

CANADA FREE TRADE AGREEMENT (CFTA)

QUICK REFERENCE

Effective Date • July 1, 2017

The Canada Free Trade Agreement (CFTA) has replaced the Agreement on Internal Trade (AIT). The CFTA carries forward the same open public procurement obligations contained in the AIT, with some new provisions. The CFTA guides domestic trade and includes **RULES** that open trade in goods and services, **PROCESSES** that reduce differences in regulations and standards, and **PROVISIONS** that increase access to billions of dollars in government procurement opportunities for Canadian businesses. This new agreement provides robust coverage for public sector entities, including significant detail on all exceptions, dispute resolution and a specific process for enforcement of monetary awards. New rules will make it easier and less costly for Nova Scotia businesses to sell their goods and services across Canada

Who negotiated this Agreement and why?

- The AIT was in existence since 1994 and has long since been acknowledged that it needed updating. Since December 2014, federal, provincial and territorial governments have worked to modernize Canada's internal trade. The CFTA resulted from these negotiations

The Parties- Who's covered by the Agreement?

- The Governments of Canada, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut

Does Nova Scotia have any excluded entities?

- No

Did the procurement thresholds change? - NO

- Province: \$25,300 Goods; \$101,100 Services; \$101,100 Construction
- Mash: \$101,100 Goods; \$101,100 Services; \$252,700 Construction
- Crowns: \$505,400 Goods; \$505,400 Services; \$5,053,900 Construction

**Every two years the thresholds will be adjusted to reflect indexing to inflation. Adjusted Mar/18*

What does my organization need to do to align with the new Agreement?

- Review the CFTA to ensure that your policies and procedures are consistent with the new obligations.
- Ensuring procedural fairness is key to avoiding potential stop contract orders & bid disputes (Article 518 (9))

Is the Atlantic Procurement Agreement (APA) still in effect?

- Yes, while the APA references specific sections of a trade agreement that does not exist (AIT), Parties have agreed to continue to abide by the spirit of the APA. Meaning that entities are to abide by the CFTA at APA thresholds until a long term decision is made on the APA.

KEY CHANGES:

TRANSPARENCY OF PROCUREMENT INFORMATION (Article 516)

- ALTP Awards: Publication of award information must be publicly posted on the Nova Scotia Procurement Web Portal, within 72 days of contract award.
- Contains transparency protocols that require an entity to promptly inform suppliers of its contract award decisions within 72 days of contract award.
- Name of supplier and contract value are to be publicly posted.

APPLICATION

- The CFTA uses a "negative list" instead of the AIT which used a "positive list" A negative list means that all entities are a part of the CFTA unless listed as exempt.

LIMITED TENDERING- NEW PROVISIONS BY WAY OF ALTP (Article 513.1 (a), (c) iv)

- Circumstances for Limited Tendering (Alternative Procurement) are similar to the AIT but have been modified.
- There is a new requirement to post the award information for contracts established using Alternative Procurement Circumstances (article 516 2. (f))

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TENDER NOTICES – SINGLE POINT OF ACCESS (Article 506):

- The Government of Canada will soon create a new single point of access (SPA). All entities will eventually be required to make their opportunities accessible through the SPA. When the new SPA is created, the Province will link the existing Nova Scotia Procurement Web Portal to this new SPA on behalf of all entities.
- All tender notices are required to be free of charge and to continue to include the traditional disclosures of key procurement details.

P3s (Article 504.10):

- Creates special new rules regulating public-private partnerships (P3s)

TRANSITION COSTS (Article 521):

- There is more detail in the new agreement about transition costs: you must advise bidders that there will be these transition costs they must bear. This must be identified in the tender document. "...direct and additional costs incurred...may include for thosetraining of employees and system integration."

TREATMENT OF TENDERS AND AWARD OF CONTRACTS (Article 515):

- New provision that expressly allows for the correction of unintentional errors in form, provided that the same opportunity is made available to all participating suppliers. The Article also states that contract award should go to the best compliant tender based on the criteria established under the tender call and contains new price verification protocols for situations involving abnormally low bids.

NEGOTIATIONS and ELECTRONIC AUCTIONS (Article 512):

- The new agreement now expressly recognizes the newer use of negotiated RFPs and electronic auctions.
- Negotiations must be anticipated in the published solicitation document or where there is no clear winner, from the declared evaluation process. Time-lines must be provided for both concurrent and consecutive negotiation processes.

BUYING GROUPS (Article 504.6-504.9):

- Requires a procurement entity to ensure that any purchases made through a buying group comply with the general open procurement obligations. These articles create further regulatory requirements for using buying groups.
- Procuring entities must publish a notice of participation in buying groups at least annually on the Web Portal (Article 504.7).

PRE-QUALIFICATION/STANDING OFFER (Article 506/508):

- For pre-qualification lists, a notice must appear in tender publications explaining how the list is intended to be used
- Unless otherwise stated in tender publication, all pre-qualified suppliers must be allowed to participate in a particular procurement
- Permanent pre-qualification lists now require regular refreshes to on-board new vendors, if for more than a 3 year period.

DETERMINATION OF TENDER VALUE (Article 505):

- Article 505 maintains that the estimated value should be based on anticipated total cost, as of the date of the tender notice publication (including awards to different suppliers). This article now clarifies that this should also include any extension options.

CONDITIONS FOR PARTICIPATION (Article 507):

- The ability to disqualify a supplier from participating in a procurement process for 'significant or persistent deficiencies in performance under prior contracts'. Ongoing formal and objective documentation of contract performance deficiencies will be crucial to relying on this stated exception to the general requirements of non-discrimination.
- Procuring entities may require prior experience for a particular project however they cannot stipulate that experience be with a particular party or province.

DEBRIEFING (Article 516):

- It is now mandatory, upon request, to provide debriefing to suppliers. It is important to make sure documentation is robust enough to be challenged.
- Insufficient debriefing disclosures are legally challengeable.

BID CHALLENGE & DISPUTE RESOLUTION (Article 518):

- Improved procurement dispute resolution process to ensure it is more timely, transparent and effective.
- Nova Scotia's Vendor Complaint Process will satisfy the requirements of this particular requirement."
http://novascotia.ca/tenders/media/50540/procurement%20process_vendor%20complaints_.pdf