

Proposed Regulations under the Proposed Fairness in Procurement Act, 2018 (Bill 194)

Bill or Act: [Bill 194: Fairness in Procurement Act, 2018](#)

Summary of the Proposal

If passed, Bill 194, the proposed Fairness in Procurement Act, 2018, would permit the Lieutenant-Governor in Council to make regulations governing procurement practices of Ontario government and/or broader public sector entities. These regulations would be in response to legislation or policies implemented by sub-national (i.e. state or local) American jurisdictions that, in the opinion of the President of Treasury Board, may inhibit or prevent Ontario suppliers from participating or succeeding in public procurement processes initiated by those jurisdictions. If the bill is passed, the government intends to bring forward two new proposed regulations to respond to the Buy American legislation enacted by the states of New York and Texas – one responding to each of the US jurisdictions.

The Government of Ontario values open, transparent and competitive procurement. The proposed regulations are intended to respond proportionally to the restrictions set out in the New York and Texas legislation. The proposed regulations are intended to impose certain measures on Government entities entering into procurement contracts with suppliers from the state of New York and with suppliers from state of Texas.

The proposed regulation responding to the Buy American legislation in the state of New York, if made:

1. would designate the state of New York as an offending American jurisdiction;
2. would apply only to the following type of procurements by Ontario government entities (*see definition at the end of this document*):
 - a. for the construction, reconstruction, alteration, repair, maintenance or improvement of surface roads or bridges; and
 - b. where the value of the procurement contract is over \$1 million USD
3. would require that for the type of procurement above, should a supplier from the state of New York be the successful bidder or chosen supplier, the procurement contract must include a provision restricting the supplier from using any iron from New York state that would be permanently incorporated in any surface road or bridge
4. would prohibit Ontario government entities from entering into a procurement contract in 2 above unless the contract includes the provisions set out in 3 above

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The proposed regulation responding to the Buy American legislation in the state of Texas, if made:

1. would designate the state of Texas as an offending American jurisdiction;
2. would apply only to procurements by Ontario government entities (*see definition at the end of this document*) for the construction, remodeling or altering of any building, structure or infrastructure or supply of material containing iron or steel for those projects;
3. would require that for the type of procurement above, should a supplier from the state of Texas be the successful bidder or chosen supplier, the procurement contract must include a provision restricting the supplier from using any iron or steel from the state of Texas
4. would prohibit Ontario government entities from entering into a procurement contract in 2 above unless the contract includes the provisions set out in 3 above

Both proposed regulations, if made:

- would not apply to any procurement contract resulting from a procurement process initiated by an Ontario government entity before the proposed regulation came into force, or to procurement contracts already in effect when the proposed regulation came into force;
- may contain a process for obtaining exemptions from the application of the regulation

The scope of any proposed responsive regulation may be expanded in the event that the identified offending American jurisdiction imposes additional restrictions on Ontario suppliers.

The intent is that a responsive regulation under the proposed *Fairness in Procurement Act, 2018* would be revoked if the identified offending American jurisdiction repeals its Buy American legislation, or provides Ontario suppliers with an exemption from the application of the legislation.

Please Note: All comments and submissions received **prior to 11:59pm on March 9, 2018** will become part of the public record. You will not receive a formal response to your comment, however, relevant comments received as part of the public participation process for this proposal will be considered by the decision maker for this proposal.

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Please do not put any personal information in the comment box as this will prevent your comment from being viewed by others.

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Definition, from [Bill 194: Fairness in Procurement Act, 2018](#)

“Government entity” means,

- (a) the Crown in right of Ontario, including any ministry of the Government of Ontario,
- (b) a public body designated in regulations made under the Public Service of Ontario Act, 2006,
- (c) Independent Electricity System Operator, and
- (d) Ontario Power Generation Inc. and each of its subsidiaries; (“entité gouvernementale”)