

Date: April 15, 2025

To: **Mayor and Council**

Name and title: KRIS DALIO, DIRECTOR OF FINANCE AND IT SERVICES

Subject: Procurement Options in Response to U.S. Tariffs

Attachment(s): Staff Report to Council dated February 18, 2025 from the Director of Finance and IT Services titled "Procurement Overview and Practices"

Recommendation(s):

That Council SELECT AN OPTION in the report dated April 15, 2025 from the Director of Finance and IT Services titled "Procurement Options in Response to U.S. Tariffs".

Purpose:

To provide Council with procurement information and options in regard to the United States as per their resolution.

Policy/Regulatory Analysis:

At the direction of Council at its March 10, 2025 regular meeting, Administration has communicated with the public around the City's support for local businesses and encouraging people to shop local where possible.

At the March 10, 2025 meeting, Council also passed the following resolution:

"That Council DIRECTS Administration to report back to Council with options for next steps regarding the City's procurement practices and other decisions related to the national tariffs between the United States and Canada and to provide information on the provincial tariff roundtable."

This report has been prepared in accordance with the above Council resolution.

Discussion:

Provincial Tariff Roundtable – March 11, 2025

Premier Eby gave opening remarks and Ministers' Anderson and Kahlon, and UBCM President Mandewo were on the call. There were 117 participants including Mayors, Board Chairs and UBCM Executive members. Some of the key takeaways were:

- The province is taking a Team Canada approach with their own practices, and they are addressing interprovincial border issues. They are also asking local governments (LG's) to let the province know of issues happening on the front lines.
- The province is not going to be putting procurement restrictions on LG's as in-progress capital may already experience challenges. Procurement is up to local government.
- There is urging of U.S. home builders' associations to apply pressure to the U.S. as our lumber is used so heavily by them. On a slightly related note, the province confirmed there would be no relaxing of short-term accommodation rules.
- There were many concerns from Mayors/Chairs/UBCM board members on unintended consequences of retaliatory tariffs. Some examples include:
 - Increased capital costs to LG's
 - Reliance on certain goods coming from the U.S. such as emergency services equipment (fire trucks) and supplies, which will impact LG's during wildfire season
 - Tourism concerns and how LG's will be impacted
 - Impact on a struggling forestry industry and the communities that are reliant on it
 - The importance of exporting goods such as Okanagan wine to other markets
 - Foreign ownership concerns prompted LG's to ask the Province to put restrictions on agricultural land
 - Fort Nelson may experience hardships with the Alaskan Highway tolls
- Collected tariffs are awaiting federal direction but most likely will be used to support workers and businesses

Procurement Options Involving the United States

The current trade situation continues to evolve daily with tariffs being threatened, withdrawn, implemented, postponed and retracted. The instability of this ongoing issue makes it difficult for all levels of government to recommend a decisive course of action. There are many things to consider such as cost, efficiency, the lack of availability of equivalent goods outside of the U.S. (for example, IT and emergency/mobile equipment), and what defines a "U.S. supplier" or a "U.S. good". A Canadian supplier as defined in trade agreement, is a supplier that has a place of business within Canada. U.S. companies often have branches that operate on Canadian soil and those companies would likely meet this definition. Also, one of the intangibles that should still be mentioned is maintaining continued good business relationships with U.S. suppliers through what may ultimately be a short-term challenge to that relationship.

As discussed in the previous report (attached), LG's are affected by regional, national and international trade agreements, as well as various aspects of law. In the case of the United States, restricting U.S. proponents are likely not to break trade agreements but may be at risk to challenges of contract and procurement law. Formal procurement practices (Request for Proposal, Request for Quotation, Invitation to Tender) are subject to contract and procurement law and any unfair practices can be challenged in the courts.

The New West Partnership Trade Agreement (NWPTA) is the trade agreement with the lowest of all the trade agreement thresholds that triggers our formal procurement at the City. This threshold is:

- \$75,000 or greater for goods and services
- \$200,000 or greater for construction

Option 1 – amend administrative procedures to put criteria around informal solicitation preference to Canadian suppliers where practicable when the purchase is below trade agreement thresholds

It is Administration's recommendation that any preferences to local suppliers, or exclusion of U.S. suppliers, only be done outside of the formal procurement practices to avoid costly legal challenges and potential losses.

This is a low-risk option that should help shift more purchases to Canadian suppliers while not exposing the City to legal challenge. When thresholds aren't met and informal procurement practices are implemented, the City can safely support local suppliers. Broadly speaking, restrictive bidding practices means less pressure to ensure competitive costs and quality of project delivery and will inevitably result in higher costs to taxpayers. However, as the threshold is still a relatively small figure in relation to the City's overall purchasing, this should mitigate the financial exposure of limiting potential suppliers.

Most of the City's purchases are made from Canadian companies. Some items come directly from U.S. companies but some of those can be redirected to Canadian companies if we are given direction to be allowed to spend more with a Canadian supplier. For clarity in this option, the intent is to generally define a U.S. company as "operating on U.S. soil with no Canadian subsidiary or distribution available". Going any further down the supply chain (U.S. companies on Canadian soil, or U.S. manufactured goods sold through a Canadian supplier) is crippling to the point of not being a viable option and would have detrimental effects on Canadian businesses and jobs. While the comfort level of 'how much more' to pay a Canadian supplier is highly subjective and needs to be measured against the affordability of the taxpayer, Administration would suggest 10% as a starting point for the conversation.

Even with this option, there are still considerable operational challenges to excluding U.S. suppliers which is why Option 1 includes a "where practicable" clause. There are many different businesses under the City umbrella with different procurement needs when it comes to suppliers and there are some critical, or even 'showstoppers', if we were to exclude the U.S. suppliers (this is just a sampling and is not meant to be an exhaustive list):

- Fire Services – as mentioned above in the roundtable section of the report, fire services have almost no products, equipment, gear and apparatus that can be sourced or manufactured exclusively from Canada. Even the scheduling and payroll support software that is used is based out of the U.S. and is a showstopper if it were removed
- IT Services – the list of U.S. reliance here is large. There is at least 15 pieces of software we are using that are sourced in the U.S. and are not provided through a Canadian subsidiary or reseller. Many of these would be defined as critical or showstopping to a division's function and include such things as security software; financial reporting software, event booking software; and asset management software. Even if a suitable replacement can be found, removing and implementing new software is extremely costly in both money and time.
- Events – restricting U.S. suppliers would severely limit business when it comes to securing entertainers or hosting conferences or our membership with the venue coalition.
- Project Delivery – there are many products that are required to operate Civic Facilities. There are at least a dozen products manufactured in the U.S. that do not have Canadian representation. Two showstoppers in particular are HVAC units and Aquatics bulkheads.

Option 2 – direct Administration to obtain legal advice for establishing policy that would restrict U.S. suppliers from bidding on formal procurement

Any changes regarding excluding U.S. suppliers from formal procurements above threshold is still subject to significant legal risk and should be done so with careful consideration and legal advice. With municipalities being exempt from the Canada-United States-Mexico Agreement (CUSMA), the

remaining hurdle to exclude U.S. suppliers is the various aspects of law (*Community Charter/Local Government Act*, contract and administrative) that apply to formal procurement. This would include such considerations as:

- Ensuring our changes are not viewed as an attempt to influence international dispute matters that are outside of our scope (municipal boundaries) and that discriminating against a group of suppliers genuinely responds to tariffs in a way that benefits the well-being of our community. Parameters and reasons for changes need to be well articulated.
- That we are fully transparent at the start of our procurement process in a legal and defensible manner of our exclusionary preference.
- That our definition of the excluded suppliers is clear, easy to interpret and resistant to legal challenges.
- Any changes to legislation the provincial government may make in response to the tariffs.

As with Option 1, we would still need the ability to work around critical or showstopping items to ensure that City services can still be adequately provided. Due to the considerable risk of this option, Administration does not recommend Option 2.

Option 3 – continue to operate as normal

Given the legal complexities, as well as financial and operational impacts of excluding U.S. suppliers in a political landscape that is changing daily, there is merit in being still for a while until more certain outcomes of the tariff war arise. This is the option that Administration is recommending.

Summary and conclusion:

This report has been prepared for Council's information. Administration is recommending Option 3 but if Council wanted to take action now, the lower risk approach of Option 1 can work as long as Administration is given the flexibility to include U.S. suppliers when it is critical to the organization's needs.

Respectfully submitted:

Kris Dalio, Director of Finance and IT Services

Approved:

Walter Babicz, City Manager

Meeting date: [2025/05/05]