

Impact of the Government Procurement Agreement between Canada and the United States

Date:	August 4, 2010
To:	Executive Committee
From:	City Manager
Wards:	N/A
Reference Number:	P:/2010/Internal Services/PMMD/EC10029PMMD (AFS # 12782)

SUMMARY

This report is submitted in response to a directive from City Council to report to the Executive Committee on the impact of the Government Procurement Agreement between Canada and the United States on the City of Toronto's purchasing and procurement policies and practices.

RECOMMENDATIONS

The City Manager recommends that

1. This report be received for information.

Financial Impact

This report has no financial impact.

DECISION HISTORY

At its meeting on Feb. 22 and 23, 2010, City Council considered a motion made by Councillor Pantalone, seconded by Councillor Perks entitled "Government Procurement Agreement between Canada and the United States". In considering the motion, City Council requested that the City Manager report to the Executive Committee on the impact of the Government Procurement Agreement between Canada and the United States of America on the City of Toronto's purchasing and procurement powers and practices.

The council decision can be found at:

<http://www.toronto.ca/legdocs/mmis/2010/mm/bgrd/backgroundfile-27604.pdf>

ISSUE BACKGROUND

On February 12, 2010, Canada and the United States signed an agreement that will allow Canadian companies to participate in U.S. infrastructure projects financed under the American Recovery and Investment Act. A copy of the agreement can be found at:

[http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ENG-Canada-USA%20Government%20Procurement%20\(clean%2011%20Feb%202010%20printed\).pdf](http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ENG-Canada-USA%20Government%20Procurement%20(clean%2011%20Feb%202010%20printed).pdf)

The Canada-U.S. Agreement on Government Procurement has three parts:

- provincial and territorial procurement commitments under the World Trade Organization(WTO) Agreement on Government Procurement (AGP), found at http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm , for all provinces and territories (except Nunavut) in exchange for U.S. sub-federal AGP commitments;
- temporary Canadian procurement commitments for construction projects for some provincial/territorial agencies not included in the AGP and a significant number of municipalities in exchange for the U.S. exempting Canada from the Buy American provisions of the Recovery Act for 7 programs of interest that receive funding from Recovery Act; and
- a commitment to explore the scope for a long term government procurement agreement between Canada and the U.S., within the next 12 months, to deepen on a reciprocal basis, procurement commitments beyond those in the WTO AGP and NAFTA.

COMMENTS

A review of the Canada-U.S. Agreement on Government Procurement (the Agreement) has concluded that the Agreement does not have any impacts on the City's procurement practices.

It is Part B of the Agreement that applies to the City of Toronto. Under Part B, Canada commits to providing the United States with access to sub-central procurement of construction services in accordance with Appendix C of the Agreement. This is a temporary commitment that took effect on February 16, 2010, and will remain in force through September 30, 2011. The City of Toronto is one of the many municipalities and provincial/territorial agencies that are listed in Appendix C and covered by this commitment.

Appendix C sets out the details of the obligations on the municipalities and agencies that are covered by the commitment and the dollar threshold above which the commitment applies. The obligations that apply to the City under the Agreement are only with respect

to the procurement of construction services for which the value equals or exceeds the threshold of \$8.5 million.

The Agreement does not apply to municipal cultural agencies, or to local electricity distributing companies owned in whole or in part by municipalities. The Agreement also excludes construction related to mass transit or highway projects

The basic obligations that apply with respect to the procurement of construction services valued at equal to or greater than \$8.5 million can be summarized as follows:

- The City accord American goods, services and suppliers no less favourable treatment than it accords Canadian goods, services and suppliers.
- Subject to certain exceptions, the City must conduct open and publicly advertised competitive processes.
- The City must not apply overly restrictive technical specifications that preclude competition or create unnecessary obstacles to international trade.

Impact of the Agreement on City of Toronto Procurement

The City is covered by other trade agreements such as the Agreement on Internal Trade (AIT) and the Ontario-Quebec Procurement Agreement. The Agreement does not impose any restrictions or limitations on the City that were not already imposed by these pre-existing trade agreements. The only exception is that the obligations in the Agreement apply in respect of the US, where the other trade agreements apply only between provinces and territories within Canada. As such, a policy giving preference to Canadian content, which may be allowable under the AIT and the Ontario-Quebec Agreement, would not be permitted in respect of procurement under the Canada-US Agreement.

As the City suspended its Canadian Content Policy several years ago and does not give preference to Canadian or Toronto based suppliers in its procurement of construction services, the Agreement will have no impact on the City's current purchasing policies and procedures.

The City already meets the requirements in the Agreement with respect to open and publicly advertised competitive procurement. Access to City procurement opportunities is provided to all suppliers wishing to do business with the City through the Purchasing and Materials Division website. The website lists all procurement calls that are issued, along with a description and provides all suppliers the opportunity to download the call documents on a 24/7 basis. The City's policy with respect to the circumstances under which purchases can be made without a competitive process (i.e. sole source purchases) is consistent with the stated exceptions to the open competition requirement set out in the Agreement.

PMMD encourages Toronto and Canadian suppliers to compete on business opportunities by offering seminars and sessions on "How to do Business with the City". This approach has ensured that Toronto and Canadian suppliers become actively involved in the City's procurement process. This is reflected by the fact that 99.71% of dollars spent by the City on all purchases and 100% of dollars spent on construction purchases was with suppliers located in Toronto and Canada in 2009.

In addition, with the high threshold value of \$8.5 million and limited scope of the Agreement, it will only apply to approximately 3.33% of construction contracts awarded by the City on an annual basis.

Impact of the Agreement on City Agencies, Boards, and Commissions (ABC's)

Municipal ABC's are also covered by the Agreement with the exception of the following:

- Municipal cultural agencies, and
- Local electricity distributing companies (owned in whole or in part by a municipality)

In addition, funds that have been provided to an ABC for mass transit or highway projects which have restrictions applied to them are also excluded from the Agreement.

A full assessment of the impact of procurement of ABC's will have to be done by the individual ABC as they each have their own procurement policies and practices which may differ from those of the City's.

Legal Services has reviewed and concurs with the content of this report.

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SIGNATURE

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