# Proposed Changes to Capital Infrastructure Requirements under the Buy Ontario Procurement Directive and Municipal Buy Ontario Procurement Directive

**Submitted to:** Ministry of Public and Business Service Delivery and Procurement

**Submitted by:** Ontario Bar Association

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ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
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# Introduction

The Ontario Bar Association ("OBA") appreciates the opportunity to provide comments to the Ministry of Public and Business Service Delivery and Procurement on proposed changes to the Capital Infrastructure Requirements under the Buy Ontario Procurement Directive and Municipal Buy Ontario Procurement Directive aimed to strengthen Ontario's Buy Ontario Procurement Requirements.

# Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with more than 17,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA's Municipal Law section which has over 200 lawyers who are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Members of the Section represent municipalities across the province in communities of varying sizes, economic pressures, and planning priorities. Many have significant experience with municipal procurement processes and Bill 72, the *Buy Ontario Act*.[1]

[1] Ontario Bar Association, Submission on Bill 72, Buy Ontario Act, 2025 (Ontario Bar Association, 2025), online: Ontario Bar Association < https://oba.org/getmedia/8893c252-2636-4133-8bfd-e3a3696f0a62/OBA-Bill-72-Buy-Ontario-Act-2025-Final.pdf>.

## Comments & Recommendations

The Buy Ontario Procurement Directive and the Municipal Buy Ontario Procurement Directive came into effect on April 13, 2026. Together, they established requirements for Ontario ministries and municipal sector entities to prioritize Ontario and Canadian goods and services in procurements.

Our comments concern the Ministry's proposed change, to expand upon the above directives and require public sector entities to enable the use of domestic goods and services through any design and technical specifications and other design deliverables to be included in capital infrastructure procurements.

We appreciate the underlying policy objectives and the broader economic and geopolitical pressures that have informed the development of this proposal. Strengthening Ontario's supply chains and enhancing the competitiveness, resilience, and growth of Ontario-based businesses are critical goals that we strongly support.

However, we are concerned that the proposed change has certain operational requirements that lack clarity and may prove difficult to implement in practice. Without greater certainty regarding how these requirements are to be interpreted and applied, municipalities may struggle to fulfill the directives' expectations.

That said, further clarity is required with respect to the following aspects of the proposal:

(1) Municipal responsibilities;

(2) Compliance expectations; and

(3) How these requirements can be practically incorporated into municipal procurement processes.

***Clarity Required on Municipal Roles and Enforcement***

The Ministry is proposing to require public sector entities to enable the use of domestic goods and services through any design and technical specifications and other design deliverables to be included in capital infrastructure procurements. Importantly, municipalities would be required to ensure that these requirements are incorporated (including through contractual provisions) when procuring design services directly or through project delivery models where design services are provided by a design-builder or consortium.

Based off the description above, it is unclear what role municipalities are expected to play in enforcing these requirements and ensuring that attestations regarding domestic goods and services are accurate. We therefore recommend that the Ministry provide guidance regarding municipal responsibilities and the extent to which they are expected to verify compliance. We also recommend guidance on how municipalities would be expected to assess whether the goods and services ultimately incorporated into a project align with original commitments made in an attestation. Without clear direction regarding municipal roles and compliance expectations, implementation will be difficult to achieve.

Furthermore, Supply Ontario states that municipalities are able to rely on attestations,[2] however, in practice, many are challenged by unsuccessful bidders to investigate the successful bidders claims (attestations) which is causing delays in awards, bid disputes, additional administrative and legal costs, leaving municipalities to fund these additional costs. Thus, we recommend that the Ministry make clear the role of municipalities in such disputes and how they are to be dealt with.

[2] Supply Ontario, "Supply Ontario", online: <https://supplyontario.ca/>.

***Practical Challenges***

The proposed change carries significant challenges for projects delivered through a Design-Build model. In such procurements, the successful proponent is responsible for both designing and constructing the project. At the time bids are submitted, the design has not yet been done, and the specific materials, products, and components that will ultimately be incorporated into the project are unknown.

As a result, it is unclear how bidders can demonstrate minimum-products requirements before the design has been completed and the project specifications have been established. Requiring such fulfillment at this stage risks uncertainty for both municipalities and proponents regarding how compliance will be assessed and demonstrated. Depending on how the requirements are interpreted and applied, this uncertainty could also lead to bid disputes, increased procurement costs, reduced competition where Ontario-based alternatives are unavailable, and challenges in delivering projects within budget.

The most practical approach would be to require proponents to commit to meeting the domestic product requirements through a standardized declaration or attestation process. Notably, guidance would be necessary on how such commitment is enforceable.

***Transition Period***

Given the internal approvals required within municipalities, we recommend that the Ministry provide a sufficient transition period before the proposed changes come into effect. A transition period of 8 to 12 months would provide adequate time for internal preparation. For instance, municipal legal staff will require time to revise contracts and obtain necessary internal approvals. These approvals often involve review by various staff, steering committees, and COOs before implementation can proceed.

Without sufficient time to complete these processes, municipalities may face challenges complying with the new requirements, ultimately undermining the effectiveness of the policy and its intended objectives.

***Justification of Administrative Burden***

As acknowledged in the consultation materials available on the Ontario Regulatory Registry, the proposed change will result in "additional administrative and implementation costs associated with procuring design services for capital infrastructure projects. These costs may include additional time required to develop procurement documents, apply new evaluation approaches, assess compliance, and conduct procurement activities. Public sector entities may also incur one-time costs related to staff training and updates to internal procurement policies, procedures, and guidance materials."[3]

Considering these anticipated costs, we question whether the benefit of the proposed change outweighs the associated administrative burden on municipalities. More specifically, we query whether municipal procurements are already heavily reliant on Canadian and Ontario-based businesses and suppliers? If so, it is unclear whether there is a demonstrated issue that necessitates these new requirements.

We therefore recommend that the Ministry make available the data supporting the need for this change. We also recommend that, in light of the administrative burden associated with the proposed requirements, the Ministry establish clear minimum thresholds for applicable procurements under the *Buy Ontario Act*.

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[3] Ontario, Regulatory Registry, "Proposed Changes to Capital Infrastructure Requirements under the Buy Ontario Procurement Directive and Municipal Buy Ontario Procurement Directive to Strengthen Ontario's Buy Ontario Procurement Requirements" (October 23rd, 2026), online: Ontario Regulatory Registry < https://www.regulatoryregistry.gov.on.ca/proposal/55375>.

***Necessary Exemptions***

Should the Ministry proceed with the proposed change, we recommend that certain arrangements be exempted to avoid disruption to ongoing municipal projects and procurement processes:

(1) Active Multi-Year Projects: Municipalities should not be required to apply the new Ontario content requirements to pre-existing multi-year contracts. Such projects were procured based on previous requirements, and applying new obligations mid-contract could create uncertainty and implementation challenges.

(2) Multi-Year VOR: existing multi-year Vendor of Record (VOR) arrangements, cooperative buying contracts, and optional contract extensions ought to remain valid until expiry, avoiding disruptive mid-contract terminations.

***Contractual Provisions***

The proposed change requires municipalities to ensure that these requirements are incorporated (including through contractual provisions) when procuring design services. Accordingly, 444 municipalities will have to draft bespoke legal clauses for architects and engineers.

For consistency, we recommend that the Ministry consider providing sample language/conditions for engineering/architectural RFPs as well as contracts that define what constitutes reasonable efforts to specify domestic products.

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*The OBA would be pleased to discuss this further and answer any questions that you may have.*