ratio require prior written approval from the buyer.

## 4 U.S. Business Definition

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

1. has its headquarters or main office located in the U.S., **and**
2. 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.

## 5 Impacts to the Procurement Process

### 5.1 OVERVIEW

The Policy applies to all new procurements posted on or after the day the Policy comes into effect. This includes procurements of any value and includes invitational, open competitive and non-competitive procurements. The Policy restricts government entities and designated BPS organizations from procuring goods and services from U.S. businesses.

### 5.2 INVITATIONAL

An invitational competitive procurement is achieved by requesting a minimum of three (3) qualified vendors to submit a written proposal in response to the public sector buyers' requirements.

Invitational competitive procurement thresholds<sup>5</sup>:

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<sup>5</sup> An open competitive procurement must be conducted for competitive procurements exceeding the values listed in this table.

Type	OPS	BPS
Goods	<\$30,300	<\$121,200
Services	<\$121,200	<\$121,200

### 5.2.1 How to Apply the Restriction

- When conducting an invitational competitive procurement, public sector buyers must not invite businesses that meet the definition of a U.S. business unless their participation is allowed under the Policy (see section 3.2.1 on Exceptions to the Requirement to Exclude U.S. Businesses). Where possible, public sector buyers should confirm that U.S. businesses are excluded before sending invitations. This means making best efforts to review potential bidders and understand the market to avoid unintentionally inviting a U.S. business.
  - Procurement documents may require each bidder to attest whether they are a U.S. business when submitting a bid, to confirm that a U.S. business is not inadvertently included. Note: A public sector entity may rely on a business's attestation that it is not a "U.S. business".
- When inviting a U.S. business to submit a bid for a services procurement, include a requirement that the U.S. business commits to having 90% or more of the staffing needed to deliver the services are located in Canada.
- Procurement documents can include a requirement for U.S. bidder to attest that at least 90 per cent of the staff required to deliver the contracted services will be located in Canada. Public sector entities can also consider requiring bids from U.S. businesses to include a detailed staffing and location list. The list could include the total number of staff by identifying each position or title (without requesting names) that will deliver the services under the contract and specifying the location for each position.
  - Note: procurement document should consider stating that if the successful bidder is a U.S. business, the staffing commitment of at least 90 percent of the staff being located in Canada, along with any staffing information, will form part of the resulting contract., Work with your legal counsel to incorporate the staffing commitment and plan into the contract.

## 5.3 OPEN COMPETITIVE

An open competitive procurement process typically involves posting a request for bids on an electronic tendering system (e.g., Ontario Tenders Portal, MERX, etc.). This allows any qualified supplier or contractor to submit a bid, providing all interested parties with an equal opportunity to compete.

Open competitive procurement threshold:

Type	OPS	BPS
Goods	>\$30,300	>\$121,200
Services	>\$121,200	>\$121,200

### 5.3.1 How to Apply the Restriction

- When conducting an open competitive process, public sector entities must restrict U.S. businesses (as defined in the Policy) from participating in the procurement.
- When procuring services, U.S. businesses may bid if they commit to having 90% or more of the required staff located in Canada.
- When drafting procurement document(s), public sector buyers could include:
  - A definition of 'U.S. business' consistent with the Policy and this guidance.
  - a requirement that each bidder attest whether or not they are a U.S. business when submitting a bid.
    - Note: A public sector entity may rely on a business's attestation that it is **not** a 'U.S. business'.
  - If the public sector entity decides to allow bids from U.S. businesses, procurement documents should include an eligibility requirement for U.S. bidders to commit that at least 90 percent of the staff required to deliver the contracted services will be located in Canada. For example, by including a mandatory criterion requiring bidders to attest to this commitment. Public sector entities can also consider requiring bidders to provide a detailed staffing list that identifies the role or position title of each proposed staff member and their location to support the attestation.

- Clear language that sets out the restriction (See Appendix A.1 for sample language).

## 5.4 Non-Competitive Procurement

Non-competitive procurements involve acquiring goods and/or services from either a single source, where multiple suppliers exist but only one is chosen, or a sole source, where only one supplier is available.

For government entities, all non-competitive procurements must follow the approvals outlined in Section 4.5.1 of the OPS Procurement Directive. Additionally, certain non-competitive procurements may require an Advance Contract Award Notice (ACAN) as specified in Section 4.4.4.1 of the OPS Procurement Directive.

BPS organizations must conduct their non-competitive procurements in accordance with section 7.2.21 of the BPS Procurement Directive.

### 5.4.1 How to Apply the Restriction

Public sector entities may only conduct a non-competitive procurement with a U.S. business if it falls under an allowable exception or if the policy does not apply. See section 3.2 of this guide for details on Scope.

When procuring services, public sector buyers must require the vendor to commit that 90% or more of the staffing required to deliver the services will be located in Canada.

If the public sector entity decides to allow a bid from a U.S. business the buyer should consider requiring the vendor to submit a list that identifies the role or position title of each proposed staff member who will perform the services under the resulting contract.<sup>6</sup>

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<sup>6</sup> Note wherever feasible public sector buyers should direct non-competitive procurement opportunities to Ontario or Canadian businesses that can meet their procurement requirements.

## 6 Reporting and Information Requests

### 6.1 GENERAL INFORMATION REQUESTS

As set out in the Policy, public sector entities 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 to whom the information should be provided.

Public sector entities must maintain records related to all procurements including information such as whether or not a procurement was with a U.S. business, procurement value, vendor's name, and other relevant details.

### 6.2 EXCEPTION REPORTING

Public sector entities must notify Supply Ontario at [SCO.Reporting@supplyontario.ca](mailto:SCO.Reporting@supplyontario.ca) on a weekly basis the following information:

- A list of all exception requests submitted for approval by the Deputy Minister, CEO or equivalent.
- The outcome of each request (approved or denied).

If the public sector entity consulted with Supply Ontario, the applicable PRRF number should be included.

## 7 Appendix

Given that each public sector entity may use different procurement documents, the sample language below for procurement contracts should be adjusted as appropriate and reviewed with legal counsel.

This language is not mandatory and is only provided to assist public sector entities in fulfilling their obligations under the Policy. As always, public sector entities should consult with their procurement, business, and legal advisors on proper usage of this sample language.

### 7.1 SAMPLE LANGUAGE FOR PROCUREMENT DOCUMENTS

(e.g. Request for Bids, Request for Proposal, etc.)

#### 7.1.1 Stating the restriction

A bid submitted by a U.S. business (as defined in the Policy) will be considered non-compliant and not evaluated if it does not satisfy the eligibility requirements set out in the procurement document(s). Public sector buyers should consider including the following requirement in their procurement document:

*A Bidder's eligibility must be demonstrated before a Bid may be accepted. The Bidder must not be a U.S. business. 'U.S. business' means a supplier, manufacturer, or distributor of any business structure (including a sole proprietorship, partnership, corporation, or other business structure) that (i) has its headquarters or main office located in the U.S., **and** (ii) has fewer than 250 full-time employees in Canada.*

*If a Bidder is a subsidiary of another corporation, part (i) of the definition above is met if that Bidder is controlled by a corporation that has its headquarters or main office located in the U.S.*

#### 7.1.2 Sample Eligibility Requirement

Public sector buyers should consider including a mandatory eligibility requirement in their procurement document (e.g., in the eRFB/RFP). An eligibility requirement can be framed in the positive or negative. For example:

#### 7.1.2.1 Attestation of U.S Business Status

*The Bidder is a U.S. business. 'U.S. business' means a supplier, manufacturer, or distributor of any business structure (including a sole proprietorship, partnership, corporation, or other business structure) that (i) has its headquarters or main office located in the U.S., and (ii) has fewer than 250 full-time employees in Canada at the time of the applicable procurement process.*

*If a Bidder is a subsidiary of another corporation, part (i) of the definition above is met if that Bidder is controlled by a corporation that has its headquarters or main office located in the U.S.*

☐ Yes

☐ No

*If the Bidder has not demonstrated eligibility with a "Yes" response, the Ministry may disqualify the Bidder.*

#### 7.1.2.2 Attestation of Staffing Commitment for Services Procurements. (To be included if a U.S. business is allowed to participate in the procurement)

*If the bidder responded "Yes", then does the Bidder commit that at least 90 percent of the staff required to deliver the contracted services will be located in Canada and that this level will be maintained for the term of the contract?*

☐ Yes

☐ No

*If the Bidder has not demonstrated eligibility with a "No" response, the Ministry will disqualify the Bidder.*

#### **To be added if a staffing list is required:**

*To support your attestation, provide a staffing list demonstrates how the 90 percent staffing commitment will be met. This list must include:*

- *The total number of staffed required to deliver the services under the contract.*
- *Each role or job title involved in delivering the contracted services and the location of each role.*



*Failure to provide this staffing list may render your submission non-compliant and may result in disqualification.*

### **7.1.3 Clause on Staffing Commitment to be included in procurement document.**

*The Vendor represents that at least ninety percent (90%) of the staffing assigned to deliver the services under any resulting contract will be located in Canada.*

## **7.2 SAMPLE REPRESENTATION FOR THE FORM OF AGREEMENT (OR EQUIVALENT CONTRACTUAL DOCUMENT)**

Public sector buyers should consider including an attestation in the form of agreement or equivalent contractual document that is entered into between the vendor and the procuring entity. Public sector buyers should work with legal counsel when including a representation in their procurement agreements. The following sample representation can be structured as a standalone representation or modified as necessary and added to an article within an agreement containing other representations and warranties.

### **7.2.1 Vendor Representation Regarding Eligibility:**

Public sector buyers, with the advice of their legal advisors should consider whether a contractual representation should be included in the performance agreement with respect to the vendor's status as a U.S. business.

### **7.2.2 Clause regarding staffing commitment**

*The Vendor represents that at least ninety percent (90%) of the personnel assigned to deliver the services under the contract will be located in Canada. Any changes that affect this ratio require prior written approval from the Buyer. Failure to comply with this section is a breach of the contract.*

### **7.2.3 Clause regarding staffing commitment if staffing list was requested**

*The Vendor represents that at least ninety percent (90%) of the personnel assigned to deliver the services under the contract will be located in Canada. The Vendor has provided a staffing list as part of its bid and will update it upon request. Any changes that affect this ratio require prior written approval from the Buyer. Failure to comply with this section is a breach of the contract.*