



Trade Agreement Obligations for Public Sector Organizations

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Presented by: Ministry of Municipal Affairs, Ministry of Economic Development and Growth, Ministry of Government and Consumer Services & Ministry of International Trade

Purpose

- To assist you in meeting your procurement-related trade obligations
- To answer trade related questions

Agenda

- Background – Trade Agreements
- Procurement Practices
- Reporting
- Procurement Methods
- Bid Disputes
- Action Items – Ours and Yours
- Resources
- City of Kingston Presentation – Municipal perspective on trade agreements

Background: Importance of Trade Agreements

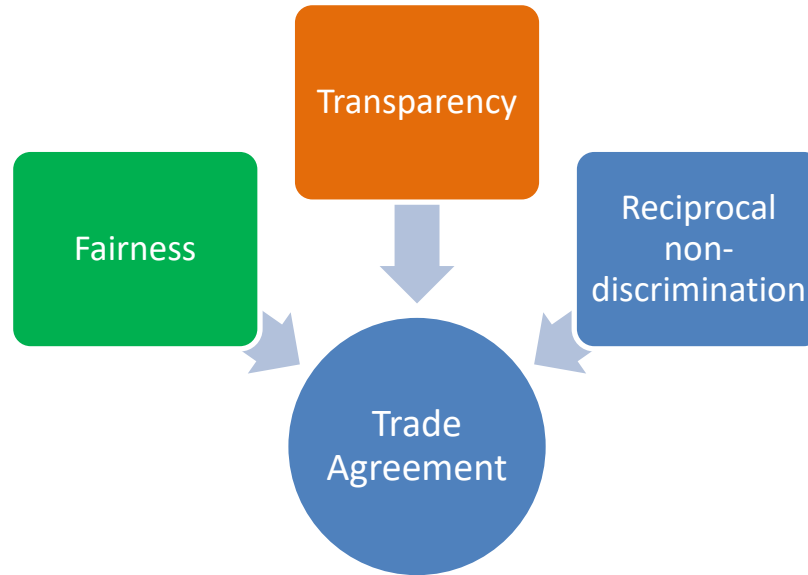
Trade agreements support the exchange of goods and services between Ontario and other countries and provinces.



- Trade agreements:
 - Eliminate or reduce tariffs and other barriers to trade that prevent goods and services from one jurisdiction being sold in another
 - Can increase economic growth and provide access to other markets to increase our competitiveness
 - May be negotiated with other countries and between provinces in Canada.

Background: Trade Agreements Principles

Trade agreements and procurement practices are built on the following fundamental principles:



Municipal Procurement Obligations

- Ontario municipalities are subject to government procurement obligations under two domestic trade agreements:
 - **Canadian Free Trade Agreement (CFTA)**, a pan-Canadian trade agreement that replaced the Agreement on Internal Trade (AIT), and took effect on **July 1, 2017**
 - **Ontario-Quebec Trade and Cooperation Agreement (OQTCA)**, a comprehensive bi-lateral agreement with the province of Quebec (largely aligns with CFTA)
- Ontario municipalities are also subject to government procurement obligations under one international agreement:
 - The **Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA)** which is undergoing ratification in Canada and is expected to be in force in September 21, 2017

CFTA and CETA – Thresholds

	Procurement Type	Ministries and most agencies	Provincial Agencies commercial / industrial *	Municipalities, school boards, publicly funded academic, health and social services
CFTA	Goods	\$25,000	\$500,000	\$100,000
	Services	\$100,000	\$500,000	\$100,000
	Construction	\$100,000	\$5,000,000	\$250,000
CETA	Goods	\$363,000	\$644,325	\$363,000
	Services	\$363,000	\$644,325	\$363,000
	Construction	\$9,062,000	\$9,062,000	\$9,062,000

*Such as OLGC, LCBO, WSIB

Notes: CETA threshold expressed in international currency in agreement and converted every 2 years. CFTA thresholds will be adjusted every 2 years for inflation

Under the Ontario Quebec Trade and Cooperation Agreement, the relevant threshold for construction services for school boards, academic health and social service entities and municipalities is \$100,000.

Figures in this table are for illustrative purposes

Background: CFTA and CETA

CFTA

35M +
Canadian
consumers

1000 +
Entities
Covered

CETA

500M+
EU
consumers

- Applies to municipalities, many Broader Public Sector organizations (including school boards and publicly funded academic, health and social services organizations), Ontario government ministries and agencies

Comparing CFTA and AIT

Sample of changes:

- Thresholds will be adjusted every two years, taking inflation into account
- Will cover nearly every sector of the economy (AIT limited coverage to 11 specific sectors or industries), including new goods and services as industries continue to evolve (for example, newly emerging green technology)
- Obligations are now included in Procurement Chapter (in AIT, some information was in annexes)
- Aligns procurement rules with international trade agreements
- Uses “negative list” approach – all sectors and public sector organizations covered unless specifically excluded

Key Obligations: What You Need to Know

Procurement Commitments

Covered entities are responsible for ensuring they are compliant with procurement-related commitments in the trade agreements.

Key areas of Ontario's trade procurement commitments include:



1. Information and Reporting – Adopting new rules, standards and procedures to ensure transparency of procurements, enabled through a Canada-wide single point of access (SPA).



2. Procurement Practices – Revised and/or expanded rules and procedures around evaluation criteria, debriefings and duration of bid postings.



3. Bid Dispute – Establishing a timely, impartial administrative procedure for vendors to challenge a procurement process conducted by a covered entity.

Information and Reporting

Information and Reporting

- **Your Obligation:** Annual collection and reporting on number and aggregate value of contracts for goods, services and construction for both competitive and non-competitive procurements which are covered by CFTA and CETA
- **Our Recommendation:** Please review your systems, tools and processes, and ensure you're capturing the needed information from January 1, 2017 onwards

2016 Survey:

- 45% to 65% track value of procurements, number of contracts, types of procurement, number of non-competitive procurements

Procurement Practices

Procurement Methods

- The trade agreements require open, competitive procurement process when acquiring goods and services above monetary thresholds
- Invitational and Non-Competitive procurements (described as “Limited Tendering”) possible under particular circumstances
 - Criteria varies between agreements – for example, CFTA allows for invitational and non-competitive procurements for expert witnesses and procurement that targets poverty reduction for disadvantaged persons
 - Procurements of this nature must be consistent with organization’s internal policies, and based on a strong business case (or may risk facing bid dispute)

Bid Posting

Under CFTA

- No minimum posting time required, however **postings must be for a reasonable period of time** for vendors to prepare and submit responsive tenders
- Compliance with internal policies for posting periods

Under CETA

- **Open procurement opportunities must be posted for a minimum of 40 calendar days** (note different than BPS Procurement Directive)
- Can be reduced under particular conditions, bid posting times can be reduced by:
 - 5 days if bids are posted electronically
 - 5 days if bids are received electronically,
 - 5 days if tender document is posted at same time as the procurement notice
 - 10 days if previously published notice of planned procurement (has specific requirements to apply this correctly)
- Posting times for **other types of procurement opportunities**, refer to CETA article 19-10

Award Notification

- **Your obligation:** award notices to be published within 72 calendar days of award
- **Our recommendation:** As is likely already your practice, notify successful vendor, then unsuccessful vendors, then post the award information

2016 Survey:

- more than 50% of organizations like yours post award information electronically, with 10% more preparing to do so

Debriefings

- **Your Obligation:** Debriefings to be offered upon request of vendor. Information to be shared includes: name of successful vendor, value of the successful bid, reasons the proposal was not selected
- **Our Recommendation:** review your process, consult the Bidder Debriefing Preparation Guide on our Information for Buyers Page

2016 Survey:

- almost 60% have a formal debriefing process for unsuccessful vendors

Single Point of Access

- **Single Point of Access (SPA)** will be a single electronic point of access to allow vendors to quickly retrieve information about all applicable Canadian opportunities
- To be created by Federal Government within 5 years of CETA's implementation
- Organizations covered by CETA will be required to make procurements available on the SPA
- Will be adapted for use by parties covered by CFTA

Bid Disputes

Bid Dispute Process (1)

- **Your Obligation:** An independent and impartial process to allow a vendor to challenge a procurement if the vendor believes it was not conducted in accordance with trade agreement rules. Resolution to be achieved within 90 days (or 135 days under extenuating circumstances)
- Require rapid interim measures
- Remedies may be applied as corrective action or compensation for loss of damage suffered limited to either/both bid development costs and dispute costs.
- Bid Disputes are between vendors and procuring organization, and can resolve potential procurement-related trade agreement breaches

Bid Dispute Process (2)

- **Our Recommendations:**
- Familiarize yourselves with sections 19.17 of CETA; article 518 of CFTA
- Seek independent legal advice to ensure you're in compliance

2016 Survey:

- 86% have a process for addressing procurement complaints

Ontario's Revised Bid Dispute Process

- Ontario will be launching an alternative service delivery method for bid dispute resolution
 - Operational expected summer 2018
 - Will use impartial, third-party resolution services
 - Available for use by provincial agencies, BPS organizations and municipalities
 - Consistent approach for vendors and buyers to resolve complaints
 - Cost to be borne by unsuccessful party to the dispute
- Further communications and webinar will be available in future

Ten Tips To Avoid A Bid Dispute

1. Devote **sufficient time** in the planning stage of the procurement, to ensure all considerations have been addressed

2. Seek **legal advice**

3. Write clear, unbiased functional specifications or performance requirements

4. Draft evaluation rated criteria that promotes a consistent and fair review of the bids received and ensures a clear alignment between scope / performance requirements, evaluation criteria and the pricing form

5. Use **procurement document templates** that align with current case law and trade agreements

6. Provide vendors sufficient time to review the procurement document and ask questions during **Question and Answer Period**

7. Limit **mandatory requirements** to only essential requirements

8. Select evaluators with **relevant / technical subject matter expertise** to effectively evaluate a bid

9. Conduct the evaluation in the manner described in the procurement document

10. Provide bidders with **specific, clear reasons** why their bid was not successful during a debriefing meeting

Action Items – Ours and Yours

Our Action Items

- Development of reporting strategy
- Developing additional implementation support materials to help you meet your procurement obligations (such as newsletters)

Your Action Items

- Learn about trade agreements, by reviewing their procurement-related sections
- Review your policies and practices
- Gather your reporting data
- Review resources available

Resources

Information for Buyers page – www.Ontario.ca/supplychain

The screenshot shows a web browser window with the URL <https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/forbuyers-login>. The page content includes a left-hand navigation menu with items like GreenFIT, Procurement Policies & Trade Agreements, Events & Seminars, Frequently Asked Questions, Vendor Reporting, and Related Procurement Links. The main content area features sections for Trade Agreements, Resources, Newsletters (with links to PDFs), Bid Dispute Resolution Guide (Coming Soon), and Bidder Debriefing Preparation Guide.

CFTA – <https://www.cfta-alec.ca/>

CETA – www.international.gc.ca/ceta

Questions?

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