

# WORLD TRADE ORGANIZATION

RESTRICTED

**S/WPGR/W/11/Add.7**

4 October 1996

(96-4054)

**Working Party on GATS Rules**

Original: English

## COMMUNICATION FROM CANADA

### Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of Canada to Members of the Working Party on GATS Rules.

The delegation has indicated that printed copies of related documents referred to in this response will shortly be submitted to the Secretariat. These documents, which will be available for reference, are:

- The Financial Administration Act;
- Your Guide to Doing Business with PWGSC;
- The Open Bidding Service;
- Annual Contracting Activity Reports, fiscal years 91-92, 92-93, 93-94.

## **I. EXISTING PROCUREMENT REGIMES**

### **Definition**

#### **1. *What is the definition of government procurement employed in completing this questionnaire?***

Government procurement is defined as the direct acquisition on the part of Canadian federal government departments and agencies of materiel and services for the fulfilment of their mandates.

### **Administrative structure**

#### **2. *How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.***

All government procurement is decentralized to departments and agencies except the procurement of goods, which generally rests with the Department of Public Works and Government Services (PWGSC). Overall, 75 per cent of procurement over \$25,000 is handled by PWGSC while the remaining 25 per cent is carried out directly by other departments and agencies. The Treasury Board is responsible for the establishment of the procurement policy of the federal government departments and agencies. Crown corporations are generally responsible for their own set of procedures.

### **Laws and regulations in force**

- 3.(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.*

Financial Administration Act

Annual Appropriation Acts

Treasury Board Contracting Policy and Guidelines

Departmental enabling legislation

Departmental policies and practices.

Each department and agency has individual spending authority. Individual departmental authorities for contracting are generally in the legislation constituting each department and conferring certain powers to its Minister. These authorities are reinforced by the Appropriation Acts passed by Parliament each year which provide funds to carry out departmental mandates. The Financial Administration Act provides for the establishment of financial limits above which Governor in Council or Treasury Board approval is required.

- (b) *Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?*

Yes, the procurement of services is decentralized to departments and agencies while the procurement of goods is generally centralized with Public Works and Government Services Canada, but is subject to Treasury Board contracting policy and guidelines. A mixed procurement is deemed to be a service procurement when the service component accounts for more than 50 per cent of the total projected cost.

### **Procurement procedures applied**

- 4.(a) *What procedures are followed in the procurement process?*

The objective of federal government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people. Inherent in procuring best value is the consideration of all relevant costs over the useful life of the acquisition, not solely the initial or basic contractual cost. The standard rule is to acquire goods and services through a competitive process. However, in specific conditions such as low value purchases or when only one supplier is available, single tendering is allowed.

- (b) *Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.*

Federal Contracting Regulations specify that, consistent with international agreements on all procurement covered by these agreements, departments are required to conduct mandatory bids for procurements exceeding \$25,000 except where exceptions are permitted.

- (c) *What are the time limits for submission of bids?*

Consistent with international agreements, bids are posted from 7 to 40 days, depending upon the relevant legislation or policy.

#### **Publicity for inviting tenders**

- 5.(a) *How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?*

Procurement opportunities that are publicly advertised, are published on the Open Bidding Service (OBS) and in the Government Business Opportunities (GBO). Notices on the OBS and in the GBO appear in Canada's two official languages, French and English, and contain both intended procurement and invitations to tender.

- (b) *Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?*

Lists of registered suppliers, contractors or consultants may be used to solicit competitive proposals for requirements below \$10,000 for printing, below \$25,000 for most goods and services, and below \$60,000 for realty, construction, architectural and engineering consulting, leasing and construction and maintenance services and for some requirements of greater value.

Printing services estimated at \$10,000 or above, most goods and services estimated at \$25,000 or above, and communications services worth \$50,000 or more are normally advertised on the OBS and in the GBO; as are requirements estimated at \$60,000 or above for realty, construction, architectural and engineering consulting, leasing and maintenance services.

- (c) *What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.*

Procurement notices include sufficient information to allow a potential bidder to make an informed decision on whether to order the bid solicitation document. Notices for procurement that are subject to NAFTA or the WTO-AGP must also include information set out in the respective agreement(s). This would include information such as the bid closing time, description of the nature and quantity of the goods or services being procured, and the name and address of the contracting authority.

- (d) *Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?*

Documents ordered through the OBS on-line and Bid Request Line services are priced according to a rate schedule established in the contract with the service provider. Documents costs range from roughly \$5 to \$55, depending on size and method of delivery. Most documents ordered

are at the low end of the range. Subscribers have several choices of delivery methods, such as facsimile, courier and mail.

- (e) *Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.*

The Open Bidding Service (OBS) is a user-friendly automated bidding system designed to give potential suppliers fast, equal access to information on government contracting opportunities. Most PWGSC bidding opportunities for goods and services valued at over \$25,000 are advertised on the OBS, as well as construction, maintenance, architecture, engineering and leasing opportunities over \$60,000, communications professional services valued at over \$50,000 and printing requirements valued at over \$10,000.

Further information on the OBS is found in the brochures *Your Guide to Doing Business with PWGSC* (refer to pages 3, 4 and 5) and *The Open Bidding Service* (provided to the Secretariat). In addition, the OBS Web site address on the Internet is <http://www.obs.ism.ca>.

#### **Requirements laid down for possible suppliers**

- 6.(a) *Are there registration, residence or other requirements for potential suppliers?*

Lists of registered suppliers, contractors or consultants may be used to solicit competitive proposals for requirements below \$10,000 for printing, below \$25,000 for most goods and services, and below \$60,000 for real estate services, construction, architectural and engineering consulting, leasing and maintenance services.

- (b) *What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?*

Contracting authorities have a duty to protect the financial interests of the government. When the bid solicitation requires the submission of bid security, the amount should be determined by the contracting authority in advance. When a bidder has submitted less than the financial security stipulated, the bid will generally be considered as non-responsive. Usually, other additional standards have to be met by Canadian firms, such as health and safety or employment equity considerations.

- (c) *Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?*

The Canadian federal government uses source lists infrequently except for low dollar value contracts.

**Criteria for assessing bids and awarding contracts**

- 7.(a) *What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?*

Award of tenders is based on criteria specified in tender document, such as qualifications, follow-on service or experience, which must be specified in the tender documents.

- (b) *Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?*

Some procurements are not covered by international agreements or are subject to exceptions set out in international agreements, such as set-asides for Aboriginals. For procurements not subject to international agreements, special provisions are allowed for regional and economic development purposes, and a preference may be accorded for Canadian value-added benefits.

- (c) *Is preference given to any particular enterprises or group of enterprises? If so, please specify.*

Generally, no preference is given to any enterprise or group of enterprises.

- (d) *Do the procurement criteria differ according to sector or region of the economy?*

Procurements that are subject to international agreements cannot contain criteria that differ according to sector or region of the economy. For procurements over \$2 million that are not subject to international agreements, but are subject to the Agreement on Internal Trade, evaluation criteria may be used to achieve industrial and regional benefits, as long as the benefits are sought in a non-discriminatory manner with respect to regions for which there exists a general framework of regional development. Procurements over \$2 million, that are not covered by any of the trade agreements, are examined on a case-by-case basis and may include criteria according to a sector or region of the economy.

- (e) *What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?*

The purchasing authority is expected to make the appropriate choice among suppliers, taking into account best value for taxpayers and national and international obligations, such as trade agreements.

**Disclosure of bids received and contracts awarded**

- 8.(a) *How are tenders received, registered and opened?*

Procurements subject to trade agreements are consistent with international trade obligations.

- (b) *Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?*

No, entities do not have to notify unsuccessful tenders individually.

- (c) *Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?*

Contract awards subject to the trade agreements are published.

**Treatment granted to domestic and foreign services and/or suppliers**

9. *What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of "domestic" in relation to domestic services and suppliers.*

Local Content Requirements: none.

Preference for domestic suppliers: An industrial and regional benefits policy may apply for larger value procurements by all government departments, when the procurement is not covered by the international trade agreements. Under this policy, all procurements over a value of \$2 million are reviewed to assess the opportunities for achieving socio-economic benefits in Canada. However, this policy is rarely applied to contracts under \$100 million.

For procurement handled by Public Works and Government Services Canada and not covered by international trade agreements, PWGSC applies a Canadian Content Policy, which restricts a procurement opportunity to suppliers of Canadian goods and services, provided there is adequate competition, usually three or more suppliers.

Preference for small or medium-size enterprises: Canada does maintain an exception under the WTO-AGP and NAFTA for small business. However, it does not currently have in place a program providing small business with preferences.

**Procedures for hearing and reviewing complaints/appeals**

10. *What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.*

A bid challenge process allows any potential supplier to complain to an impartial reviewing authority, at any time throughout the procurement cycle, on how a government procurement is being handled.

The Canadian International Trade Tribunal has been designated as the independent bid challenge authority for Canadian federal government procurements that are subject to the Agreement on Internal Trade, the North American Free Trade Agreement, and the World Trade Organization - Agreement on Government Procurement.

For procurements outside the trade agreements, each purchasing department usually has its own appropriate procedures to deal with complaints.

**II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS**

**11. *Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.***

Memberships: World Trade Organization - Agreement on Government Procurement, North American Free Trade Agreement, GATT Agreement on Government Procurement (1988) and Agreement on Internal Trade.

**III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT**

**12.(a) *Please provide statistics (if available) on the number and value of services procurements***

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

**(b) *Please provide statistics (if available) on the***

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*
- *share of procurement of each service in total domestic consumption of the service.*

*Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.*

Annual contracting activity reports showing services procurement, for fiscal years 1991-92 to 1993-94, has been provided to the Secretariat.

Contact Points

Mr. N.B. (Bruce) Ballantyne  
Client and Supplier Relations Officer  
Public Works and Government Services Canada  
Place du Portage, Phase III, Floor 3C1  
11 Laurier Street  
Hull, Québec  
Canada  
K1A 0S5

Tel. (1) (819) 956-0914  
Fax. (1) (819) 956-6123  
Internet: Ballantb@SOS.PWGSC.GC.CA

Additional information is also available on PWGSC's home page at address <http://w3.pwgsc.gc.ca/> or in the brochure "Your Guide to Doing Business with PWGSC".

Mr. R.J. Kelly  
Group Chief  
Contracting Management  
Deputy Comptroller General  
Treasury Board Secretariat  
10th Floor, East Tower  
140 O'Connor Street  
Ottawa, Ontario  
Canada  
K1A 0R5

Tel. (1) (613) 957-2526  
Fax. (1) (613) 952-1381  
Internet: Kelly.RJ@tbs-sct.gc.ca