

BYE BYE AMERICAN SUPPLY – ONTARIO PROCUREMENT OPPORTUNITIES FOR MOST US BUSINESSES RUN DRY

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Ontario Premier Doug Ford announced on March 4, 2025, that effective immediately US-based companies were banned from taking part in government procurement as long as US tariffs on Canadian exports were in place. The announcement had no details about how this ban would be implemented or its precise scope. In particular, questions remained about how it would apply to Canadian subsidiaries of US companies.

Now, Ontario has formalized the ban with the release of its Procurement Restriction Policy,[\[1\]](#) which provides details on the application and scope of the ban, including how a US business is defined and its application to a Canadian subsidiary.

US companies and their Canadian subsidiaries with 250 or more full-time employees in Canada will not be affected by the Policy and remain eligible to do business with Ontario public sector entities.

The Policy applies to all Ontario government entities and Broader Public Sector ("**BPS**") organization subject to the BPS Procurement Directive.

The Policy only applies to new procurements (as of March 4, 2025), but does not apply when public sector entities use Vendor of Record arrangements or other arrangements available to public entities.

Procuring from a US business is only permitted when the US business is the only viable source for the good/service, and the procurement cannot be delayed.

Under the Policy, the definition of a US business can include a Canadian subsidiary of a US business.

"A 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."

The Policy does not require public sector entities to verify whether a supplier is a US business or not. A public

sector entity can rely on a business' representation that it does not meet the Policy's definition of a US business. This approach is similar to Ontario's *Building Ontario Businesses Initiative Act, 2022* ("**BOBIA**"), which aims to direct government contracts to Ontario businesses where possible, in compliance with trade agreements. BOBIA regulations define what is an "Ontario business" and permits a public sector entity to rely on a representation by a business that it falls within the definition.

Canadian subsidiaries of US businesses may fall outside the definition of a US business, depending on the corporate structure and how control is exercised. Contact Timothy Cullen or Marc McLaren-Caux for assistance determining how the Policy impacts your business.

[1] [Procurement Restriction Policy | ontario.ca](#)

[2] [O. Reg. 422/23 GENERAL | ontario.ca](#)

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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