

# Know Your NRFPs & Trade Obligations – It's Dangerous to Go Alone

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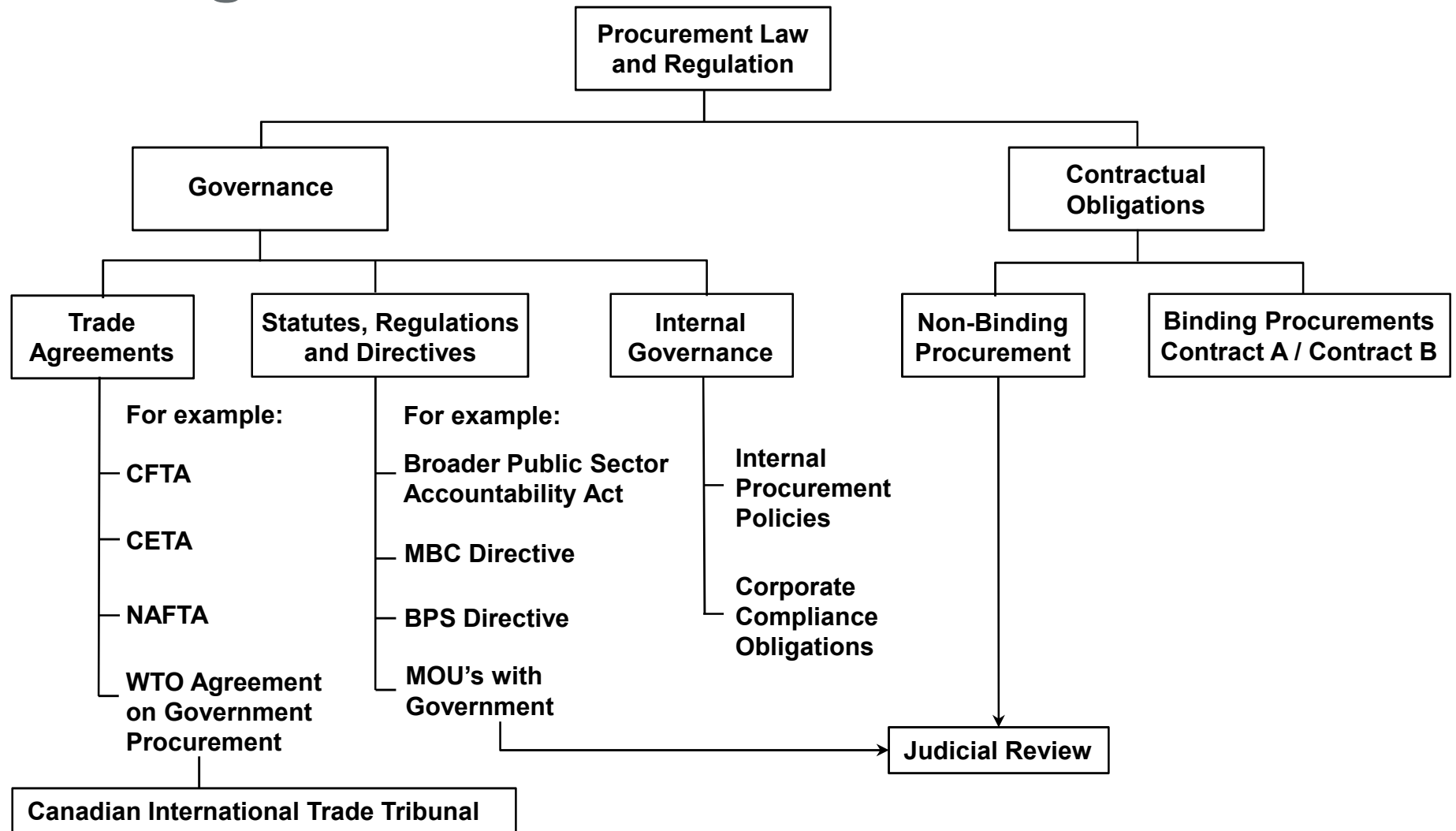
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# Overview

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1. Overview of Procurement Law and Regulation in Canada
2. Binding vs Non-Binding Tenders – Advantages & Risks
3. Trade Treaty Obligations – CETA & CFTA
4. Q&A

# 1. Overview of Procurement Law and Regulation in Canada



# Procurement Governance

- ▭ Must be conscious of the “procurement regulatory framework” within which government procuring entities are obliged to function
  
- ▭ Ontario entities checklist:
  - *Broader Public Sector, Accountability Act, and Memoranda of Understanding*
  - Trade Agreement Obligations / Agreement on Internal Trade
  - Internal policy restrictions for the entity

# Canada – An Extremely Litigious Jurisdiction

- Canada sees more procurement litigation than almost any other country in the world
- Allows for “double barrel” lawsuit – both Civil and Administrative actions
- “Lost profit” actions give *major incentives* to complaining bidders

## 2. Binding vs Non-Binding

- ▭ What is a “binding” procurement (i.e. RFP) process?
  - ▭ *The Queen (Ontario) v. Ron Engineering Construction (Eastern) Ltd.* (SCC, 1981)
- ▭ By Common Law, these are procurement processes that are intended to create a binding contractual relationship between the procuring authority and each bidder that submits a compliant bid
- ▭ Binding procurements create a binding “bidding contract” or “Contract A”

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# Binding Public Tender Procurements – Obligations Arising from “Contract A”

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## What is a “bidding contract” or “Contract A”?

- Sets out the express rules (terms and conditions) that apply to the competitive procurement process
- Is not the actual contract that the successful bidder will enter into (the contract with successful bidder is referred to as “Contract B”)
- Includes such terms and conditions as:
  - rules for submitting proposals (e.g. the submission deadline);
  - required bid security (e.g. a letter of credit or a deposit);
  - rules for negotiations (if any);
  - required content of proposals (e.g. technical and financial);
  - rules for evaluation of proposals;
  - rules for irrevocability of proposals and any irrevocability period; and
  - rules for amendment of proposals (if any).

# Binding Public Tender Procurements – “Duty of Fairness”

- ↪ The Supreme Court has also imposed a Common Law “implied duty of fairness” in Contract As that have come before the courts
  
- ↪ Fairness obligations take many forms, but most commonly relate to:
  - ↪ fair/equal disclosure of information to all bidders;
  - ↪ reasonable time for bidders to submit their proposals;
  - ↪ fairness in evaluation and evaluation methodology;
  - ↪ absence of procuring authority bias;
  - ↪ absence of procuring authority conflict of interest;
  - ↪ following the procurement process rules as established (e.g. not awarding contract to a bidder who is an ineligible person);
  - ↪ awarding the contract as tendered (e.g. no negotiated fundamental changes to Project scope or to preferred proponent’s proposal); and
  - ↪ not waiving/allowing a bidder to correct a proposal with a material deviation from the procurement requirements (i.e. not accept a non-compliant bid)
  
- ↪ Non-Binding RFPs lack these Common Law obligations



# Key Supreme Court of Canada Cases – How did we Get Here?

- ↪ Number of cases which inform the law of competitive procurement
  - ↪ *Queen (Ont.) v. Ron Engineering & Construction (Eastern Ltd.)*
    - ↪ Articulation of Contract A/Contract B
  - ↪ *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*
    - ↪ Contract A can only be formed between the procuring entity and *compliant* bidders
  - ↪ *Martel Building Ltd. v. Canada*
    - ↪ There is a duty owed to treat all compliant bidders fairly and equally
  - ↪ *Tercon Contractors Ltd. V. British Columbia*
    - ↪ SCC refused to enforce a waiver clause with respect to damages arising out of a breach of Contract A
  - ↪ *Design Services Ltd v. Canada*
    - ↪ SCC refused to recognize a new cause of action for “negligent procurement”
    - ↪ Duty of Care by tendering authority does not extend to subcontractors
  - ↪ *Double N Earthmovers Ltd. v. City of Edmonton*
    - ↪ Procuring entity is permitted to renegotiate a contract on which a competitive process was based after Contract B is signed
    - ↪ When assessing compliance, no duty on owner to investigate representations on face of bid, although right to do so

# Indicators for a Binding RFP

What are indicators that Contract A/bidding contract is intended to come into existence?

- ↪ The procurement documents (RFP, tender) describe the bidder's submission as **irrevocable** (usually for a defined period of time);
- ↪ The bidder is obliged to “accept” contractual terms and conditions when it submits a bid or a proposal and the owner is obliged to award the contract;
- ↪ The bidder's submission is an “offer” to carry out work or provide goods rather than a submission to be the preferred proponent to enter into negotiations;
- ↪ The **price** and offer submitted is **irrevocable**

# Non-Binding Public Tender Procurements – What are they?

- Flexible process designed to avoid Contract A obligations
- Common world at large outside of Canada
- Provide a foundation for a Negotiable Public Tender RFP format

# Non-Binding Public Tender Procurements - Negotiable RFP Formats

- ▭ Request for parties to submit proposals that form the basis for negotiations rather than a firm invitation to enter into binding agreement
  
- ▭ Characterized by:
  - no irrevocable bid, bid validity period or bid security requirements
  - a provision setting out that no Contract A will be formed
  - no liability for bidder who breaches procurement documents
  
- ▭ Two principle forms:
  - “Rank and Run” Consecutive Negotiations
  - “Best and Final Offer” Concurrent Negotiations or “Dialogue Procurements”
  
- ▭ Case Example: University of Toronto

# Non-Binding Public Tender Procurements – When to use them

- Consider using a non-binding public tender procurement when:
  - public sector owner wants to reduce its legal risk
  - subject matter of procurement doesn't lend itself to use of industry standard terms and conditions (e.g. there is no clear industry standard and diverse/innovative price and technical solutions are expected)
  - owner has difficulty setting out the scope of the project - proponents' technical submissions will form the basis for the final negotiated contract scope and price (e.g. allows owners to “test the waters”)
  - past binding procurement has failed or was cancelled
  - procurement has no clear commercial end (e.g. procurement for research, study or experimentation)

# Non-Binding Public Tender Procurements – Benefits

- ▭ Avoids Common Law obligations applicable to Contract A procurements, significantly simplifying the process
  - may accept a non-compliant bid
  - no duty of fairness
  - no duty to award contract
  - increased flexibility and potential for bidder innovation
  - increased competitive tension
  - allows for bid rectification if desired
  
- ▭ Without a breach of contract claim – *no claim for lost profits*. Aggrieved bidders only have administrative remedies

# Non-Binding Public Tender Procurements – Detriments

- ▭ No proposal irrevocability/security
- ▭ Reduced control over process – e.g. proponents can withdraw their bids
  - This risk is mitigated because proponents want to be awarded the contract and putting together a proposal can be a significant undertaking
- ▭ Owners cannot contractually bind proponents to the terms and conditions of the procurement until a final contract is entered into
- ▭ Legal risk remains
  - ▭ Increased chances of administrative law remedies (i.e. judicial review, where the remedy would be setting aside the decision under review)
  - ▭ Novel approach in Canada, so may have legal challenges – especially in larger and more complex procurements

# Non-Binding Public Tender Procurements – Risks & Challenges

- ▭ Relatively new in Canada – though principle has been accepted
- ▭ Some courts may find “Contract A” even when it is expressly disavowed
  - Key is whether the parties intended to enter into contractual relations by the submission of a bid (i.e. in contract law, an offer, acceptance and consideration exists)
  - See Case Studies in Part 4 of this presentation
- ▭ Increased likelihood of judicial review cases
- ▭ Regular contractual duties to avoid “bad faith” continue to apply (*Bhasin v. Hrynew*)



## Case Studies

- ↪ Two recent cases illustrate diligence required when setting out to conduct a non-binding public tender procurement and to avoid a binding public tender procurement
- ↪ *Marine Atlantic* - the “Landmine” RFP
- ↪ *Rapiscan* – the “Stealth” RFP

# *Marine Atlantic* – the Landmine RFP

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## ***Topsail Shipping Company Ltd. v. Marine Atlantic Inc. 2013 NLTD(G) 163***

- ▭ Marine Atlantic, a federal Crown corporation, ran ferry services in Newfoundland and Labrador
- ▭ The Province was considering taking over the service, so Marine Atlantic did not want to issue a public tender call for a long-term contract; instead, it asked three providers to submit proposals for a short-term arrangement
- ▭ Topsail's proposal was the lowest price, but it did not win
- ▭ It brought an action claiming breach of the duty of fairness under Contract A, alleging that Marine Atlantic had engaged in contract discussions with its competitor during the bid process
  - Marine Atlantic brought a summary dismissal motion on the grounds that the solicitation was not an RFP, and no duty of fairness under Contract A was owed
  - Topsail argued there was a Contract A because it was one of the pre-qualified bidders and was owed a duty of fairness

# *Marine Atlantic* – the Landmine RFP

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- The court found the RFP terms were unclear, and considered 13 factors that determine whether the bidding process created Contract A and the corresponding duty of fairness :
  1. The irrevocability of bids
  2. The formality of the process
  3. Whether bids are solicited from selected parties
  4. Whether the identity of bidders is confidential
  5. Whether there is a deadline for submitting bids
  6. Whether a security deposit is required
  7. Whether evaluation criteria are specified
  8. Whether there is a right to reject proposals
  9. Whether there was a statement that it was not a tender call
  10. Whether the work is definitely going to proceed
  11. Whether compliance with specifications was a condition of bids
  12. Whether there was a duty to award Contract B
  13. Whether Contract B had specific, non-negotiable conditions

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# *Marine Atlantic* – the Landmine RFP

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- ↪ Notwithstanding that the solicitation lacked many of the key Contract A indicators, the court concluded that there was a Contract A, and a corresponding duty of fairness
- ↪ Potential issue – someone picked up the phone at an early stage and created an effective pre-qualification
- ↪ The ambiguities in the documents allowed the Court to read in the following implied terms:
  - ↪ Duty of fairness (in spite of no irrevocability clause)
  - ↪ Low bid rule (in spite of no clear evaluation criteria)
  - ↪ “No negotiations” rule (in spite of no clear contract award terms)

# Rapiscan – Stealth Contract A

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## ***Rapiscan Systems, Inc. v. Canada (Attorney General), 2014 FC 68***

- ▭ CATSA issued non-Contract A solicitation for airport screening equipment in 2010
- ▭ Contract Review Committee created and published a Request For Information, followed by a Request for Submissions
  - Request for Submissions specifically stated that a response to the Request for Submissions did not constitute the formation of Contract A.
  - Also stated that CATSA was not obliged to follow a competitive bid process, and that it reserved the right to accept submissions that failed to meet any of the stated requirements
- ▭ Rapiscan and Smiths made submissions.
- ▭ Committee drafted a briefing note and presented it to the Board. The briefing note stated that Smiths rated the highest in all categories
  - However, the Smiths model was not certified by the American Transportation Safety Administration, a known minimum requirement
  - This information was not before the Board at the time of their decision
- ▭ Rapiscan's submission was eliminated because it did not provide the required "three views"
  - However, the "three views" requirement was (a) not known to the bidders and (b) was a weighted requirement, not a minimum requirement; which could not be properly applied to remove the Rapiscan submission from the Board's consideration
  - price of the Rapiscan submission was not put before the Board for consideration
- ▭ Board voted and decided to award the contract to Smiths
- ▭ Rapiscan brought an application for judicial review of CATSA's decision

# Rapiscan – Stealth Contract A

- ↪ The court found that CATSA was subject to judicial review and owed an administrative law duty of procedural fairness
- ↪ Court also found that the manner in which the procurement was conducted violated this standard
- ↪ A key component to the decision was the closing off of the Contract A remedies – which court implied created a *de facto* unfairness to bidders procedurally
- ↪ No monetary award for lost profits – administrative remedy only

## **CATSA appealed: *Rapiscan Systems, Inc. v. Canada (Attorney General)*, 2015 FCA 96**

- ↪ Court of Appeal upheld the lower court decision on more limited grounds
  - ↪ Disagreed with the lower court that CATSA had acted in bad faith or that the mere elimination of Contract A created unfairness
  - ↪ However, CATSA had published rules on how it was going to conduct procurements, including requirement for an open process
  - ↪ Reliance on criteria without disclosure violated that published process without notice to CATSA board or bidders by management

# Recommendations

- ▭ **Be reasonable** - Contracting out of Contract A should be a shield, not a sword. Best practice is to try to act as though bound by Contract A if possible
- ▭ Where possible, frame your solicitations as performance based rather than outcome based, which also allows for creative solutions
- ▭ Leave latitude for negotiations in your solicitations
- ▭ Be aware of existing rules and policies of particular government entities and applicable law

## 3. Trade Treaty Compliance

- Major Treaties impacting AB/BC Entities
  - Canada-European Union Comprehensive Economic and Trade Agreement (“CETA”)
  - Canadian Free Trade Agreement (“CFTA”)
  - NWPTA
- Strong procurement chapters – includes coverage of provincial and municipal entities
- Imposes significant obligations on those entities that meet or exceed rigor of Contract A
- **HOWEVER**, allow for Negotiable Formats



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# CFTA & CETA - Overview

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- Provide a “statutory backbone” for procurement that is common in other regions.
- Incorporated by reference through regulation and government policy directives/MOUs with crown entities.

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# Procurement Under CETA/CFTA

## *Broadening the Net*

### ▸ **Public Procurement**

- Canada: over \$200 billion annually
- Alberta: multi-billion dollar spend annually (heavily sourced from small and medium-sized firms)

### ▸ **CETA**

- Creates one for the largest free trade areas in the world
- As of Sep 21, 2017, sub-federal entities/MASH sector:
  - Must **comply** with open and fair government **procurement requirements**
  - Are **open** to procurement **competition** from companies across Canada and from 28 EU countries

# Procurement Trade Agreements

## *Spaghetti Bowl*

New West Trade Partnership Agreement	BC, Alberta, Saskatchewan (Manitoba as of Jan 2019) provincial and <b>MASH sector</b> procurement being bid on by suppliers from these provinces	-	State to state, and private party dispute resolution
Canadian Free Trade Agreement (“CFTA”)	Federal, provincial and <b>MASH sector</b> procurement being bid on by Canadian suppliers and commenced on or after July 1, 2017	-	CITT (federal contracts) Provincial mechanisms (other contracts)
Canada-U.S. Agreement on Gov. Procurement	Provincial procurement (except Nunavut) being bid on by US suppliers	Crown corporations	Provincial mechanism
NAFTA	Federal contracts being bid on by US, Canadian and Mexican suppliers	Sub-federal entities	CITT
WTO Agreement on Gov. Procurement	Federal contracts being bid on by Canadian and foreign suppliers from 17 countries and the EU	Sub-federal entities, <b>MASH sector</b>	CITT
Trans-Pacific Partnership Agreement (“TPP”)	Some “sub-central” government entities’ procurement being bid on by Canadian and foreign suppliers from 13 countries ( <i>future of TPP uncertain</i> )	Municipalities, <b>MASH sector</b>	CITT (federal contracts)
CETA	Federal, provincial, municipal, Crown corporations, <b>MASH sector</b> and utility providers procurement being bid on by EU and Canadian suppliers	-	CITT (federal contracts) Other contracts: TBD

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# CETA/CFTA Obligations

## *Key Procurement Principles*

- ↪ **Non-discrimination:** must treat domestic and EU suppliers equally favourably
  - ↪ May not discriminate against local suppliers based on foreign ownership or foreign ties
  - ↪ May not use “offsets”
    - ↪ ❌ cannot accord a preference for Canadian value-added or limit tendering to Canadian goods, services, or suppliers
- ↪ **Transparency:** must publicly publish individual procurement opportunities and contract awards
- ↪ **Impartiality:** must conduct procurement and treat complaints in an impartial manner

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# CETA/CFTA Applicability

## *Covered Entities*

Who?  
What?  
How much?

- ↪ Broad coverage of:
  - ↪ Federal entities
  - ↪ Provincial entities (with narrow exceptions)
  - ↪ **Unprecedented**: All publicly-funded MASH entities
    - ↪ **M**unicipalities
    - ↪ **A**cademic institutions (incl. universities, colleges)
    - ↪ **S**chool boards
    - ↪ **H**ealth and social services agencies (incl. hospitals, health units)
  - ↪ Crown corporations (incl. OLG, LCBO, Hydro One)

# CETA/CFTA Applicability

## *Procurement Covered*

Who?  
What?  
How much?

- ▭ **All goods**, with narrow exceptions:
  - ▭ Procurement for public order and national defense
  - ▭ Mass transit vehicles (exception allows Ont. and Que. to require 25% be allocated to Canadian content)
  
- ▭ **Services specified** in annex 19-5 for CETA. While CFTA copied CETA's obligations, it did NOT include an Annex – so prima facie everything is covered.
  
- ▭ Procured by **any contractual means**
  - ▭ Purchase, lease, with or without option to buy
  
- ▭ Exemption for aboriginal businesses

# CETA Applicability

## *Value Thresholds*

Who?  
What?  
How much?

	SDR <sup>1</sup>	\$CDN (2017)	SDR	\$CDN (2017)
Federal government	130,000	\$241,800	5,000,000	\$9,300,000
Provincial ministry/agency, and <b>MASH entities</b>	200,000	\$372,000	5,000,000	\$9,300,000
Crown corporations, provincial or municipal entities of a commercial or industrial nature	355,000	\$666,300	5,000,000	\$9,300,000

<sup>1</sup> 1 Special Drawing Rights (“SDR”) : \$1.86 CDN (adjusted over time)

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# CETA/CFTA Applicability *Valuation*

Who?

What?

How much?

- ↪ **DO NOT:**
  - ↪ Divide procurement
  - ↪ Intentionally underestimate value
  
- ↪ **DO** consider the **MAXIMUM** total value of the procurement:
  - ↪ Over its entire duration
  - ↪ Whether awarded to one or more suppliers
  - ↪ Including premiums, fees, commissions, interests
  - ↪ Including the total value of options



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# Tendering Procedural Rules

## *CETA/CFTA 101*

### **Take note of:**

1. Rules on **tendering procedure type**
2. Rules on **disclosure**
3. Rules on **supplier qualifications**
4. Rules on **technical specifications**
5. Rules on **bid evaluations** and **contract awards**
6. Rules on **bid challenges** and **disputes**

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# Tendering Procedural Rules

## *CETA/CFTA101*

- ▭ **Three types** of tendering procedures = **Three sets of rules** to remember
  - ▭ **Open** tendering procedure (all suppliers may apply)
  - ▭ **Selective** tendering procedure (only suppliers invited)
  - ▭ **Limited** tendering procedure (sole-sourced contracts)
    - ▭ Must publish a report justifying **every** limited tender process
    - ▭ Only available in limited circumstances
    - ▭ Prudent approach: publish intention to sole source in advance and ask for comments (similar to federal ACANs)

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# Tendering Procedural Rules

## *CETA/CFTA 101*

- **Two-part test** to determine the availability of limited tendering
  1. **Purpose** is not avoid competition or to discriminate against suppliers based on origin; **AND**,
  2. **Specific exemption** applies, such as:
    1. Previous, substantially unmodified tenders were unsuccessful
    2. Only one supplier can provide the goods/services and no reasonable alternatives/substitutes exist
    3. Tender is for additional deliveries by an original supplier, who cannot be changed
    4. Extreme urgency

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# Tendering Procedural Rules

## *CETA/CFTA 101*

- ↪ **“Sufficient” time** must be given to prospective suppliers to participate in tenders
  
- ↪ Function of:
  - ↪ Nature and complexity of procurement
  - ↪ Extent of subcontracting anticipated
  - ↪ Time to transmit tenders (if non-electronic process)
  
- ↪ Specific rules with respect to bidding periods:
  - ↪ Commercial goods or services
  - ↪ Mutual agreement with qualified suppliers (limited circumstances)

# Tendering Procedural Rules

## CETA 101

### Time Is Ticking

	General Rule		Possible Abridgments	
	<i>Open Tendering Process</i>	<i>Selective Tendering Process</i>	<i>Time Credits for Electronic Tendering</i>	<i>Other</i>
Requests for participation	N/A	25 days from the date of publication of the notice of intended procurement	No	May be reduced to no less than 10 days if an urgency is duly substantiated
Submission of tenders	40 days from the date of publication of the notice of intended procurement	40 days from the date of notification to suppliers that they will be invited to bid	5-days credit if tendering process is conducted electronically	May be reduced to no less than 10 days if, e.g.: (i) entity has published a notice of planned procurement in the past 12 months; or (ii) urgency is duly substantiated

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# Tendering Procedural Rules

## *CETA/CFTA 101*

### ↪ **Extensive** disclosure obligations

#### 1. Notices of **intended procurement**

- ↪ Required for every tender that is not sole-sourced
- ↪ Accessible electronically via single point of access (next 5 years)
- ↪ Detailed content requirements, in addition to a summary and disclosure of intention to negotiate

#### 2. Publication of **awards**

- ↪ Must be published no later than 72 days after every contract award
- ↪ Must maintain records for every contract for 3 years after its award

#### 3. Notices of **planned procurement** (*yearly*)

- ↪ Not mandatory but advantageous (see “Time Is Ticking” slide)

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# Tendering Procedural Rules

## *CETA/CFTA 101*

### ▭ Suppliers Qualifications

- ▭ Any restrictions must be **limited** and “**essential**”
  - ▭ Must be limited to suppliers’ legal/financial capacity and commercial/technical abilities
  - ▭ Must be evaluated on the basis of suppliers’ business activities in Canada and internationally
- ▭ Suppliers’ prior experience
  - ▭ May require relevant prior experience **if** essential
  - ▭ May not require prior experience with the procuring entity or in Canada
- ▭ Very limited performance exclusions – no “litigation debar”

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# Tendering Procedural Rules

## *CETA/CFTA 101*

### ▸ Technical Specifications

#### ▸ Must:

- Be “unbiased” and avoid creating “unnecessary obstacles to trade”
- Describe **performance** and **functional** requirements
- Use **international**, rather than national, **standards**

#### ▸ Should not:

- Describe design or descriptive characteristics
- Refer to trademarks, patents, copyrights, designs, types, specific origins, producers or suppliers

#### ▸ Allow for “**equivalent**” goods and services



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# Tendering Procedural Rules

## *CETA/CFTA 101*

### ↪ **Bid Evaluation Criteria**

- ↪ May include price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery
- ↪ Must be disclosed in the notice of intended procurement (unless price is the only criteria)
- ↪ **Common litigious issue:** “hidden” criteria and undisclosed weighting

### ↪ **De-Briefing of Unsuccessful Suppliers**

- ↪ Upon request (no specified cut-off time period)
- ↪ Must explain (i) why the supplier was not selected, and (ii) relative advantages of the bid winner’s tender

# Tendering Procedural Rules

## *CETA/CFTA 101*

- **Negotiation Protocol**
- Specifically contemplated by CFTA and CETA
- May conduct either Rank & Run or BAFO
- Must outline the procedures to be used in the tender notice.
- For BAFO – must provide a common deadline.
- For Rank & Run – must provide a deadline for submitting a final offer before terminating.

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# Tendering Procedural Rules

## *CETA/CFTA 101*

### ↪ Disputes

#### ↪ Supplier challenges:

- ↪ Suppliers have at least **10 days** to submit (from the time when the basis of the challenge became known)
- ↪ Rapid **interim measures** available, including the suspension of procurement process
- ↪ Possible **remedies**: monetary awards (bid preparation costs, costs of challenge, lost profit) and re-opening of the outcome of bidding processes

#### ↪ Canadian forum for “timely, effective, transparent and non-discriminatory administrative or judicial review”:

- ↪ Federal procurement → CITT (90 day expedited process)
- ↪ Other procurement → Judicial Review/Bid Protest mechanism (more on that tomorrow – including case study)

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# Implications of CETA/CFTA

## *What now?*

- **Bottom line** → procurement is now more:
  - Competitive
  - Scrutinized
  - Susceptible to challenge
- Procurement **≠** tool for local economic or social development

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# Implications of CETA/CFTA

## *What now?*

- ↪ Procuring entities may expect:
  - ↪ **Administrative costs** associated with:
    - ↪ Disclosure related to their procurement practices
    - ↪ Issuing notices and tender documents in accordance with CETA rules
    - ↪ Accounting to unsuccessful suppliers for their procurement decisions
    - ↪ Responding to supplier challenges
  - ↪ **Slowing down** of procurement process associated with:
    - ↪ Limited availability of sole-sourced tendering processes
    - ↪ Supplier challenges
    - ↪ Uncertainty as CETA requirements are being interpreted and as new bid-review mechanisms are being developed

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# Implications of CETA/CFTA

## *What now?*

### ↪ **Devil is in the details:**

1. **Do not assume** that compliance with Canadian procurement directives or other trade agreements equates to compliance with CETA/CFTA
2. **Understand** when CETA/CFTA applies
  - ↪ Value thresholds
  - ↪ Designated contracts, goods and services
  - ↪ Exemptions

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# Implications of CETA/CFTA

## *What now?*

### ▸ **Devil is in the details:**

3. **Be aware** of your enhanced obligations when procurement is subject to CETA/CFTA
  - Develop guidelines, procedures and training
  - Proactively protect and promote your interests by taking action with respect to CETA compliance
4. **Identify and evaluate** your risk exposure under CETA/CFTA
  - Monitor your procurement needs and processes

**Questions? Comments?**

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