

Construction File: What the New National Trade Agreements Mean to You

The Canadian Free Trade Agreement (CFTA) and Comprehensive Economic and Trade Agreement (CETA) are new intergovernmental agreements between the Canadian Federal Government and Provinces and Territories; also covering Municipalities and the broader public sector in [British Columbia](#). When procuring construction services you should be aware that these new trade agreements impose a higher level of transparency than ever before -- right down into local government contracts. With easier access to dispute resolution mechanisms, public sector organizations can expect more challenges and scrutiny of their procurement processes than ever before:

Canadian Free Trade Agreement (CFTA)

- Came into force July 1, 2017
- Replaces Agreement on Internal Trade (AIT)
- Designed to align practices with international commitments CETA which came into force September 21, 2017
- Addresses regulatory environment and procurement with the intent to lower trade barriers

Key CFTA Procurement Provisions

- CFTA Chapter Five Sets out rules, practices, and procedures to be followed to ensure fair and open access to government procurement opportunities
- Thresholds for Construction (effective January 1, 2018):
 - \$101,100 for governments
 - \$252,700K for regional, local, district, and other forms of municipal government, municipal organizations, school boards, and publicly-funded academic, health, and social service entities as well as any corporation or entity owned or controlled by one or more of the preceding entities
- Specifications must use performance and functional requirements; avoid particular brands but if used, add "or equivalent".

Contractors Capacity to Participate:

- Qualification considerations are limited to legal, financial capacity and commercial and technical abilities.
- Where a contractor's experience is a condition this must be done through a pre-specified process. Hence, an evaluation must be based on the conditions specified in the procurement documents, which must include the evaluation criteria that will be used in the evaluation of the proponent submissions, including the methods of weighting and evaluation, unless price is the sole criterion;
- Pre-qualified source lists must be refreshed annually (CETA).
- Cannot limit bidders experience to activities within the territory of the project.
- May not permit reprisal clauses such as contractors past legal action against a public owner.

Post-Closing Requirements

- On request, provide an unsuccessful supplier with a debriefing explanation of the reasons why their tender was not selected.
- Post on a public website the award information for each contract along with the value of the successful tender.

Dispute Resolution Process

- Complaint procedure leading to consultation
- Challenge must be reviewable by impartial administrative or judicial review authority
- Interim measures and compensation available
- Contact the [Internal Trade Secretariat](#)

Some valuable related BCCA resources:

[Construction File: Pre-qualification of Contractors](#)

[Construction File: Proactive Release of Project Information for the Construction Industry](#) (applies to all public sector construction under the Freedom of Information and Protection of Privacy Act)

[Construction File: What is Fair, Open and Transparent Bidding?](#)