

## RUSH ORDER – GOVERNMENT OF CANADA INVOKES URGENT OPERATIONAL REQUIREMENTS TO JUSTIFY QUICK PURCHASES OF MILITARY GOODS

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Government procurement is rarely considered swift, especially in the defence sector. Stories in the media about defence procurement typically lament lengthy inflexible administrative processes, and project delays.

Government policy and multilateral trade treaty commitments generally require procurement be done by means of a competitive process. Outside of standing offers and supply arrangements, traditional competitive processes take time. This is especially true of complex defence procurements, where dollar amounts and sensitive requirements result in higher levels of scrutiny. Timelines from pre-tender consultation to contract award can take years.

So how is it that Canada's Minister of National Defence announced three new defence procurements on March 9, 2023, with estimated timeframes for contract awards from mid-2023 to early 2024? [1] All three procurements have been designated Urgent Operational Requirements (UORs), which is an exceptional procurement mechanism that allows the federal government to dispense with traditional procurement processes in order to procure essential equipment on an accelerated timeline.

The Government Contracts Regulations permit the use of non-competitive sole source contracts or atypical procurement mechanisms where there is an operational need to fulfil an interim requirement for defence supplies or services, or to ensure defence logistical capabilities on an interim basis. [2] The purpose of the exception is to allow the Minister of Defence to move quickly to prevent critical capability or supply gaps.

Past use of this exception has not been without controversy. In 2015, the federal government relied upon it to approve a sole-source \$700M contract to retrofit an interim supply ship for the navy leading to complaints from rival suppliers about the lack of competition. [3]

Minister Anand's recent announcement cited the need to support and protect Canadian and NATO forces deployed in Eastern Europe as part of Operation REASSURANCE.

If you have questions about supplying government or public sector entities and the complex rules that govern



the world of public procurement, McMillan LLP, together with its public affairs arm, McMillan Vantage, is here to help. For more information, please contact Timothy Cullen or Stevie O'Brien.

- [1] <u>Minister Anand updates National Defence stakeholders on progress to modernize the Canadian Armed Forces for tomorrow's security challenges</u> (Government of Canada).
- [2] Government Contracts Regulations, SOR/87-402 at s. 3(1)(g).
- [3] "Seaspan joins fight against \$700M Davie supply ship deal" (CBC News).
- by Timothy Cullen and Stevie O'Brien

## **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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