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Overview of the Government Procurement Obligations in Canada's International Trade Agreements

Canadian Institute for Procurement and
Material Management National Workshop

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Overview

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- 2. Core Principles**
- 3. Structure**
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 - a) Procuring Entities
 - b) Goods, Services, Construction Services
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Canada's International Trade Agreements with Government Procurement Obligations

- North American Free Trade Agreement (NAFTA)
- Canada - Chile FTA
- Canada - Peru FTA
- Canada - Colombia FTA
- Canada - Panama FTA
- Canada - Honduras FTA
- Canada - Korea FTA
- Canada - Ukraine FTA
- Revised WTO Agreement on Government Procurement (GPA)
- Canada - European Union Comprehensive Economic and Trade Agreement (CETA)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Core Principles

Non-Discrimination

- Equal treatment for Canadian and foreign firms
- Prohibition of offsets

Transparency

- Clear rules and procedures
- Contracting opportunities and award notices are publicly available
- Laws, regulations, policies, and judicial rulings are published

Accountability

- Bid challenge mechanisms are in place

Structure

Procedural Rules

- Set of rules requiring non-discrimination, transparency and accountability



Market Access Commitments

- Annexes set out the entities, goods and services (including construction services) as well as the thresholds that are subject to the obligations of the GP Chapter
- Specifies which procurements are subject to certain exceptions and exclusions



Key Procedural Rules

Scope and Coverage

- Applies to any measures regarding a covered procurement, as set out in the market access schedules
- Does not apply to: goods and services purchased for commercial sale or resale; acquisition or rental of land or immovable property; and cooperative agreements, grants, loans, and procurements conducted under an international agreement.

General Exceptions

- Used for procurements indispensable for national security or for national defense purposes.
- Procurements conducted to protect public safety, human, animal or plant life, health or intellectual property are not covered.

Notices of Intended Procurement (NIP)

- By September 2022, all NIP will be accessible online free of charge through a Single Point of Access
- Information required in the NIP is specified.

Key Procedural Rules

Conditions for Participation

- Conditions to determine the eligibility of a suppliers to participate in a procurement process must be limited to those that are essential to carry out the relevant procurement
- A supplier may be excluded on grounds such as bankruptcy, false declarations, deficiencies in performance, final judgements in respect of serious crimes, professional misconduct or failure to pay taxes.

Technical Specifications

- Cannot be prepared, adopted or applied with the purpose of creating obstacles to international trade.

Tender Documentation

- Suppliers must have access to all the information necessary to prepare and submit bids for a procurement opportunity.

Key Procedural Rules

Time-periods

- Minimum time periods for procurement processes ensure that suppliers have enough time to prepare and submit their offers.

Limited Tendering

- Under specified circumstances, limited tendering (i.e. sole sourcing) is permitted.

Transparency of Procurement Information

- Information on individual procurement opportunities is readily available through paper or electronic means.
- Procuring entity shall inform participating suppliers of the contract award decision and, on request, provide an unsuccessful supplier the reasoning behind the decision.
- Includes the collection and reporting of statistics.

Domestic Review Procedures

- Allows supplies to challenge procurement decisions that they believe run contrary to the obligations of the GP chapter.

Provisions Supporting Inclusiveness

Tender Documentation

- The evaluation criteria in the NIP or tender documentation may include *inter alia* price and other cost factors, environmental characteristics, etc.

Technical Specifications

- For greater certainty, a Party, including its procuring entities, may apply technical specification to promote the conservation of natural resources or the protection of the environment.

Facilitation of Participation by MSMEs

- Commitment to adopt or maintain measures to help SMEs participate in the procurement process.

General Notes in Canada's Market Access Schedule

- Stipulates that the GP Chapter does not apply to any form of preference, including set asides, to benefit Indigenous Peoples and MSMEs or minority owned businesses, including women-owned businesses.

Market Access Commitments

Procuring Entities

Annex 1: Central Government Entities

- Federal government departments and agencies covered are listed.



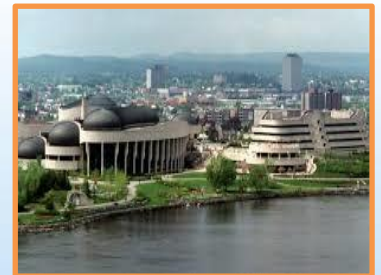
Annex 2: Sub-Central Government Entities

- Scope of coverage is defined for each Province and Territory.



Annex 3: Other Entities

- Crown Corporations covered are listed with their specific exclusions.



Market Access Commitments

Goods, Services and Construction Services

Annex 4: Goods

- Since all goods are covered, some specific exclusions are listed.
- Goods covered for procurement conducted by law enforcement entities (e.g. DND, RCMP, Coast Guard, police forces) are listed.



Annex 5: Services

- Services covered are listed along with some exclusions.



Annex 6: Construction Services

- All UN CPC Division 51 construction services are covered, with specific exceptions.



Annex 7: General Notes

- Exceptions to Canada's coverage are listed.

Market Access Commitments

Thresholds




Level playing field for Canadian firms to be able to compete for Canada's trading partners' public contracts



Listed in Special Drawing Rights (SDR) in the WTO GPA, CETA and CPTPP

Listed in US Dollars in NAFTA and Canada's other GP Chapters



Adjusted and converted into Canadian and foreign currencies every two years

Useful Links

- Financial Administration Act, Government Contracts Regulations
 - <http://laws.justice.gc.ca/>
- Treasury Board Secretariat's Contracting Policy, Purchasing Activity Reports
 - <https://www.canada.ca/en/treasury-board-secretariat/services/government-procurement.html>
- Treasury Board Secretariat Policy Notices and Circulars - Contracting
 - <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice.html>
- Supply Manual
 - <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual>
- Government Electronic Tendering Services (GETS)
 - <https://buyandsell.gc.ca/>
- Alternative Dispute Resolution
 - <http://adric.ca/>
- Office of the Procurement Ombudsman
 - <http://opo-boa.gc.ca/index-eng.html>
- Canadian International Trade Tribunal
 - <http://www.citt.gc.ca/en/procurement>
- EU Tenders Electronic Daily
 - <https://ted.europa.eu/TED/main/HomePage.do>

Questions?

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