

Town of Whitby Staff Report

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Report Title: Town of Whitby Procurement Restrictions in Response to Tariffs Imposed by the United States

Report to: Committee of the Whole

Date of meeting: April 14, 2025

Report Number: FS 19-25

Department(s) Responsible:

Financial Services Department
Legal and Enforcement Services

Submitted by:

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Francesco Santaguida, Commissioner,
Legal and Enforcement Services/Town Solicitor

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1. Recommendation:

1. That Staff implement procurement restrictions designed to restrict United States businesses from accessing Town of Whitby procurements based on the Province of Ontario's Procurement Restriction Policy (Attachment 1 to Staff Report FS 19-25) and as outlined in Staff Report FS 19-25;
2. That the Town's Procurement Policy F 080 be amended for the procurement restrictions and definition of U.S. Business outlined in Staff Report FS 19-25;
3. That Staff be authorized to amend the Town's Procurement Policy F 080 based on adjustments to the Province of Ontario's Procurement Restriction Policy and that such restrictions be in effect until the earlier

of March 31, 2026 or when the Province of Ontario's Procurement Restriction Policy is rescinded;

4. That the Commissioner of Financial Services/Treasurer, subject to the agreement of the Commissioner of Legal and Enforcement Services/Town Solicitor, be delegated authority, until March 31, 2026, to approve contract extensions where it is necessary or in the best interest of the Town; and
5. That the Commissioner of Financial Services/Treasurer and the Commissioner of Legal and Enforcement Services/Town Solicitor report back to Council on the use of their delegated authority through the regular reporting of the Purchasing Division of Financial Services.

2. Highlights

This report is to provide an overview of the recent tariffs initiated by the government of the United States of America, the resulting trade war and economic uncertainty resulting from the tariffs, and the Town's proposed response.

3. Background

At the beginning of March, the United States of America ("U.S.") initiated tariffs on Canada, Mexico and China. Since then, tariffs have been announced, delayed, and re-announced. Canada, like other countries, has responded with counter tariffs against goods and services imported from the U.S. into Canada. A timeline of events related to the announcements on tariffs is summarized below:

March 4	The U.S. imposed tariffs on goods from Canada, Mexico and China. China and Canada each responded with retaliatory tariffs.
March 5	Automakers were exempted from tariffs for one month
March 6	Most tariffs on Canada and Mexico were delayed for one month
March 7	New U.S. tariffs announced on Canadian dairy and lumber
March 9	Canadian dairy and lumber tariffs postponed
March 10	Ontario charges 25% export tax on electricity in response
March 11	Ontario suspends the export tax on electricity
March 12	U.S. tariffs on Canadian steel and aluminum go into effect; Canada responds with additional retaliatory tariffs

April 2 U.S. announces “reciprocal tariffs” to many countries around the World, including a 25% tariff on Canadian automobiles.

As of the time of this report, the previously reported tariffs on steel, aluminum and auto tariffs are still in effect for those goods manufactured in Canada and exported to the US.

Alignment to Trade Agreements

There are a number of trade agreements to which Canada is a party, and which set out certain rules with respect to government purchases. Each of the trade agreements contain thresholds, above which any government purchase must comply with the terms of the agreement. The agreements also prohibit preferential treatment to goods and services based on the location or origin of the goods and services.

The two primary trade agreements which will impact any Town policy are the Canadian Free Trade Agreement (“CFTA” or “Siff-tah”) and the Comprehensive Economic and Trade Agreement (“CETA” or “See-tah”). The CFTA is an internal agreement between the federal government and the 13 provincial and territorial governments. The CETA is a bi-lateral agreement between the Government of Canada and the European Union.

The trade agreements apply to procurements above a threshold stipulated in the respective trade agreement. In addition to requiring an open competition for procurements above the threshold, they generally prohibit favouring local goods or services. If the value of the procurement is below the applicable threshold, that trade agreement will not apply. The current thresholds under the CFTA and CETA are:

	CFTA	CETA
Goods	\$133,800	\$353,300
Services	\$133,800	\$353,300
Construction	\$334,400	\$8,800,000

CFTA

CFTA is meant to “ensure fair and open access to government procurement for all Canadian suppliers.”¹ CFTA provides that goods and services from one province must receive treatment that is no less favourable than the treatment we would provide to

¹ CFTA Article 500

goods and services from Ontario. This means that above the CFTA thresholds, we would not be able to limit suppliers from other provinces from bidding.

A “Buy Canadian” approach would be permissible under the CFTA.

CETA

CETA has a similar purpose to CFTA in that CETA prohibits providing preferential treatment to local suppliers.² A “Buy Canada” approach on contracts above the CETA threshold would be a violation of that agreement. Such competitions would have to be open to suppliers from the EU as well as Canada.

The CETA would not prohibit any preference for non-American goods and services. As the U.S. is not a signatory to the CETA, the prohibition would not extend to American companies or American suppliers.

Compliance with Trade Agreements

There are three tiers that should be considered when considering “Buy Canada” approach. Tier 1 are purchases which are below the trade agreement thresholds. Tier 2 are purchases which are above the CFTA thresholds but below the CETA thresholds. Tier 3 are purchases above the CETA thresholds.

Tier 1

Tier 1 would be purchases that are below \$133,800 for goods and services, and below \$334,400 for construction. For such purchases, we would be able to adopt a “buy local” policy, as there is no applicable trade agreement which would provide otherwise.

This provides the Town with an opportunity to further support local businesses, prioritize Canadian made goods and services, and support the long-term sustainability of our local industries.

Tier 2

For purchases which are above the CFTA threshold (\$133,800) but below the CETA threshold (\$353,300), a “buy Canadian” policy would be possible. This would also be consistent with the steps taken by a number of other municipalities in Ontario.

The common approach to goods that fall within this tier is to prioritize Canadian goods and services wherever possible. Other municipalities have adopted various definitions of the terms “American Supplier,” “Canadian Supplier,” “Other Supplier” and “Canadian Subsidiary.”

Tier 3

² CETA Article 19.4

Where a purchase is above the CETA thresholds, we would not be able to implement a “Buy Canadian” policy. However, since the U.S. is not a party to the CETA, we would still be able to limit or restrict American suppliers from bidding on Town contracts.

A policy which restricted, or outright banned U.S. suppliers could be enacted in a manner which is compliant with CETA. For purchases above the CETA thresholds, non-US suppliers could be given preference over U.S. suppliers. So long as any policy did not restrict EU based suppliers from bidding on contracts, such a policy would be consistent with CETA.

Internal Documents

The Council approved [Procurement Policy F 080](#) (the “Policy”) is aligned with the trade agreements and is meant to encourage fair and transparent competitive procurement processes and equitable access to all qualified suppliers. Guided by the principle to achieve the best value in its commercial transactions (e.g. “value for money”), the Policy provides that the Town shall not be bound to purchase goods or services based on Canadian content or to practice local preference in awarding contracts unless specifically required to do so under the authority of the Governments of Ontario or Canada.

As such, the current Procurement Policy may act as an impediment to any “Buy Canada” or non-American policy. Since the Policy specifically states that the Town will not be bound to purchase Canadian goods, any direction or decision to do so by Council would require a direction from the Federal or Provincial government or a revision to the Policy approved by Council. Otherwise, any aggrieved supplier could potentially challenge any such direction as a violation of the Town’s Procurement Policy.

Other Legal Considerations

There are other considerations outside of the Policy and applicable trade treaties that will need to be evaluated prior to making any policy changes. One example is the potential impact of the *Discriminatory Business Practices Act* on any such decision. Review of these considerations is ongoing, and Legal Services cannot provide any further information at this time. These considerations should be fully vetted as part of a broader review prior to any final decisions being made.

Practical Considerations

The rationale for open and competitive procurement practices is to ensure value for money in the procurement of goods and services. Restrictions upon the scope of permitted suppliers or bidders (i.e. limiting competition) may result in an increase in costs for the Town/taxpayers. Further, implementation of local preference practices (e.g. Buy Canadian, or buy from local Whitby businesses only) would need to consider and be flexible to account for the following:

Supporting the Canadian Economy vs. Supporting Canadian Businesses

- For the purchase of goods, “Buy Canadian” may be difficult to define, verify, and may exclude local/Canadian resellers/distributor. For example, the Competition Bureau of Canada requires that companies that use “Product of Canada” vs. “Made in Canada” labels ensure that there is at least 98% and 51%, respectively, of Canadian content in the non-food products. Further, a supplier located in Whitby or Canada may import and distribute goods from the United States but employ local/Canadian residents;
- There may be instances where a Canadian affiliate of a U.S. company is bidding on a project. Definitions and safeguards will need to be put in place to ensure that such companies are able to continue to participate in Town procurement, while not inadvertently leaving out potential bidders who create jobs in Canada but do so as a Non-Canadian company;
- An alternative option to “Buy Canadian” would be to permit US suppliers to bid on project, but include a provision in the applicable tender documents which would permit the Town to bypass a low bid (or high score in the case of an RFP) from an U.S. supplier in favour of a Canadian supplier where the lowest Canadian bid (or highest Canadian score) is within a certain amount of the low bid (or high scoring) US supplier.

Lack of Canadian or Non-U.S. Companies in Certain Procurement Circumstances

- There are situations where there are no suitable Canadian substitutes/alternatives currently available, such as in the case with some enterprise-level business software. Any changes should include sufficient flexibility to allow for purchases from Non-Canadian suppliers in such circumstances.

Whitby/Canadian Businesses being “Shut Out” of Other Markets

- Municipalities and buyers in other jurisdictions may implement similar local preference practices that will effectively shut out Canadian or Whitby businesses from those markets. For example, if local preference was narrowly defined as “Whitby businesses only”, and if surrounding municipalities implemented similar local preference practices, Whitby businesses would be excluded from being awarded work from neighbouring municipalities.

Ensuring that the Town Obtains Significant Value for the Money It Spends

- There may be times where a Canadian product or service is available but the cost is significantly higher than the U.S./Non-Canadian option. This increased cost of goods and services could result in higher property taxes (or a reduction in service levels to offset the higher costs) and is not considered fiscally responsible. Regardless of the tariffs, the Town must still responsibly achieve value for the money it collects from its residents and taxpayers;

- Federal and Provincial grant agreements have wording regarding “value for money” and/or the fair, open, and transparent procurement of goods and services.

The approach taken by other municipalities is to define “Canadian supplier” or “Canadian business.” A business, regardless of where its shareholders or directors may reside, must locate its head office or a permanent office in Canada, as well as maintain a certain minimum number of employees located in Canada. Preparing definitions in this manner allows the focus to be on companies that support the Canadian economy through employing Canadians. This may allow a Canadian subsidiary of an U.S. company to remain eligible to bid, as the subsidiary would have a permanent presence in Canada and employ Canadians. Exceptions can be made within any policy for situations where there is no suitable non-U.S. option available. It is recommended that any new or amended policy contain such provisions to ensure that we do not create rules which are so rigid that they defeat the purpose.

With the above considerations in mind, The Town will implement practices and propose Policy updates that supports the goal of maximizing local jobs, Canadian jobs, and supporting Canadian-owned companies.

4. Discussion

An analysis of Purchase Orders issued from January 1, 2023, and December 31, 2024, indicates that less than two percent (2%) of the Town’s operating and capital budget for 2023 and 2024 are with suppliers with U.S. addresses. However, this does not entirely reflect U.S. supply chain involvement in the Town’s procurement of goods and services. Canadian businesses source parts, materials, or products from the U.S. Even if direct transactions with U.S. suppliers are limited, restricting procurement could negatively impact Canadian businesses that rely on U.S. manufacturing, making enforcement of such restrictions complex and potentially disruptive to the Canadian economy. It would also be a major administrative burden on staff to determine the origin of parts, materials or products, which could also significantly increase costs to the Town.

Whitby’s Procurement By-law mandates awarding contracts to the lowest-priced compliant bidder for tenders, ensuring open and fair competition. This approach helps the Municipality procure goods and services in a cost-effective manner while maintaining transparency and integrity in the procurement process. Canada’s proposed retaliatory tariffs on U.S. goods will raise the prices of these products, the result of which may be that Canadian or other non-American alternatives are naturally used in order for bids to be more competitive. The end result may be a natural favoring of Canadian and non-American products by bidders.

Provincial Procurement Restriction Policy

Staff recommend following the guidance of the recent Province of Ontario's Procurement Restriction Policy for the definition of a U.S. Business and duration of the restriction. On April 7, 2025, the [Provincial Management Board of Cabinet updated their Procurement Restriction Policy](#) (see Attachment 1) to restrict U.S. Businesses from accessing public sector procurements in Ontario:

- The policy is in force as a response to U.S. tariffs on Canadian products and services;
- The Provincial Procurement Restriction Policy may be adjusted or rescinded should tariffs be lifted;
- A definition of U.S. Business is provided in the policy and notes that a public sector entity can rely on a business' representation that it does not meet the U.S. Business definition;

Town of Whitby Procurement Restriction Policy

Although the Provincial Procurement Restriction Policy is applicable to all Provincial ministries, Provincial agencies, the Ontario Power Generation, Independent Electricity System Operators, and Designated Broader Public Sector organizations, Ontario municipalities are not bound by this policy. However, Staff recommend utilizing the definition of U.S. Business for restrictions related to the Town of Whitby's procurements. Specifically, Staff recommend implementing procurement restrictions designed to restrict the following United States Businesses (based on the Province's Procurement Restriction Policy) from accessing Town of Whitby procurements:

A) 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.

B) Town Staff may rely on a sworn declaration from a bidder that they are not a U.S. Business when awarding contracts

Subject to Council approval of this report, the Town's Procurement Policy F 080 will be updated with the U.S. procurement restriction and definition noted above. Further, it is recommended that:

- Staff be authorized to amend the U.S. Procurement Restriction in Town Policy F 080 based on amendments to the Provincial Restriction Policy (April 7th update included as Attachment 1 to this report); and,
- The U.S. this restriction in the Policy F 080 ends the earlier of March 31, 2026 or when the Province of Ontario rescinds their Procurement Restriction Policy issued by the Management Board of Cabinet. If the Provincial restriction is not rescinded by March 31, 2026, Staff will provide a report to Council to recommend an extension, if required.

5. Financial Considerations

Currently, the Town procures goods and services mainly through quotes, tenders, and request for proposals based on dollar thresholds outlined in the Town's Procurement Policy F 080. Subject to Council approval of this report, the Town will continue to utilize the thresholds to determine when to obtain informal quotes, formal quotes, tenders and Request for Proposals. However, in response to tariffs imposed by the United States and the current economic environment resulting from the "trade war" started by the tariffs, U.S. Businesses (defined in the section above) will be restricted from participating in the Town of Whitby procurement of goods and services.

As noted earlier in this report, restricting competition may result in higher overall costs for the Town of Whitby (e.g., the U.S. Business may be the supplier with the lowest overall price). These budget pressures may result in the re-prioritization / deferral of capital projects in order to proceed with priority projects with available funds. That is, approved capital projects may need to be deferred and closed in order to "free up" budget/funding for other approved priority projects that have bids exceeding originally approved budgets while the U.S. procurement restriction is in place.

During this period of uncertainty with tariffs and retaliatory tariffs, it is anticipated that prices for goods and services will increase and there may be supply chain impacts that may delay the timely delivery of Town procurements. As the Town provides essential services to the community, to mitigate the impact of tariffs during this period of uncertainty, it is recommended that the Commissioner of Financial Services, subject to the agreement of the Commissioner of Legal and Enforcement Services, be delegated authority to approve contract extensions in situations where negotiating an extension is favourable to obtaining bids or where supply or pricing is likely to be impacted. The delegated authority is recommended to expire March 31, 2026.

6. Communication and Public Engagement:

Not Applicable

7. Input from Departments/Sources:

Not Applicable

8. Strategic Priorities:

Not Applicable

9. Attachments:

Attachment 1 – Procurement Restriction Policy _ Ontario.ca.PDF