



Contracting Policy Notice 2008-5 – Canada-Chile Free Trade Agreement – Government Procurement Chapter (Archived)

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Contracting Policy Notice: 2008-5

File No: 7010-000-006

Date: December 17, 2008

To: Functional Heads, Administration/Finance of all Departments and Agencies

Subject: Canada-Chile Free Trade Agreement - Government Procurement Chapter

Summary: The Canada-Chile Free Trade Agreement (CCFTA) has been amended to add a Chapter on government procurement. The Chapter came into force September 5, 2008.

Background: CCFTA entered into force July 5, 1997 but did not include a government procurement chapter. An amendment to include such a chapter was signed in November 2006 but did not come into effect until September 5, 2008.

Particulars

1. General

As with other trade agreements, the general principles of the CCFTA are: non-discrimination in the treatment of one Party's goods, services and suppliers by the other Party; transparency; and open competition.

A new concept introduced in this trade agreement is "extended transparency". Simply put, extended transparency seeks to **make information available** with respect to specific procurement opportunities that are **not covered** by the trade agreement.

2. Procurement Coverage

a. *Entities*

The Entities covered by CCFTA are those departments, agencies and Crown corporations listed in Annexes to the Procurement Chapter.

b. *Goods, services and construction services*

Coverage of goods, services and construction services essentially reflects a combination of Canada's coverage under the North American Free Trade Agreement (NAFTA) and the World Trade Organization Agreement on Government Procurement (GPA); however, the Annexes to the Procurement Chapter of CCFTA should always be consulted to determine whether or not a particular procurement is covered under CCFTA.

c. *Thresholds*

Departments and Agencies

Contract	Threshold \$
Goods	\$76,500
Services	\$76,500
Construction	\$8,300,000

The thresholds for goods and services will be adjusted in accordance with NAFTA whereas the thresholds for construction services will be adjusted in accordance with the GPA.

Crown Corporations

Contract	Threshold \$
Goods	\$382,800
Services	\$382,800
Construction	\$12,200,000

The thresholds for goods, services and construction services will be adjusted in accordance with NAFTA.

3. Bid Challenge

Implementation of the Chapter required an amendment to the *Canadian International Trade Tribunal (CITT) Procurement Inquiry Regulations* to bring Chilean supplier complaints under the scope of the CITT's mandate to review complaints. The amended regulations will come into effect shortly.

4. Transparency Measures

In general terms, CCFTA resembles the **existing** transparency measures in both NAFTA and the GPA; however, there are some noticeable differences as set out below.

- a. The Time Limit for Tendering is 30 days, down from 40 days under NAFTA, and may be reduced to no less than 10 days in specific situations. Nonetheless when NAFTA and the GPA cover a procurement, the longer posting limits must be respected. In circumstances where the NAFTA and GPA limits may be reduced to 30 days or more, such as is permissible under NAFTA Article 1012(3) and GPA Article XI(3), the lower CCFTA limits would be applicable.
- b. Unlike NAFTA, where there are 72 days to publish a contract award notice, it must be done promptly for CCFTA. Also unlike NAFTA, the notice for CCFTA must include an explanation of the circumstances justifying an award which did not use open-tendering.
- c. Entities covered under the Chapter are "**encouraged** to publish, as early as possible for the fiscal year, information regarding its procurement plans".
- d. The agreement contains "extended transparency" measures, which are new to trade agreements. It should be noted that these commitments are **informational in nature only** and **do not provide foreign suppliers with opportunities to bid**. The benefit for Canada is the reciprocity enjoyed by Canadian exporters having a window into foreign government procurement markets.

There is little burden on Canada for extended transparency as the majority of these **informational measures** are already practiced by federal departments and agencies. The specific obligation is to apply twelve of the Chapter's provisions to **non-covered** procurement of goods, services and construction services where the value exceeds CDN\$124,000 and where an open-tendering process will be used. A summarized list of the extended transparency commitments is found in Attachment 1 to this Contracting Policy Notice (CPN).

5. Reporting and information requirements

- a. There are no annual reporting requirements, statistical or otherwise.
- b. Although there is no annual reporting requirement, CCFTA requires records to be maintained relating to tendering procedures and contract awards covered by the Procurement Chapter for a period of at least three years. The Chapter defines the procurement process as one that begins after an entity has decided on its requirement and continues through to, and including, contract award. It should be noted that where Treasury Board procurement-related policies demand longer record retention than the CCFTA, TB requirements prevail.
- c. The CCFTA requires that records must be maintained, or a written report prepared, providing justification for any contract awarded by means other than open tendering procedures.

6. Effective Date

This CPN is effective immediately.

References

1. Canada-Chile Free Trade Agreement

The full text of the Procurement Chapter

2. Questions & Answers for CCFTA

3. Canadian International Trade Tribunal Procurement Inquiry Regulations

4. Contracting Policy

The TB procurement policy suite is under review, and the particulars of this CPN will be incorporated into the new suite of policies and/or directives. In the meantime, departments and agencies are requested to follow the guidance in this Notice. All TBS publications are available on-line via the TBS website.

ENQUIRIES

For further information, please contact:

Treasury Board Secretariat by
phone 613-957-2487 or by fax 613-957-2405.

Original signed by:

Bob Hirst

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Attachment 1 Contracting Policy Notice: 2008 - 5 Extended Transparency Commitments[1]

The following Articles apply to non-covered procurements where two conditions are met: (1) an open-tendering process is used; and (2) the procurement is in excess of CDN\$124,000.

Article	Provision
K-03	Publication of Procurement Measures Measures of general application governing procurement and any changes thereto must be published.

<p>K-04</p>	<p>Publication of Notice of Intended Procurement</p> <p>An advance notice of a procurement inviting suppliers to bid must be published.</p>
<p>K-05(1)</p>	<p>Time Limits for the Tendering Process</p> <p>Only the first sentence of Article K05(1) is an extended transparency obligation</p> <p>An Entity must "allow sufficient time for suppliers to prepare and submit responsible tenders, taking into account the nature and complexity of the procurement"</p>
<p>K-06</p>	<p>Information on Intended Procurements</p> <p>06(1) All information necessary to prepare and submit tenders must be provided.</p> <p>06(3) Modifications to evaluation criteria must be provided in writing</p>
<p>K-08</p>	<p>Conditions for Participation</p> <p>08(1) Where there is a separate process to participate in a procurement, such as a qualification, a notice shall be published inviting suppliers to apply for participation. Sufficient time must be given to suppliers to respond.</p> <p>08(2)(b) Qualification decisions must be based solely on the published conditions for participation.</p> <p>08(5) Entities must communicate to a supplier who has applied for qualification, whether or not the supplier has qualified. A written explanation of a rejection must be provided upon request.</p>
<p>K-10</p>	<p>Awarding of Contracts</p> <p>10(1) Tenders must be in writing, conform to the tender documentation and be submitted by a supplier which has satisfied the conditions of participation</p> <p>10(2) Unless it is not in the public interest, a contract shall be awarded to the supplier determined to be fully capable of undertaking the contract</p>

K-15	Non-disclosure of information Confidential information shall not be disclosed.
K-16	Exceptions Measures may be adopted in certain circumstances to protect: essential security interests; public morals, order or safety; human, animal or plant life or health; intellectual property; or relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour.

[1] This attachment **summarizes** the provisions applying to non-covered procurements. For a full understanding of Canada's obligations, the full text of the Chapter should be consulted at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/index.aspx?lang=eng>

Date modified:

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[CPN 2008-5 : Attachment 1 - Extended Transparency](#)