



PROCEDURE	PR038-119-2017/07	PAGE: 1	OF: 12
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APPROVED BY: OWNER	APPROVED ON: 2017-07-01		
OWNER: VICE-PRESIDENT AND CHIEF FINANCIAL OFFICER			
TRADE AGREEMENT COVERED PROCUREMENTS PROCEDURE			

1. General

Objective To describe the process for:

- (a) determining whether a procurement is a Covered Procurement for purposes of CETA and/or the CFTA;
- (b) conducting a Covered Procurement in compliance with the applicable obligations in the Trade Agreement(s); and
- (c) complying with other Trade Agreement requirements related to Covered Procurements.

Definitions Terms with the first letter in upper case and terms in quotations that appear in the Glossary – Trade Agreement Covered Procurements Procedure (as amended from time to time) shall have the meaning set out therein.

In this procedure: (a) all CETA Article references are references to Articles of Chapter 19, unless otherwise indicated; (b) all CETA Annex references are references to Canada’s Annexes to its Market Access Schedule for Chapter 19; (c) all CFTA Article references are references to Articles of Chapter Five, unless otherwise indicated; and (d) all CFTA Annex references are references to Annex 520.1 (Party-Specific Exemptions), Schedule of Canada.

Application This procedure applies to all employees of CATSA. All Covered Procurements must meet the applicable requirements of this procedure (and CETA and/or the CFTA, as applicable). In respect of Covered Procurements: (a) the requirements herein (and in CETA and/or the CFTA, as applicable) are in addition to any requirements set out elsewhere in the Procedures; and (b) in the event of an inconsistency or conflict between (i) the provisions of another Procedure and (ii) the provisions of this procedure (and/or CETA and/or the CFTA, as applicable), the provisions of this procedure (and/or CETA and/or the CFTA, as applicable) shall prevail.

2. Accountabilities

	P&C	ABO	Legal	Other stakeholders
Determining whether a procurement is a Covered Procurement: Step 1 – Covered Procurement Activities	A	C	S	
Determining whether a procurement is a Covered Procurement: Step 2 – Valuation Thresholds	S	A		S - Finance
Determining whether a procurement is a Covered Procurement: Step 3 – Covered Goods and Services	A	C		
Conduct of the Procurement	A	R		
Conditions for Participation	A	R	S	
Technical Specifications	A	R	S	
Qualification of Suppliers	A	R		
Limited Tendering	A	R	S	
Posting Periods	A	I		
Tender Notices	A			
Negotiations with Suppliers	A	S	S	
Awarding of Contracts; Informing Suppliers of Contract Award Decisions; Publication of Award Information	A	I		
Bidder Debriefs	A	C		
Complaint Resolution	A	S	S	
Collection and Reporting of Statistics	A	I		
Publication of Procedures Regarding Covered Procurements	A	I	S	

(A=Accountable, R=Responsible, S=Support, C=Consulted, I=Informed. If an individual is accountable ("A") and also responsible ("R"), then only "A" will be indicated in chart.)

3. Process

A. Background

- (a) Canada is a signatory to a number of trade agreements aimed at reducing trade barriers between the signatories. Two of these agreements contain government procurement provisions applicable to CATSA: (i) the CFTA, applicable to CATSA as of July 1, 2017; and (ii) CETA, expected to be applicable to CATSA as of a later date in 2017.
 - (b) CETA sets out Canada's commitment to reduce trade barriers between Canada and the EU. Chapter 19 focuses on non-discrimination, transparency and impartiality in government procurement.
 - (c) The CFTA sets out the commitment of Canada and its provinces and territories to reduce trade barriers within Canada. Chapter Five focuses on open, transparent and non-discriminatory access to government procurement opportunities for all Canadian suppliers.
 - (d) The key procurement obligations under the Trade Agreements are largely harmonized. However, differences do exist in the obligations of the Trade Agreements and in the wording of various sections of the Trade Agreements. Thus, attention must be paid to the provisions of each Trade Agreement applicable to a procurement.
 - (e) The procurement provisions of the Trade Agreements are structured such that if a proposed contract/procurement meets certain stated criteria, it is covered by the agreement; if it does not meet all the stated criteria, it is not covered.
 - (f) If a proposed contract/procurement is a Covered Procurement, then the procurement obligations in the relevant Trade Agreement(s) must be complied with. When planning a procurement, CATSA must determine whether the proposed contract/procurement is subject to one or both Trade Agreements.
 - (g) A proposed contract/procurement can be covered by both Trade Agreements. In such a case, the provisions of both Trade Agreements must be complied with at the same time. To accomplish this, the procedures/requirements to be followed are those that are considered the more rigorous.
 - (h) For assistance with the application of CETA, P&C Advisors should consult the Global Affairs Canada website at: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng>.
 - (i) For assistance with the application of the CFTA, P&C Advisors should consult the Internal Trade Secretariat website at: <http://www.ait-aci.ca>.
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B. Determining whether a procurement is a Covered Procurement

(I) Under CETA

Step 1 – Covered Procurement Activities

A Covered Procurement under CETA:

- (a) is a procurement of goods, “services”, or any combination thereof as specified in Annex 19-4 (Goods), Annex 19-5 (Services) or Annex 19-6 (Construction services);
- (b) which has a value that equals or exceeds the relevant threshold; and
- (c) which is not otherwise excluded from coverage by: (i) Art.19.2.3; (ii) Annex 19-4, 19-5, 19-6 or 19-7; or (iii) another provision of CETA.

To be a Covered Procurement under CETA, a contract, agreement, arrangement or transaction must (See Art.19.2.2):

- (a) not be excluded from the procurement obligations of CETA by Art.19.2.3, which excludes items such as: (i) the rental of land and buildings; (ii) forms of assistance; and (iii) public employment contracts;
- (b) be a procurement of goods and/or “services” as specified in the Annexes (and in particular, not exempted or excluded under Annex 19-7); and
- (c) be by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy.

Certain other provisions may exempt or exclude a procurement from the obligations of CETA: See the security and general exceptions provisions (Art. 19.3) and the national security provisions (Art.28.6 of Chapter Twenty-Eight (Exceptions)).

Step 2 – Valuation Thresholds

The following CETA thresholds are applicable to procurements by CATSA (including estimated applicable taxes):

Goods	SDR 355,000	CDN \$604,700
Services	SDR 355,000	CDN \$604,700
Construction Services	SDR 5,000,000	CDN \$8,500,000

Notes: (i) For the valuation of a procurement resulting in the award of (i) more than one contract or (ii) contracts in separate parts (“recurring contracts”), refer to Art.19.2.7.

(ii) For procurement (i) by lease, rental or hire purchase of a good or a “service”, or (ii) for which a total price is not specified, refer to Art.19.2.8.

(iii) These Canadian dollar threshold conversions will be updated every two years (next on Jan. 1, 2019).

Step 3 – Covered Goods and Services

Subject to certain exemptions and exceptions:

Goods

Goods described in any of the Federal Supply Classifications (FSC) listed in s.2 of Annex 19-4 are covered under CETA. For details of the goods contained in the listed FSC codes, see FSC at:

http://www.dla.mil/Portals/104/Documents/DispositionServices/Receiving/Usable/DISP_h2book%5b1%5d.pdf

Services

Services identified in the CPC references listed in s.2 and s.3 of Annex 19-5 are covered under CETA. For details of the services contained in the listed CPC codes, see the CPC at:

<https://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1&prn=yes>

Construction Services

All “construction services” identified in Division 51 of the CPC are covered under CETA. (See s.1 of Annex 19-6) For details, see the CPC at:

<https://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1&prn=yes>

Exemptions and Exclusions

(a) For procurements relating to security screening equipment, refer to the exceptions to FSC 63 and FSC 66 in s.2 of Annex 19-4 in determining if such equipment is excluded from coverage under CETA.

(b) The procurement by CATSA of all services, with reference to those goods purchased by CATSA which are not covered by Annex 19-4, are excluded from coverage under CETA. (See Note 1 to Annex 19-5).

(c) The “services” covered by Chapter 19 are subject to Canada's exclusions from and reservations to Chapters Eight (Investment), Nine (Cross-Border Trade in Services) and Thirteen (Financial Services) of CETA. (See s.3(d) to Annex A-7).

(II) Under the CFTA**Step 1 – Covered Procurement Activities**

A Covered Procurement under the CFTA:

- (a) is a procurement of a “good”, a “service”, or any combination thereof other than those expressly excluded under Chapter Five;
- (b) which has a value that equals or exceeds the relevant threshold; and
- (c) which is not otherwise excluded from coverage by: (i) Art.501.11; or (ii) another provision of the CFTA.

To be a Covered Procurement under the CFTA, a contract, agreement, arrangement or transaction must (See Art.504.2):

- (a) not be excluded from the procurement obligations of CFTA:
 - (I) by Art.504.11, which excludes items such as: (i) the rental of land and buildings; (ii) forms of assistance; (iii) public employment contracts; (iv) measures necessary to protect intellectual property; (v) the procurement of health services or social services; and (vi) the procurement of legal services; or
 - (II) in the Government of Canada’s Schedule to Annex 502.1;
- (b) be a procurement of “goods” and/or “services” other than those expressly excluded under Chapter Five; and
- (c) be by any contractual means, including: purchase; lease; and rental, with or without an option to buy.

Certain other provisions may exempt or exclude a procurement from the obligations of the CFTA: See the legitimate objective provisions (Art.501) and the security exceptions provisions (Art.801(b) of Chapter Eight (General Exceptions)).

Step 2 – Valuation Thresholds

The following CFTA thresholds are applicable to procurements by CATSA (including estimated applicable taxes):

Goods or Services (excluding Construction)	CDN \$500,000
Construction	CDN \$5,000,000

Notes: (i) As per Art.505.3, if a procurement for “goods” will include the installation, operation, maintenance, or manufacture of such “goods”, CATSA shall include in its valuation those associated costs.

- (ii) These thresholds will be adjusted for inflation in accordance with Art.504.4: (i) on Jan. 1, 2018; and (ii) subsequently, on Jan. 1 every two years after Jan.1, 2018.

Step 3 – Covered Goods and Services

Goods and Services (including Construction)

With respect to procurement by CATSA, all “goods”, “services” or any combination thereof are covered under the CFTA, subject to the following:

(i) Chapter Five does not apply to procurement by CATSA for security screening, including “services” and “goods” that are related or incidental to security screening (Section B(k) of Annex 520.1); and

(ii) Chapter Five does not apply to procurement of, among other things: (a) financial management consulting services of a confidential nature (Section B(l) of Annex 520.1); or (b) public relations services (Section B(q) of Annex 520.1).

C. Certain Requirements Applicable To Covered Procurements

(a) Conduct of the Procurement

(CETA Art.19.4; CFTA Art.502, 503)

As general principles, the Trade Agreements require that Covered Procurements are conducted in an open, non-discriminatory, transparent and impartial manner.

(b) Conditions for Participation

(CETA Art.19.7; CFTA Art.507)

The Trade Agreements provide that CATSA shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities, and the commercial and technical abilities, to undertake the relevant procurement.

The Trade Agreements contain further provisions respecting conditions for participation, including: (i) limits on the use of conditions for participation; and (ii) a non-exhaustive list of grounds upon which CATSA may exclude a supplier.

(c) Technical Specifications

(CETA Art.19.9.1 to 19.9.6; CFTA Art.509)

The Trade Agreements contain provisions governing the use of “technical specifications” and conformity assessment procedures (as defined in CFTA Chapter Thirteen (Definitions)), including the requirements that in prescribing “technical specifications” CATSA, if appropriate:

(i) sets out the “technical specifications” in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(ii) bases the “technical specifications”: (I) in the case of CETA, on international “standards”, if they exist; otherwise, on national technical regulations, recognized national “standards” or building codes; and (II) in the case of the CFTA, on “standards”, if they exist.

The Trade Agreements do not permit seeking or accepting advice (used in the preparation or adoption of any “technical specification”) from a person

that may have a commercial interest in the procurement, if it would have the effect of precluding competition.

CFTA Art.509.6 provides that Chapter Five is not intended to preclude CATSA from preparing, adopting, or applying “technical specifications” it considers necessary to protect sensitive government information, including specifications that may affect or limit the storage, hosting, or processing of such information outside Canada. (See Art.509.6 for details. CETA does not contain a directly corresponding provision.)

(d) **Qualification of Suppliers**

(CETA Art.19.8; CFTA Art.508)

The Trade Agreements include provisions governing the (pre)qualification of suppliers.

CETA provides for: (i) the establishment and maintenance of “multi-use lists”; and (ii) the use of Selective Tendering.

The CFTA provides that CATSA may: (i) establish “standing arrangements” using a procurement method that is consistent with Chapter Five; and (ii) limit tenders to prequalified suppliers provided that the prequalification process is consistent with Chapter Five.

Buying Groups

For CFTA requirements relating to any CATSA procurements conducted through “buying groups” (as defined in Art.521), see Art.504.5 to .9.

(e) **Limited Tendering**

(CETA Art.19.12; CFTA Art.513)

Limited Tendering is permitted under the Trade Agreements in certain circumstances, provided that it is not used to avoid competition or in a manner that (i) in the case of CETA, discriminates against suppliers of the EU or protects Canadian domestic suppliers, and (ii) in the case of the CFTA, discriminates against suppliers of any province or territory.

The circumstances under which the CFTA permits the use of Limited Tendering are set out in Art.513(a) through (i), and are similar (but not identical) to those circumstances under which CETA permits the use of Limited Tendering. The CFTA includes one additional circumstance, relating to procurements of “goods” or consulting services regarding matters of a confidential or privileged nature. (See Art.513.1(i))

Where a procurement is covered by both Trade Agreements, the provisions of both Trade Agreements must be complied with at the same time. With respect to the utilization of Limited Tendering exceptions, this means that: (i) only the Limited Tendering exceptions that are common to both Trade Agreements are available as options; and (ii) where a certain Limited Tendering exception is common to both Trade Agreements, the exception with the more rigorous requirements must be complied with.

CETA Art.19.12.2 requires that CATSA prepare a report “in writing”

(containing specified information) in respect of each Covered Procurement contract awarded under a Limited Tendering exception.

The Trade Agreements require contract award notices to include information relating to the justification for the use of Limited Tendering. (See CETA Art.19.15; CFTA Art.516.2)

(f) **Posting Periods**

(CETA Art.19.10;CFTA Art.511)

The Trade Agreements provide that CATSA shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as: (i) the nature and complexity of the procurement; (ii) the extent of subcontracting anticipated; and (iii) the time necessary for transmitting tenders by non-electronic means (in the case of CETA, from foreign as well as domestic points) if electronic means are not used.

Deadlines

The CFTA does not specify the number of days required for posting periods, but simply states that the time periods must be reasonable.

CETA, on the other hand, prescribes the required number of days. CETA provides that, in the case of Open Tendering, the final date for the submission of tenders shall not be less than forty (40) “days” from the date on which the “notice of intended procurement” is published; however, this may be reduced to not less than ten (10) “days” (i) for purchases of “commercial goods or services” in certain circumstances, and/or (ii) in certain circumstances as outlined below:

- a. This forty (40) day period may be reduced by five “days” for each one of the following circumstances:
 - (i) the “notice of intended procurement” is published by electronic means;
 - (ii) all the tender documentation is made available by electronic means from the date of the publication of the “notice of intended procurement”; and
 - (iii) tenders are accepted by electronic means.
- b. This forty (40) day period may be reduced to not less than ten (10) “days”:
 - (i) if a notice of planned procurement has been published within certain time periods and containing certain information;
 - (ii) in certain circumstances involving contracts of a recurring nature; or
 - (iii) if a state of urgency renders this forty (40) day period

impracticable.

For determining the deadlines for Selective Tendering under CETA, see Art.19.10.2 to 19.10.8.

(g) **Tender Notices**

(CETA Art.19.6; CFTA Art.506)

CETA requires that for each Covered Procurement (other than Limited Tendering), a “notice of intended procurement” and a summary notice shall be posted on www.MERX.com and shall include the details identified in Art 19.6.

The CFTA requires that for each Covered Procurement (other than Limited Tendering), a “tender notice” shall be posted on www.MERX.com and shall include the details identified in Art.506.

Notice of Planned Procurement

CETA also encourages CATSA to publish a notice of planned procurement regarding its future procurement plans.

(h) **Negotiations with Suppliers**

(CETA Art.19.11; CFTA Art.512)

For Covered Procurements, negotiations with suppliers must be conducted in accordance with (i) in the case of CETA, the provisions of Art.19.11, and (ii) in the case of the CFTA, the provisions of Art.512.

The Trade Agreements require that, other than for negotiations in a case of no obvious winning tender, to conduct negotiations with suppliers, the intent to negotiate shall be indicated in the “notice of intended procurement” (for CETA Covered Procurements) and in the “tender notice” (for CFTA Covered Procurements).

(i) **Awarding of Contracts**

(CETA Art.19.14; CFTA Art.515)

The Trade Agreements require that, for Covered Procurements, unless it is not in the public interest to award a contract, CATSA shall award the contract to the supplier that CATSA has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted: (a) the most advantageous tender; or (b) if price is the sole criterion, the lowest price.

(j) **Informing Suppliers of Contract Award Decisions**

(CETA Art.19.15.1; CFTA Art.516.1)

The Trade Agreements require that CATSA promptly inform participating suppliers of CATSA's contract award decisions and, on the request of a supplier, shall do so “in writing”.

(k) **Publication of Award Information**

(CETA Art.19.15.2; CFTA Art.516.2)

The Trade Agreements require that CATSA publish a notice containing specified award information on www.MERX.com, not later than seventy-two (72) “days” after the award of each Covered Procurement contract.

(l) **Bidder Debriefs**

(CETA Art.19.15.1; CFTA Art.516.1)

The Trade Agreements require that, on request, CATSA provide an unsuccessful supplier with an explanation of the reasons why its tender was not selected. CETA also requires the explanation to include the relative advantages of the successful supplier's tender.

(m) **Complaint Resolution**

(CETA Art.19.17.2; CFTA Art.514.4)

CETA provides that, in the event of a complaint by a supplier arising in the context of a Covered Procurement, CATSA and the supplier *will be encouraged* to seek resolution of the complaint through consultations. The CFTA provides that, in the event of such a complaint, CATSA and the supplier *shall* seek to resolve the complaint through consultations.

(n) **Collection and Reporting of Statistics**

(CETA Art.19.15.4 to 19.15.6; CFTA Art.516.3 and .4)

CETA requires the collection and reporting of statistics on contracts covered by Chapter 19, including:

- (i) the number and total value of contracts covered by Chapter 19 awarded, broken down by Annex; and
- (ii) estimates for the data required under (i) above, with an explanation of the methodology used to develop the estimates, if it is not feasible to provide the data.

The CFTA provides that the Government of Canada is required to make available, on an annual basis, the number and aggregate value of its Covered Procurement contract awards, broken down by procuring entity type as set out in Art.504.3.

(o) **Publication of Procedures Regarding Covered Procurements**

(CETA Art.19.5)

CETA requires the prompt publication of certain information regarding Covered Procurements (including CATSA's procedures regarding Covered Procurements), and any modifications thereof. Such CATSA information is available at: www.catsa.ca/.

The CFTA does not include a corresponding publication obligation.

4. Administration

**Review
and
Amendment**

This procedure shall be reviewed by the Owner at least once every three years. Any substantive amendments to this procedure must be approved by the Owner.

**Related
Documents**

- Canada-European Union Comprehensive Economic and Trade Agreement (CETA) (<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>)
 - Canadian Free Trade Agreement (CFTA) (<http://www.ait-aci.ca/wp-content/uploads/2017/04/CFTA-Consolidated-Text-Final-English.pdf>)
 - P031 - Procurement and Contracting Policy
 - Glossary – Trade Agreement Covered Procurements Procedure
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