Public Procurement World - Canada

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# 1. The Laws

## a. What is the applicable legislation?

Canada's legal framework for government procurement comprises trade agreements, statutes, regulations, case law, and policies. The legal framework that applies to government procurement at the federal level differs from the framework that applies in Canada's 10 provinces. Canada also has three territories, Yukon, Northwest Territories and Nunavut, which are not discussed in this chapter.

**Federal Procurement**

At the federal level, the Government Contract Regulations ("GCRs") is the primarily piece of legislation that regulates procurement by federal government entities. The GCRs set out conditions of contract entry, requirements relating to bid and contract security, and deemed terms for procurement contracts.

**Provincial Procurement**

A number of Canadian provinces have put in place legislation to regulate procurement procedures:

Quebec: An Act respecting contracting by public bodies

Ontario: the Broader Public Sector Procurement Directive

Newfoundland and Labrador: an Act Respecting Procurement by Public Bodies

Nova Scotia: the Public Procurement Act

New Brunswick: the Procurement Act

Saskatchewan: The Purchasing Regulations

**Common Law Procurement Principles (Federal and Provincial Procurement)**

Canada's applicable legislation is supplemented by a separate body of common law that is generally referred to as "Contract A/Contract B", which is the law that applies to the bidding contract in a competitive procurement for tenders. The courts have consistently found an "implied term of fairness" in these bidding contracts and have enforced the principle that a bidding contract does not come into effect unless the bidder submits a "compliant bid", namely one that complies with the terms and conditions of the bid call document. The "Contract A/Contract B" framework applies to tenders at the federal and provincial level.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

The federal government is subject to binding and enforceable commitments made pursuant to trade agreements with other nations, such as the World Trade Organization's Agreement on Government Procurement ("GPA") and the North American Free Trade Agreement ("NAFTA").

Under the GPA, Canada has agreed to provide suppliers in select countries in Europe, Asia and North America with the right to bid without discrimination on a broad range of public sector tender calls by federal government entities, subject to certain monetary thresholds. Pursuant to NAFTA, Canada has agreed to provide suppliers in the United States and Mexico with equal opportunity to compete for certain contracts involving specified classes of goods and services bought by a prescribed list of federal government entities, subject to certain monetary thresholds.

The GPA and NAFTA are not applicable to provincial or municipal governments, or to private industry or private individuals.

## c. What are the basic underlying principles of the legal framework?

The Canadian procurement process must be "open, fair and transparent" ("open" means that anyone can bid; "fair" means that bidders and prospective bidders are treated equally; and "transparent" means that the rules are known to everyone). The underlying purpose of a procurement process that is open, fair and transparent is to support the principle of "value for money".

## d. Is aerospace and defense procurement treated differently from other types of procurement?

The federal procurement rules applicable to aerospace and defence procurement are generally the same as for other procurement processes, except for certain industry-specific rules which apply.

As many as three federal departments are involved in major procurements of military services and equipment: Innovation, Science and Economic Development Canada (formerly Industry Canada), which is responsible for industrial and regional benefits (also known as "offsets"); the Department of National Defence, which defines the budgetary, operational, technical and project management requirements of the acquisition; and Public Works and Government Services Canada ("PWGSC"), which manages the procurement process, negotiates the contract and then manages it once signed.

Canada's offset requirements for major military procurements are reflected in the Industrial and Regional Benefits ("IRB") programme, which requires successful bidders to make investments in advanced technology in select sectors and areas of Canada in amounts sometimes equal to the value of the specific contract. In addition, if a procurement is declared to be subject to the federal Defence Production Act, the underlying documents will be exempt from the rigorous disclosure requirements applicable under federal laws, helping to ensure that sensitive technology and information are appropriately protected.

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

At the federal level, government procurement rules generally apply to procurements by federal government departments, corporations incorporated under a federal statute, and corporations that receive the majority of their funding from the federal government and their agents. However, federal government entities that are creatures of statute and that are mandated to compete with the private sector are generally not subject to the government procurement rules.

At the provincial level, government procurement rules similarly have general application to procurements by provincial public bodies. For example, the Québec and Newfoundland and Labrador government procurement statutes generally apply to all public agencies in their respective provinces. Currently, the Ontario Broader Public Sector Procurement Directive only applies to colleges, universities, school boards, hospitals, children's aid societies, community care access corporations, corporations that purchase goods or services for a designated broader public sector organization, and to every publicly funded organization that received public funds of C$10 million or more in the previous fiscal year of the Government of Ontario. It is expected that the Directive will eventually apply to municipalities in Ontario, although there is no set timeline in which this is to occur. The government procurement legislation of Nova Scotia, New Brunswick and Saskatchewan also has broad provincial application.

Common law procurement rules apply generally to all public bodies in Canada. This includes the "Contract A/Contract B" framework described above and the corresponding duties such as the duty to conduct a fair competitive bid process.

## b. Which private entities are covered by the laws?

The common law "Contract A/Contract B" framework applies to the procurement processes of private companies in circumstances in which the procurement documents constitute a legal tender.

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

No, co-operations between public bodies and private entities are not generally exempted from public procurement law.

## d. Which types of contracts are covered?

Does not apply.

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

Changes to an existing contract are dealt with in accordance with the rules and procedures that a public body establishes in its procurement bid documentation. Bona fide changes to an existing contract are generally permitted where the contracting parties mutually agree.

Public bodies typically impose limitations on a contractor's ability to transfer a public contract. The Canadian International Trade Tribunal ("CITT"), the adjudicative authority for disputes arising from NAFTA, the GPA and other international Canadian bilateral trade agreements, has suggested that it is not opposed to contracts being assumed by a third party.

## f. What is the applicable regime for framework agreements?

Public bodies are free to establish framework and central purchasing agreements among themselves so long as the procurement processes conducted through such arrangements comply with the government procurement rules that are applicable to federal and provincial public bodies. This includes complying with all applicable international trade obligations, as well as the duty to conduct a fair competition, the duty to disclose all material evaluation criteria and the duty to reject non-compliant tenders.

## g. What is the applicable regime for public-private partnerships (PPPs)?

Public-private partnerships ("PPPs") are subject to the government procurement rules that are applicable to federal and provincial public bodies. Many levels of government in Canada have imposed rules that require procuring authorities to consider utilizing PPPs for a proposed project which meets or exceeds certain monetary thresholds.

## h. How are concessions dealt with?

Concession contracts are subject to the general government procurement rules and the terms outlined in the public body's bid call document.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

Canada's Competition Act is generally intended to maintain and encourage competition. The statute focuses on two types of practices: (i) those subject to prosecution under criminal law, including practices such as bid rigging, conspiracies to lessen competition, price maintenance and refusal to supply, price-discrimination, and predatory pricing; and (ii) those subject to review by the Competition Tribunal (such as mergers, abuse of dominant position, tied-selling, refusal to deal, exclusive dealing, market restriction and delivered pricing).

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

At the federal level, the GCRs generally require bids to be publicly solicited for all contracts and subject to full competitive public tendering where anyone who complies with the applicable requirements can bid. The rules are generally more flexible at the provincial level, where the circumstances in which public entities are not required to hold a competitive public tendering will be governed by applicable trade agreements, legislation, policies and directives.

Public agencies can use a broad range of approaches, provided they comply with the requirements of the bilateral or multi-national trade agreements, such as NAFTA, the GPA, and the domestic Agreement on Internal Trade ("AIT") (collectively, the "Trade Agreements"), the common law, and the agency's own internal policies and procedures. Typically, a public agency is required to have internal policies and procedures governing contracting authorities, the manner of conducting procurement, and in what circumstances procurement may be conducted. For example, such policies and procedures often provide guidance on the following documents:

Request for Information ("RFI"), which is used as an information- gathering tool;

Request for Expressions of Interest, which is commonly used to identity which participants in the market are able and willing to provide the goods and/or services;

Request for Qualifications ("RFQ"), which is used to pre-screen bidders based on a set of qualification criteria established by the public agency;

Request for Proposals ("RFP"), which typically prescribes the outcome desired but not how the successful bidder will deliver the goods and/or services. The terms and conditions of the RFP typically vary significantly, depending on the needs of the public agency. The proposals may be legally binding or non-binding, depending on the intent of the public agency; and

Tender, which is normally used when what is being acquired can be well defined (e.g. a commodity product) and where the key criteria is price.

## b. What status do electronic means/procedures have?

Electronic, on-line platforms are used by federal and provincial public bodies as the primary place to post bid solicitations and allow prospective bidders to search for bid opportunities.

Federal government entities advertise contract opportunities electronically on the Government Electronic Tendering System ("GETS"), where approximately 10,000 federal government opportunities are posted annually, according to PWGSC.

Public provincial contract opportunities are also advertised electronically through each province's respective on-line platform.

## c. Where are contract notices, i.e. calls for bid, published?

**Federal Contract Notices**

[PWGSC - Buyandsell.gc.ca/tenders](https://buyandsell.gc.ca/procurement-data/tenders)

**Provincial Contract Notices**

[Alberta Infrastructure - Tendering and Contracting Opportunities](http://www.infrastructure.alberta.ca/912.htm)

[British Columbia - e-Procurement in B.C.](http://www.bcbid.gov.bc.ca/open.dll/welcome?language=En)

[Manitoba Government Tenders](http://www.gov.mb.ca/tenders/index.html)

[Newfoundland and Labrador Government Purchasing Agency](http://www.gpa.gov.nl.ca/tenders/index.html)

[New Brunswick Opportunities Network (NBON)](https://nbon-rpanb.gnb.ca./)

[Nova Scotia Tenders](https://novascotia.ca/tenders/tenders.aspx.)

[Ontario - Supply Chain Management](https://www.doingbusiness.mgs.gov.on.ca/)

[Prince Edward Island Tender Opportunities](http://www.gov.pe.ca/tenders/index.php3)

[Quebec - Sous-secrétariat aux marchés publics](http://www.tresor.gouv.qc.ca/en/public-procurement/government-procurement/)

[Saskatchewan - SaskTenders](https://sasktenders.ca/content/public/Search.aspx.)

## c. Can certain prospective bidders be excluded from the competition?

Certain prospective bidders – or companies that otherwise would have bid – may be excluded from a competitive procurement process, even if they have met the procurement bid documentation requirements, for a number of reasons including poor performance under an earlier contract with the public agency, previous instances of fraud, or litigation between the entity and the public agency. In such instances, the procedure to exclude an entity must have been established well ahead of the particular competition in which the public agency seeks to exclude the entity, and the exclusion procedure must be complied with.

It is also possible to exclude all but a single entity, where sole sourcing is permitted pursuant to the applicable framework.

There are no prescribed rules on short-listing bidders. Public agencies typically address this question in their internal policies and procedures.

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

When a public body issues a call for tenders, it is generally free to establish the criteria that bidders must satisfy in order to be eligible to bid. A public body is also generally free to define situations in which a bidder will be disqualified from participating in the procurement process. In any event, the selection criteria must comply with the Trade Agreements and must accord with the public body's duty to run a fair competitive procurement process that does not unduly favour any particular bidder(s). Additional restrictions which are specific to certain levels of government may also apply.

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

Through the use of the RFQ pre-qualification process, a public body may require that entities pre-qualify for a competitive procurement based on a range of criteria, such as depth of expertise or financial strength. Where a pre-qualification process has been established, only those prospective bidders that meet the requirements may then subsequently submit a bid.

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

In Quebec, enterprises that are convicted of certain prescribed offences set out in the Act respecting contracting by public bodies, become listed on Quebec's Register of Enterprises Ineligible for Public Contracts ("RENA"). Enterprises listed on RENA are prohibited from bidding on public contracts for a prescribed period. Once an enterprise is listed on RENA, there are limited opportunities to be removed from RENA before the period of ineligibility has ended.

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

Where a conflict of interests exists between a public body and a bidder, the bidder may be disqualified from participating in the procurement. The specific circumstances that will constitute a conflict of interest in a given procurement procedure are generally set out by the procuring authority in the bid call document. Public bodies are subject to a duty to avoid any conflict of interest that could compromise the integrity of the tendering process. To that end, bidders may also be subject to a duty to declare any actual, potential or perceived conflict of interest upon discovery of the same. However, case law provides that establishing a conflict of interest at law requires something more than the mere appearance of a potential conflict.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

There is no bar to submitting a joint bid, although in some circumstances bidders will need to be mindful of the requirements against bid rigging set out in the Competition Act. According to the Competition Bureau, bid rigging occurs where two or more persons agree that, in response to a call for bids or tenders, one or more of them will either not submit a bid, will withdraw a bid, or will submit a bid arrived at by agreement. The offence of bid rigging is committed only if the person requesting the bids is not informed beforehand about the agreement made between the parties.

## g. Can members of a bidder consortium be changed during a procurement procedure?

Whether or not a bidder can change a member of a bidder consortium during a procurement procedure will depend on the terms outlined in the bid call documentation.

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

See 4(f), above.

## i. Is there a special regulation or a special requirement for a foreign company to participate in a procurement procedure?

Federal and provincial public bodies are free to allow foreign companies to participate in a procurement process. Foreign companies are not required to have a local branch, subsidiary or tax residence in order to participate in a Canadian procurement procedure.

Public bodies must ensure that the eligibility criteria which they establish for a particular procurement does not unjustifiably exclude foreign companies from participation. That is, public bodies must be conscious of their trade obligations and their broader duty to conduct a fair competitive procurement process.

Under certain circumstances, federal public bodies are required to allow foreign companies to participate in a procurement process pursuant to trade agreements such as the GPA and NAFTA. Exceptions nevertheless exist for procurements that involve national security or national defence.

# 5. Specifications

## a. Are there any rules on the specifications?

Most bid call documents include mandatory requirements, which all submitted bids must satisfy. Any bid that fails to meet even a single mandatory requirement would ordinarily be deemed non-compliant.

Only the criteria that were published in the bid call document may be relied on to evaluate the bids that are submitted, which means that the evaluation criteria must be developed before the release of the bid call document. The bid call document must be transparent, and the evaluation criteria applied evenly with respect to the assessment of all compliant bid submissions.

A public agency may make adjustments to the performance criteria after selecting a preferred bidder; however, the right to make such adjustments must itself be reserved in the bid call document.

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

Where a public body undertakes procurement by way of a tender, there is generally no opportunity for bidders to negotiate with the public body to change the specifications. Tenders typically involve very clearly stated specifications and often the lowest-priced responsive tender is accepted without further negotiations. Similarly, in the context of a tender, a bidder may submit its own specifications or standard terms of business; however, to the extent that such specifications or terms of business do not align with mandatory requirements of the tender documentation, the bidder's submission will be declared non-compliant.

Where a public body undertakes procurement by way of a non-binding RFP, the public body generally expects to negotiate with one or more bidders about certain aspects of the bid documentation. RFPs are often used when the specifications for a project are not particularly clear, so bidders are invited to propose a solution to a problem, requirement or objective. Bidder selection, as part of an RFP process, is thus based on a broader range of criteria, e.g. the effectiveness of the proposed solution, rather than on price alone as is more typical in the tender process.

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

The protection of small and medium enterprises ("SMEs") is not addressed in federal or provincial government procurement legislation. However, the Office of Small and Medium Enterprises ("OSME") within PWGSC advocates on behalf of SMEs and encourages their participation in federal government procurement. The OSME assists SMEs by raising awareness of opportunities and by providing information services.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

The main rule is that contracts must be awarded in accordance with the rules set out in the bid call document (including the public agency's internal policies and procedures). A public agency may insert a broad range of reservations in a bid call document, including the right not to award a contract in accordance with the published evaluation criteria, but such reservations will not be supported by the courts if they are deemed to constitute an abuse of process (in the sense of defeating the principle of procedural fairness).

Public entities are generally free to establish the terms by which they will evaluate bids. In a tender process, public entities typically evaluate bidders based on the lowest-priced bid. In an RFP, public entities generally evaluate bidders based on, inter alia, the best value, which gives them more flexibility to take into account other factors besides just the price of the bid.

## b. Are there any limitations regarding the offered bid price?

Whether or not there are any limitations regarding the offered bid price will depend on the terms outlined in the bid call document.

## c. Are there any rules on alternative bids?

An alternative bid may be defined either as the submission by a bidder of a second bid which is responsive to the evaluation criteria set out in the bid call document, or as the submission of a second bid which is non-responsive to the requirements of the bid call document. The former is acceptable but the latter constitutes a non-compliant bid and will not be considered. While public agencies have a great deal of latitude in defining the requirements of their bid call documents, all bids must be evaluated equally against the evaluation criteria set out in the bid call document.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

The Trade Agreements generally include various grounds for exemptions to competitive bidding. These are supplemented by each public agency's internal policies and procedures, and may also be supplemented by sector- specific provincial and municipal legislation.

## b. What are the consequences for violation of the competitive bidding requirement?

From the perspective of the bidders, violation of the bidding requirements typically leads to a determination that their submission is non-compliant, and therefore will be excluded from consideration in the context of awarding the contract. From the perspective of the party conducting the competitive bidding process, a violation of the competitive bidding requirements, particularly a violation that favours a particular bidder or disadvantages other bidders, can lead to a common law claim for damages. See 8(f) and 8(g), below.

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

Does not apply.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

At the federal level, remedies are available under the relevant Trade Agreements for breach of Canada's obligations therein, and remedies are generally available under contract law and the common law on bidding and tendering for breach of the GCRs, breach of the legal duties attached to government procurement in Canada, and breach of the rules of procurement in a particular federal government procurement process.

A supplier that seeks to challenge a provincial government procurement process is generally limited to suing under the common law of Canada (or civil law of Quebec) and pursuant to any specific provincial public contracting regulations. A supplier may be able to seek redress for a breach of the AIT, which is an internal trade agreement among the different levels of government in Canada. The Ontario Broader Public Sector Procurement Directive requires the public agencies to which it applies to negotiate, mediate or arbitrate disputes.

## c. Is there a specific forum before which procurement disputes are heard?

Typically the bid call document will prescribe how disputes are to be treated, which may include binding arbitration. The CITT hears complaints respecting procurement involving the federal government covered by the Trade Agreements and certain other international trade agreements. Courts are the preferred forum for all other procurement-related disputes.

## d. Are there any timing requirements for the review?

The bid call document will usually set out any timing requirement that must be met by the parties to a dispute. Timelines may also be set by an arbitrator, where one is appointed. The time required to achieve finality in a dispute varies according to the dispute procedure relied on by the parties.

## e. What are the main preconditions for review?

In order to commence a review proceeding before the CITT, the complainant must be a bidder or prospective bidder on a designated contract.

Whether a complainant is a bidder is simply a question of whether the complainant submitted a bid. The attributes of a prospective bidder remain unsettled within the CITT's case law. However, the question generally turns on whether the complainant is capable of submitting a bid before bid closing, whether the complainant has been precluded from submitting a bid, whether the complainant has the technical and financial capability to fulfil the requirement that is the subject of the procurement and whether the complainant has the capacity to submit a proposal in response to the solicitation.

A contract is a designated contract if it meets all of the following conditions:

the contract has or will be awarded by a government institution;

the goods and/or services being procured are covered by a prescribed Canadian trade agreement;

the value of the tendered contract is at or above the monetary threshold for coverage under the specific prescribed Canadian trade agreement;

the procurement must be within Canada.

## f. What are admissible grounds for starting a review proceeding?

A review proceeding may be initiated on the grounds of a breach of one or more applicable international trade agreements, statutes, regulations and contracts. Breach of contract encompasses a number of grounds that are unique to the procurement framework, such as breach of the purchaser's duty to conduct a fair competition, to make full disclosure of, inter alia, evaluation criteria and to reject non-compliant bids. A purchaser's failure to disclose material information and honour the representations made in its tender call can also give rise to concurrent tort claims.

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

The CITT has the power to postpone the award of a contract, to order a procurement to be undertaken again or to award damages to a complainant. Courts have access to a broader arsenal of powers, including the granting of injunctions, setting aside contracts, ordering procurements to be undertaken again and awarding damages to the complainant.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

See 8(g), directly above.

## i. How long does a judicial proceeding for review take?

The length of a judicial proceeding for review will vary depending on the complexity of the subject matter and the behaviour of the parties in the review process. The commercial value of the procurement contract and the resources available to the parties for the review process are also significant influencing factors. It is not uncommon for legal proceedings in Canada to span over several years.

## j. Must unsuccessful bidders be notified before the award? If so, when?

Subject to the specific rules of a particular procurement process, public entities are generally under no obligation to notify unsuccessful bidders of the outcome of a procurement before a contract is awarded. Public bodies nevertheless do often provide unsuccessful bidders with the opportunity to learn why their bid was rejected in favour of another. Pursuant to freedom of information legislation, the federal, provincial, territorial and in some cases municipal governments and their agents are required to provide certain information regarding a procurement process upon to persons who make a valid request.

## k. Are review proceedings common?

The substantial amount of case law arising from bid complaints to the CITT suggests that government procurement review proceedings are common.

## l. Are damage claims in relation with procurement procedures common?

Yes, see 8(k), directly above.

## m. What are the leading court decisions involving procurement disputes?

There have been many court decisions involving procurement disputes, including those by the Supreme Court of Canada, which are followed by the lower courts across Canada. These main Supreme Court of Canada decisions are the following:

*Ontario v. Ron Engineering* (1981), in which the Supreme Court of Canada established the "Contract A/Contract B" paradigm;

*M.J.B. Enterprises Ltd. v. Defence Construction (1951) Limited* (1999), in which the Supreme Court of Canada held it was an implied term of the tender contract that the owner was under an obligation to accept only a "compliant" tender;

*Martel Building Limited v. Canada* (2000), in which the Supreme Court of Canada found an implied obligation to treat all bidders fairly and equally;

*Double N Earthmovers Ltd. v. Edmonton (City)* (2007), in which the Supreme Court of Canada held that owner/buyers were under no duty to investigate whether an apparently compliant bidder could actually comply with the requirements of Contract B;

*Tercon Contractors Ltd vs. British Columbia (Ministry of Transportation and Highways)* (2010), in which the Supreme Court of Canada held that a well drafted, unambiguous exclusion clause could be sufficient to exclude liability for a breach of the duty of fairness.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

The AIT, which was signed by the provinces of Canada, the federal government and the territories in 1995, applies as policy outside the federal environment, where it does not have the force of law. Nonetheless, it contains significant guidance on procurement principles and procedures and is an important reference for local government agencies.

In addition, the Ontario Broader Public Sector Procurement Directive prescribes a number of procurement procedures which apply to procurement by colleges, universities, school boards and hospitals.

## b. Does a specific contract law apply for public contracts?

There is generally no specific body of contract laws that apply exclusively to public procurement contracts. Courts will interpret a contract between a public and private entity in the same way that it would between two private entities. However, as is typical in many jurisdictions, legislation exists at both the federal and provincial levels which bars certain types of claims against public entities and/or limits the liability that can be attached to public entities.

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

The public procurement laws generally apply universally, regardless of the specific industry sector, but many public agencies also prescribe specific procedures applicable to procurement involving technology. In some cases, depending on the technology being acquired, the laws remain unchanged but the procurement strategies and techniques employed must be adjusted to accommodate the technology being acquired.

## b. Are there any specific laws or practices that apply in the defense sector?

Yes, see 1(d), above.

## c. Are there any specific laws or practices that apply in the health care sector?

As mentioned above, the public procurement laws generally apply universally, however many public agencies also prescribe specific procedures applicable to procurement involving health care. Canada has a publicly funded health care system, with roles and responsibilities for health care services shared between provincial and territorial governments and the federal government. Therefore, all dealings with hospitals and other entities in the health care sector will generally be subject to the government procurement rules.

## d. Are there any specific laws or practices that apply to any other particular industry sector?

Federally regulated financial institutions are subject to government procurement guidelines prescribed by the Office of the Superintendent of Financial Institutions ("OFSI"). The guidelines set out OSFI's expectations for financial institutions that enter into a material outsourcing arrangement with a service provider.

As mentioned above, the public procurement laws generally apply universally, regardless of the specific industry sector. However, many public agencies, in addition to those discussed above, also prescribe specific procedures applicable to procurement (i.e. municipalities, school boards, etc.).

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

In October 2016, the Comprehensive Economic Trade Agreement ("CETA"), a proposed trade agreement between Canada and the European Union ("EU"), was signed by both the EU and Canada. Increased access to government procurement opportunities is one of the key features of the agreement. CETA is expected to enter into force provisionally when Canada ratifies the agreement, which is expected to take place in 2017.

In July 2016, the Canadian provinces and territories reached an agreement in principle on a new Canadian Free Trade Agreement ("CFTA"), to replace the AIT. The CFTA is expected to introduce rules to foster broader, more transparent access for Canadian companies to government procurement contracts.

While the courts can be expected to continue to play an important role in procurement, some provinces are considering introducing significant reforms to procurement procedures, in part with a view to harmonizing the procurement framework across their jurisdictions.

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