Municipal Procurement in Canada

The Impact of Trade Agreements

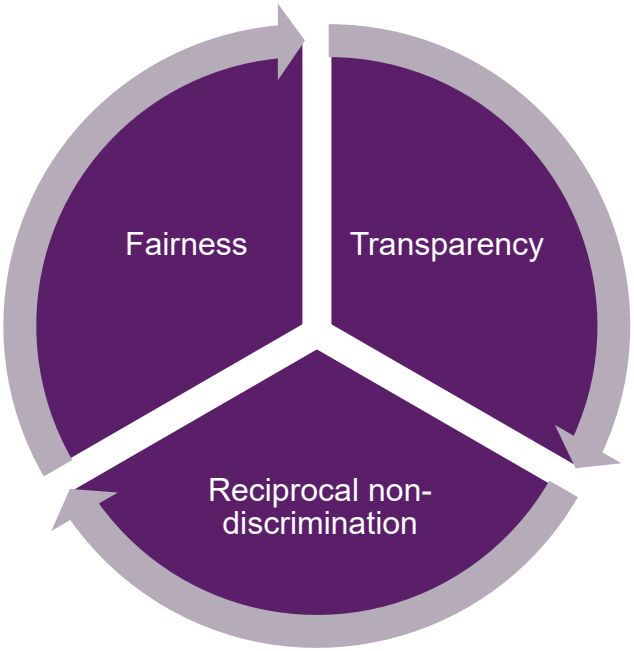
IMLA
Municipal Procurement in Canada
September, 2022

Presented by:
Mary Ellen Bench
Counsel, Dentons
Maryellen.Bench@dentons.com
416-863-4724

Municipal Procurement

- Municipalities are not recognized as a level of government in the Constitution of Canada. Provinces set the legislation that applies
- Common law principles apply in English Canada and civil law in Quebec
- Canada Infrastructure Bank borrowing rules
- Municipalities are required to have procurement policies setting out processes and can allow for environmental and sustainability factors
- Judicial inquiries into procurement establish as a principle that elected officials have no role in procurement beyond approving the budget and final recommendations
- Fairness Advisors engaged if concern about process

Public Sector Procurement Principles



Procurement Models

- Tenders –contract A and contract B
- Request for Proposals
- Request for Expression of Interest
- Request for Quotes
- Single sourcing
- Sole sourcing and contract extensions
- Cooperative purchases –other public bodies
- In-house bids
- Unsolicited bids

Public Private Partnerships

- In Canada generally involve a combination of any of: design-build-finance-operate-maintain (DBFOM)
- Key areas where PPPs are used:
  - Rail and light rail transit
  - Water /wastewater treatment facilities
  - Hospitals
  - Court houses
  - Sports facilities on occasion
- Not regulated by legislation, but often under control of provincial funding partner to the municipality
- Information available at The Canadian Council for Public-Private Partnerships

Importance of 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 competiveness
- May be negotiated with other countries and between provinces in Canada; municipalities do not negotiate but are impacted

Key Canada 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
- The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) which is undergoing ratification in Canada and took effect on September 21, 2017
- The World Trade Organization Agreement on Government Procurement (WTO-GPA) (only for ministries and some agencies)
- The Canada-United States-Mexico Agreement (CUSMA or USMCA) which w created the largest free trade region in the world, and came into force in 2020
- The Asia-Pacific region, through the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The CPTPP entered into force on 14 January 2019.

Impact of Trade Agreements on Canadian Municipalities

Government Procurement Thresholds in International Trade Agreements for 2022 and 2023 (in CAN $)									
Agreement (date of entry into force)	Federal government entities			Sub-federal government entities			Government enterprises (Crowns)		
	Goods	Services	Construction	Goods	Services	Construction	Goods	Services	Construction
CPTPP (December 2018)	$238,400	$238,400	$9,100,000	$651,000	$651,000	$9,100,000	$651,000	$651,000	$9,100,000
European Union (CETA) (Provisional application since September 2017)	$238,400	$238,400	$9,100,000	$366,800	$366,800	$9,100,000	Section A (Crown Corporations)		
							$651,000		
							$651,000	$9,100,000	
							Section B (Utilities)		
							$733,600	$733,600	$9,100,000
							$651,000	$651,000	$9,100,000
Section B (Utilities)									
$733,600	$733,600	$9,100,000							
WTO-GPA	$238,400	$238,400	$9,100,000	$651,000	$650,100	$9,100,000	$651,000	$651,000	$9,100,000

What CETA Covers

CETA covers virtually all sectors and aspects of Canada-EU trade in order to eliminate or reduce barriers:

- Trade in goods: CETA eliminates tariffs and reduces barriers for virtually all sectors and aspects of Canada-EU trade. Prior to this agreement, only 25% of EU tariff lines on Canadian goods were duty-free. With CETA, 98% of EU tariff lines are now duty-free for Canadian goods.
- Rules of origin: Canadian exporters have clear and favourable rules that consider Canada's supply chains to determine which products are considered originating and therefore eligible for preferential tariff treatment.
- Customs and trade facilitation: Canada and the EU are working to keep customs procedures simple, effective, clear and predictable. This reduces processing times at the border and makes it easier to move goods between countries.
- Regulatory cooperation and conformity assessment: CETA helps avoid unnecessary or discriminatory regulatory requirements. Canadian and EU regulators are collaborating to create regulatory measures that make it easier for Canadians to do business in the EU.

What CETA Covers – Cont.

- Government procurement: Canadian companies can bid on opportunities at all levels of government in the EU, opening potential business estimated at $3.3 trillion annually.
- Trade in services and labour mobility: CETA provides Canadian service providers with more business opportunities in the EU and makes it easier for certain skilled professionals to work temporarily in the EU.
- Investment: Investment provisions in CETA are designed to give investors greater certainty, stability and protection for their investments and to provide access to an independent dispute resolution mechanism.
- Sustainable development, labour and the environment: CETA includes clear commitments to uphold Canada's high standards and not to undermine them for commercial gain. Clear language confirms the right to regulate for all levels of government.

Canada - Spain Infrastructure - Recent Examples

Public-Private

- ACCIONA Infrastructure –highways in the Cities of Windsor, Calgary and Quebec. Deep lake water cooling in Toronto
- Dragados infrastructure and Deltana Engineering–Scarborough subway extension and Eglinton Crosstown LRT (key consortium member)
- INTECSA-INARSA engineering –(now part of SNC Lavalin)
- Merlin Properties – agreements in Canada and Spain with Brookfield

United States –Europe Trade Agreements

According to the European Commission, this is the current nature of the trade relationship between the US and the EU:

Despite the US being the EU's largest trading partner, there is no dedicated free trade agreement between the EU and the US. The Transatlantic Trade and Investment Partnership (TTIP) negotiations were launched in 2013, but ended without conclusion at the end of 2016. They were formally closed in 2019 after being considered obsolete. Nevertheless, transatlantic trade continues to enjoy one of the lowest average tariffs (under 3%) in the world, governed by World Trade Organization (WTO) rules.

Contact



Mary Ellen Bench
Counsel
Municipal Law

D 416-863-4724
E maryellen.bench@dentons.com

Mary Ellen Bench serves as Counsel in Dentons' Real Estate group, where she advises a broad range of public and private sector clients on governance, municipal law, development, infrastructure and related matters.

Throughout her career, clients and colleagues, alike, have relied on Mary Ellen's exceptional skillset and professional excellence to lead numerous infrastructure and development projects, provide significant input on governance matters and municipal legislative reform, and advise on many municipal corporate, development and finance matters.

With more than 30 years' experience in municipal public service, Mary Ellen held various leadership roles in the legal department at the City of Toronto, as well as City Solicitor for the City of Mississauga. In those roles, she was often engaged on project teams outside of the traditional legal role, because of her practical approach that uniquely achieved solutions to challenging problems that respect and garner the support of all parties, a quality for which she is known throughout the business and legal communities.

In 2006, the Law Society of Ontario recognized Mary Ellen as a Certified Specialist in Municipal Law in respect of local governance matters, and land use planning and development, areas in which she exemplifies the highest standards of the profession. The Rotman School of Management also certified Mary Ellen as an In-House Counsel Specialist, reinforcing her capabilities as a strategic business partner, both internally and with her clients.

For more information, please visit:

https://www.dentons.com/en/maryellen-bench

Thank you

Dentons Canada LLP
77 King Street West
Suite 400
Toronto, Ontario M5K 0A1
Canada

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.
www.dentons.com

© 2019 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see dentons.com for Legal Notices.