

Additional Government Procurement Opportunities for U.S. and Canadian Companies

April 9, 2010

Effective March 25, 2010, the U.S. Office of Federal Financial Management, Office of Management and Budget amended its guidance on implementing sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 ("ARRA") for financial assistance awards. 2 CFR Part 176. Among other things, the amendment incorporates the agreement between Canada and the United States on government procurement, which was signed on February 12, 2010, and entered into force on February 16, 2010 ("Agreement").

Specifically, subject to the World Trade Organization Agreement on Government Procurement ("GPA"), the Agreement provides that the U.S. and Canada will share open market access in government procurement, including federal but now also state and local levels. As such, both Canadian and the U.S. companies will have unrestricted access to one another's government procurement opportunities. Moreover, the Agreement provides both countries with preferential market access beyond the confines of the GPA for construction projects. As such, the U.S. received procurement commitments for various provincial, territorial, and municipal projects and Canada was exempted from the Buy American provisions of the ARRA for certain U.S. agency programs, including programs with the U.S. Department of Agriculture and the Environmental Protection Agency, the U.S. Department of Energy, and the U.S. Department of Housing and Urban Development.

Furthermore, the Agreement also provides that within the next twelve months, the U.S. and Canada will enter into discussions to further explore an agreement that would expand their respective obligations in regards to market access to government procurement opportunities. In addition, the Agreement establishes an expedited consultation process on any matter related to government procurement, which requires a response to the request of a party no later than ten days after the request has been made.

These developments are an indication that both the Canadian and U.S. governments are continuing to move toward strategies to increase trade and foster economic prosperity for both countries in these challenging economic times.

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