

As a public sector organization, you are well-versed in the practice of conducting procurements that offer value for money and respect public funds. Trade agreements support this objective by optimizing competition among suppliers. They're an important tool to encourage economic growth and job creation within Ontario as they help the province diversify, expand and strengthen its economic ties with other jurisdictions.

The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) is expected to take effect in the summer of 2017 and the Canadian Free Trade Agreement (CFTA) will be in force on July 1, 2017. These trade agreements will open markets and allow public sector organizations better access to skilled and qualified suppliers across the province, country, and globe.

## How does this affect my organization?

It's important for you to understand each agreement, in particular government procurement rules, since these agreements will affect how public sector organizations conduct procurements.

You are encouraged to review your organization's policies, processes or systems to ensure they reflect these rules.

## Overview

The Ontario government has been working with the federal government, provinces and territories to build stronger ties with our trading partners through the negotiation of agreements that remove barriers to trade and investment. CETA (an international agreement) and CFTA (a domestic agreement) require that procurement processes in Ontario are conducted in a more transparent, open and competitive manner that will help ensure the best value for money in public spending. These agreements will enable Ontario firms to greater access government procurement opportunities across Canada and the EU.



### Did you know?

All ministries, municipalities, most provincial agencies and organizations in the broader public sector (including school boards and publicly funded academic, health, and social services organizations) are covered under these trade agreements.

# The Canada-European Union Comprehensive Economic and Trade Agreement

Part of the Government of Canada's trade and export strategy was the completion of CETA. A final agreement was reached in October 2016 and is expected to take effect as early as summer 2017.

CETA represents a key opportunity to promote stronger economic ties with the EU, the largest single market in the world, with over 500 million consumers and a gross domestic product of close to \$18 trillion.

With some exceptions, Ontario entities covered by CETA's procurement rules include ministries, provincial agencies, government-owned entities of a commercial or industrial nature (provincial or municipal), municipalities (but not municipal energy entities), school boards and publicly-funded academic, health and social service entities.

## The Canadian Free Trade Agreement

The federal government, provinces and territories have reached an agreement to strengthen and modernize the Agreement on Internal Trade (AIT). The new CFTA, which will enter into force on July 1, 2017, will replace the existing 22-year old AIT. CFTA will reduce and eliminate barriers to the free movement of persons, goods, services and investment in Canada.

Similar to CETA, CFTA's procurement commitments promote open procurement practices among public sector organizations covered by the agreement. Under CFTA, almost all procurements conducted by the federal government and procurements conducted by ministries, provincial agencies, government entities, other entities that are owned or controlled by a government through ownership interests, municipalities, school boards and publicly-funded academic, health and social service entities will be covered by CFTA's procurement rules.

## What's New?

Among the procurement rules in CFTA and CETA, there are some key areas that are new and with which you will be expected to comply. These new procurement rules include:

- **Collection and Reporting of Procurement Statistics** – promoting transparency by collecting and reporting on the number and value of procurements conducted by your organization
- **Procurement Practices** – revised and/or expanded rules and procedures around bid posting periods, evaluation criteria, posting of contract award information and vendor debriefings



### Did you know?

Though efforts are being made to align the rules and practices of CETA, and CFTA, each remains a separate agreement with its own specific requirements

- **Bid Dispute** – establishing a timely, impartial administrative procedure for suppliers to challenge a procurement they feel was not conducted in accordance to the procurement rules set out in an applicable trade agreement

## Collection and Reporting of Procurement Statistics

You are encouraged to start collecting procurement data at or above the CFTA's and CETA's applicable thresholds.



### What do I collect?

**CETA:** Number and value of contracts by goods, services, or construction

**CFTA:** Number and value of contracts by goods, services, or construction



### For what period?

1 year's worth

1 year's worth



### When do I file?

Up to 2 years after

Following year

Additional information on how and when to submit your data will be provided at a later date. In the meantime, we encourage you to review your systems, tools and processes to help with the above reporting requirements.

## Procurement Practices

The following general practices have been expanded or revised:

**Debriefings** – You'll be expected to inform all participating suppliers of the contract award decision within **72 calendar days** of awarding the contract. Upon request of the supplier, you'll also be expected to provide the reasons why the supplier tender was not selected.

**Bid posting and contract award requirements** – For procurements valued at or above CETA's monetary thresholds, you'll be expected to post the procurement opportunity for no less than 40 calendar days. This posting time may be reduced if the following conditions are met:

- the tender notice is published electronically
- the tender document is posted at the same time as the tender notice and the public sector organization accepts bids electronically

We encourage you to review your procurement policies, systems, templates and supporting tools to ensure alignment with the revised rules.

For the specific conditions see Article 19.9 (Time-Periods) of CETA’s procurement chapter and Article 511 (Time Periods) of CFTA’s government procurement chapter.

### Bid dispute

You’ll be expected to have an independent and impartial process in place to allow a supplier to challenge a procurement, if they believe it was not conducted in line with an applicable trade agreement’s procurement rules.

This process is expected TO be timely, transparent, and non-discriminatory and include the following key elements:

- The body or individuals used by the public sector organization will be independent of your organization. If your organization does not have an independent body to initially review the complaint, it should have a process in place to allow the supplier to ‘appeal’ to an independent body.
- A provision to preserve the supplier’s right to participate in the procurement process, where appropriate (such as extending the bid submission closing time) while the complaint is reviewed.
- A provision to provide the supplier with financial compensation (which may be limited to the cost of making the complaint and/or the preparation of their bid), or provide for corrective action (such as re-evaluating the bid) depending on the circumstances, if the supplier’s complaint was proven.

Your organization is encouraged to review the bid dispute provisions in CETA (Article 19.17 – Domestic Review Procedures) and CFTA (Article 518 – Review Procedures)

Additionally, a tool called the Bid Dispute Resolution Guide has been prepared to help guide you on what to consider if designing and implementing a bid dispute resolution process.

Ontario will be streamlining its current bid dispute process by using third party service providers. This new process will make it easier for a supplier and a public sector organization to resolve a procurement complaint. The cost of the new service will be borne by the party that is unsuccessful in the bid dispute.

### Trade Agreements’ Procurement Thresholds

The CETA and CFTA charts below show at what value the trade agreements’ procurement rules apply and are provided for general information only.

#### CETA’s Procurement Thresholds

Procurement Type	Ministries and most Provincial Agencies*	Provincial Agencies – commercial/ industrial	Municipalities, school boards and publicly-funded academic, health and social services
<b>Goods</b>	\$340,615	\$604,700	\$340,615
<b>Services</b>	\$340,615	\$604,700	\$340,615
<b>Construction</b>	\$8,500,000	\$8,500,000	\$8,500,000

\* Does not include provincial agencies of a commercial or industrial nature (Ontario Lottery and Gaming Corporation, Liquor Control Board of Ontario, Workplace Safety Insurance Board)

**Note:** The above figures have been converted into Canadian dollars as of January, 2017. CETA thresholds are expressed in International Currency in the agreements and are converted every two years.

## CFTA's Procurement Thresholds

Procurement Type	Ministries and most Provincial Agencies*	Provincial Agencies – commercial/ industrial	Municipalities, school boards and publicly-funded academic, health and social services
Goods	\$25,000	\$500,000	\$100,000
Services	\$100,000	\$500,000	\$100,000
Construction	\$100,000	\$5,000,000	\$250,000

\* Does not include provincial agencies of a commercial or industrial nature (Ontario Lottery and Gaming Corporation, Liquor Control Board of Ontario, Workplace Safety Insurance Board)

**Note:** CFTA's thresholds will be adjusted in line with inflation every 2 years.

## What I need to do

You are encouraged to review the government procurement chapters of [CETA](#) and [CFTA](#) since you are expected to comply with the requirements specified in each agreement.

## Bid Dispute Survey

The streamlined bid dispute process will be available in the summer of 2018 for use by public sector organizations. We encourage you to complete this [short survey](#) to aid in the development of this process.

## Tools and Resources

We have developed some tools and guides to help you with the procurement-related rules described in this newsletter. Please visit the [Information for Buyers](#) section of the Doing Business with the Government of Ontario website for trade updates, guides, and other resources.

An information seminar on trade implementation will be conducted the summer of 2017. Please visit [Eventbrite](#) to register. Register early, as space is limited.

For questions regarding procurement rules please contact [BPSSupplyChain@ontario.ca](mailto:BPSSupplyChain@ontario.ca)

## What's next?

Keep an eye out for the 2<sup>nd</sup> Issue of Trade News – Procurement Chapter coming later this year.

This newsletter is brought to you by the Ministries of Government and Consumer Services, Economic Development and Growth, International Trade, Municipal Affairs and Treasury Board Secretariat.