



REPORT

To: Chair and Directors

Report Number: FN-BRD-332

From: Financial Administration

Date: April 10, 2025

Subject: Procurement Policy – Canadian Manufacturing Preference

RECOMMENDATION: [Corporate Unweighted]

That the Regional Board receive the information on anticipated changes to Provincial and Federal legislation related to US tariffs and existing Trade Agreements for information.

BACKGROUND/RATIONALE:

On March 6, 2025, the Regional Board passed the following resolution:

MOVED, SECONDED and CARRIED,

That the Regional Board authorize review of the existing Procurement Policy and associated procedures to identify all opportunities that would focus on incorporating a Canadian first/buy tendering policy.

The new US Administration has threatened to implement 25% tariffs on all Canadian exports as follows:

- On March 4, 2025, the US implemented 25% tariffs on Canadian exports and 10% tariffs on Canadian energy. Shortly after the tariff implementation, a one-month exception was applied on automobiles and parts covered under the Canada-United State-Mexico Agreement (CUSMA).
- On March 6, 2025, CUSMA was broadened to include all CUSMA covered products to be exempt from tariffs. However, non-CUSMA goods still face tariffs ranging from 10% to 25%.
- On March 12, 2025, the US implemented additional 25% tariffs on foreign steel and aluminum, including steel and aluminum from Canada.

In response to the US tariffs, Canadian government announced the following retaliatory tariffs:

- On March 4, 2025, 25% tariffs were applied on \$30 billion worth of US goods such as food, beverages, appliances, apparel, motorcycles, pulp and paper.
- The Canadian government has planned to implement tariffs on another \$125 billion worth of American imports following a consultation period. The Canadian government has stated that these measures will remain in place until the US eliminates tariffs imposed against Canadian steel and aluminum products.

While significant tariffs have been imposed on various Canadian products, their application remains inconsistent, as not all Canadian exports to the US are subject to the same tariffs. The situation remains fluid, with ongoing negotiation, unpredictability and potential for further changes which may or may not be confined to the bilateral economic relationship between Canada and US but could also impact the global trade network.

Procurement Policy - Review

The Peace River Regional District (PRRD) requires procurement processes to be conducted in a competitive, fair, open and transparent manner which is based on ‘best value’; that is the optimal combination of total cost, performance, economic, environmental and social sustainability, reducing carbon dependency, and reducing waste. The PRRD’s current procurement policy can be divided into two sections based on procurement processes and trade agreement thresholds:

1. Below Trade-Agreement Threshold:
 - CA\$500 – CA\$15,000 – Informal procurement
 - CA\$15,000 – CA\$75,000 – Formal Procurement
2. Above Trade-Agreement Threshold:
 - CA\$75,000 and above

Below Trade-Agreements Threshold

CA\$500 – CA\$15,000 – Informal procurement

The procurement of goods and services are sourced from the local market at the lowest quotation, irrespective of the origin of the product and service. With the implementation of 25% tariffs on US products, it is expected that US products would increase by 25% and under the lowest quotation procurement, the PRRD would continue to procure products and services at the lowest quotation to get optimum value from the local market for small, valued products and services.

CA\$15,000 – CA\$75,000 – Formal Procurement

The PRRD’S current Procurement Policy already incorporates Canadian preference in Clause 4(a) which states: *“For procurements under Trade Agreement thresholds, the Regional District will give preference to local suppliers where quality, specifications, service, price and delivery are equivalent”*.

This clause allows the PRRD an opportunity to give preference to Canadian suppliers over US suppliers if the evaluation score is same. Over the past five years, the PRRD has only been engaged with US suppliers in relation to Enterprise Resource Planning (ERP), IT software, software licenses, emergency equipment and where no viable Canadian alternatives were available. These sectors of procurement were and still are exempt from tariffs as of today.

With reference to incorporating Canadian Manufacturing Preference as a part of the Evaluation Criteria in tender documents and awarding additional score/points for Canadian products and services, there is a legal risk under the *Local Government Act* (LGA). Section 273 of the LGA prohibits the Regional District Board from providing assistance to an industrial, commercial or business undertaking. Section 271 of the LGA defines “assistance” as meaning “providing a grant, benefit, advantage or other form of assistance”. Therefore, implications of incorporating Canadian manufacturing preferences may expose the PRRD to the following financial and litigation risks under the LGA:

- Prioritizing Canadian supplies may lead to inflated costs if domestic options are more expensive than international alternatives, contradicting the procurement principle of “value for money”.
- Courts may view preferential scoring as indirect assistance by tilting competition in favour of domestic suppliers; potentially violating the LGA’s intent.
- Awarding additional points to Canadian products and services could be interpreted as conferring an unlawful advantage.

Above Trade-Agreements Threshold

There are provincial and federal trade agreements that include provisions in relation to local government procurement processes. The table below notes the current MASH (Municipalities, Academia, Schools and Hospitals) thresholds for the various trade agreements:

	Goods	Services	Construction	Notes
CETA	353,300	353,300	880,000	28 countries of the European Union
CFTA	133,800	133,800	334,400	10 provinces, 3 territories, Federal Government
NWPTA	75,000	75,000	200,000	Alberta, British Columbia, Saskatchewan, Manitoba

Note that the CUSMA Trade Agreement does not apply to local government if the local government follows the three primary agreements mentioned above.

The core objectives of all trade agreements are to adhere to principles of fairness, competitiveness, and non-discrimination. Furthermore, these agreements specifically prohibit the use of technical specifications that require or refer to trademarks, trade names, patents, copyrights, designs, types, specific origins, producers or suppliers. The focus of these trade agreements is to reduce trade barriers. Any entity within the boundaries of the trade agreement must be treated as if they were a local supplier. No preference policies are permitted under the trade agreement.

1. New West Partnership Trade Agreement (NWPTA)

Article 14 of the NWPTA provides the parties “open and non-discriminatory access” to local government procurements if the value of the procurement is \$75,000 or greater for goods and services or \$200,000 or greater for construction. Incorporating Canadian Manufacturing preference would amount to discriminatory access to the applicable procurement and would be prohibited under the applicable trade agreement.

2. Canada Free Trade Agreement (CFTA)

Article 503(3) of the CFTA prohibits to impose any preference in their tendering documents as stated below:

503(3) *“A procuring entity shall not impose or consider, in the evaluation of tenders or the award of contracts, local content or other economic benefits criteria that are designed to favour:*

- a. the goods or services of a particular Province or region, including those goods and services included in construction contracts; or*
- b. the suppliers of a particular Province or region of such goods or services”.*

Furthermore, under common law principles governing fairness in procurement, the award of a contract contrary to criteria stated in the tender document is prohibited. For example, bypassing the top-ranked bidder in favour of the second-ranked bidder on basis of Canadian preference could result in liabilities under both the trade agreements and common law. If the top-ranked proponent files a legal challenge

against the PRRD, the legal remedies that could be imposed against the PRRD could be broadly described as follows, depending on which legal approach the challenger takes (i.e., making a common law claim versus trade agreement protest, and what legal basis is relied upon):

- Lost profits of the top-ranked proponent. There is no firm rule about what percentage of their bid price would constitute their profit, but 15% of their bid price is a reasonable assumption for present purposes.
- Cost of preparing a proposal or bid. If a protest is brought under the trade agreements, such costs are capped at \$50,000 (though it is unlikely that the bidder would claim a cost nearly that high).
- A court order requiring the PRRD to freeze the procurement process pending final determination and, if the court decides in favour of the top-ranked proponent, to enter into a contract with the same.

The PRRD's procurement activities have been primarily focused on domestic sources over the past five years with no exposure to US suppliers, directly or indirectly, with the exceptions of essential IT infrastructure, software licenses and specialized emergency equipment, which was mostly procured through Canadian vendors, but originated from US manufacturers. Examples of this are Microsoft licensing, ERP systems, website services, and fire trucks.

It's also worth noting that PRRD has limited control or influence over the components used by suppliers for infrastructure repairs or capital construction projects, however in light of potential US tariffs, suppliers working with the PRRD are actively seeking alternative sources to mitigate costs and maintain competitiveness, in an already challenging market.

ALTERNATIVE OPTIONS:

1. That the Regional Board provides further direction.

STRATEGIC PLAN RELEVANCE:

- Not Applicable to Strategic Plan

FINANCIAL CONSIDERATION(S):

Although the PRRD currently procures minimally directly from the United States, it is expected that there may be price increases in procurements due to tariffs throughout the supply chain.

COMMUNICATIONS CONSIDERATION(S):

None at this time.

OTHER CONSIDERATION(S):

None at this time.

External Links:

1. [Peace River Regional District Procurement Policy No. 0340-26](#)
2. *Local Government Act* - See Division 4 - Providing Assistance:
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15001_08

3. New West Partnership Trade Agreement – See Article 14 – Procurement:
http://www.newwestpartnershiptrade.ca/pdf/NWPTA_May_26_2022.pdf
4. Canada Free Trade Agreement (CFTA) – See Chapter Five – Government Procurement, Article 503(3) – General Procurement Rules:
<https://www.cfta-alec.ca/cfta-agreement/chapter-five-government-procurement>
5. [List of products from the US subject to 25% tariffs effective March 4,2025](#)
6. [List of products from the US subject to 25% tariffs effective March 13,2025](#)