Selling products or services to government customers in Canada

Things to know

Canada is governed by a federal system, and policies relating to selling to government vary among the federal, provincial/territorial and municipal governments. Common across all jurisdictions are general principles established by case law governing competitive procurements. A party that solicits bids is subject to a duty of fairness and good faith in respect of the execution of the procurement process. This overarching duty includes sub-duties such as

- the duty to treat all bidders fairly and equally
- the duty to provide proper disclosure (relevant, accurate information)
- the duty to avoid conflict of interest and bias
- the duty to evaluate bids according to the disclosed criteria
- the duty to reject non-compliant tenders

Procurement documents (when drafted carefully to account for judicial guidance) can often override at least some elements of these duties.

Under a number of leading cases decided by the Supreme Court of Canada, issuers and bidders have contractual obligations that may arise by participating in a competitive procurement prior to actually entering into the resulting contract. This "Contract A" is deemed to be formed between the party soliciting a bid and the bidder. The terms of Contract A govern the conduct of the parties during the tendering process.

Once a bidder has been selected as the supplier, a second contract, known as "Contract B," is created between the party soliciting a bid and the bidder. Contract B governs the contract for the goods or services being procured.

USEFUL RESOURCES

- Canadian Free Trade Agreement
- CETA
- Government of Canada procurement opportunity website
- United States-Mexico-Canada Agreement
- Canada - Selling to governments
- Office of the Commissioner of Lobbying Canada

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- Recent CUSMA, CETA, CPTPP initiatives pose challenges, provide opportunities for cross-border trade

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FEDERAL GOVERNMENT POLICIES AND TRADE AGREEMENTS

In addition to these general procurement principles, the Government of Canada has established policies that require competitive procurements (subject to narrow exceptions) for purchases over specified value thresholds. It is also a party to multiple trade agreements that require signatories to provide open access to government procurement for certain goods and services above minimum monetary thresholds. These trade agreements include:

- Canadian Free Trade Agreement (an agreement governing trade within the Canadian federation)
- The Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA)
- The Canada-United States-Mexico Agreement (CUSMA)
- WTO Revised Agreement on Government Procurement (AGP)

The result of these multiple and inter-laced requirements is that federal government procurement documents and contracts are highly standardized and generally inflexible.

Things to do

- Review carefully the procurement documents to ensure that all applicable requirements are understood; there will be little ability for the issuing agency to vary the process, policy and contracting approach.
- Where the federal government is a target customer, monitor carefully the various sites used to issue procurements as these will usually be the exclusive avenues by which services, goods and technology may be sold to the federal government.

RELATED TOPICS

- Lobbying in Canada
- Federal government sales – Key policies
- Federal government sales – Certifications and reporting
- Federal government sales – Key contracting issues
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