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EUROPEAN UNION GOVERNMENT PROCUREMENT GUIDE

for Canadian Businesses



This is the first edition of the European Union (EU) Government Procurement Guide (GPG) for Canadian Businesses. As new EU regulations come into effect and relevant changes to the European procurement environment are enforced, this Guide will likely be revised.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4	Selection.....	14
WHY THIS GUIDE?	4	Award	14
Disclaimer.....	5	CHAPTER 4: GUIDE TO USING TED	15
PROCUREMENT: AN ABBREVIATED SUMMARY	5	Overview	15
CHAPTER 1: OVERVIEW OF THE EU PROCESS	6	Introduction to TED.....	15
Introduction	6	Common Procurement Vocabulary (CPV).....	15
1. Registering for Email Alerts on TED.....	7	Nomenclature of Territorial Units for Statistics (NUTS)	16
2. Review the Contract Notice	7	Setting Up a TED Account	16
A) Request Full Tender Documents	7	Figure 2. The homepage of Tenders Electronic Daily	16
B) Pass the Selection Process	8	Figure 3. The ECAS homepage where bidders can register to use TED	17
3. Completing a Bid.....	8	Browsing TED.....	18
A) Technical Bid	8	Figure 4. The list of contract notices for Belgium	18
B) Financial Bid	8	Setting up an automatic email alert TED using a CPV code	19
C) Certificates.....	8	Reviewing the Contract Notice	19
4. Understanding Procurement Procedures	9	Example of a Contract Notice	20
5. Understanding Selection and Award Criteria.....	9	Figure 5: Contact Details.....	20
6. Submitting a Bid on Time	9	Figure 6: Short Description, CPV, GPA and lots	21
Further Options for Consideration	9	Figure 7: Technical Details.....	22
Consider Identifying a Local Legal Team	9	Figure 8. Procedure, award criteria, time limits and language	23
Consider Hiring a Local Specialist.....	10	Using eCertis for Certificates	24
Consider Promoting Your Company's Additional Competencies	10	Figure 9. The eCertis homepage.....	24
CHAPTER 2: CETA GOVERNMENT PROCUREMENT COMMITMENTS	10	CHAPTER 5: COMPLETING A BID	25
Overview	10	Overview	25
Powers maintained by both sides.....	10	Technical Bid.....	25
Figure 1: CETA Comparison Table.....	11	Financial Bid.....	25
Market Access Changes for the EU	12	Certification.....	25
Market Access Changes for Canada	12	European Single Procedure Document (ESPD).....	25
Excluded sectors.....	12	Member State Implementation	26
EU thresholds in CETA	12	Practical Information	26
CHAPTER 3: CHALLENGES AND EXPECTATIONS FOR BIDDERS	14	eCertis	26
Overview	14	Figure 10 eCertis Source.....	26
Market Research.....	14	Certification: Quality Assurance and Environmental Certification.....	26
Understanding the Procurement Process	14	EU Law, CETA and the GPA	27
Languages.....	14		
Partnering	14		
Certification.....	14		

CHAPTER 6: SELECTION AND AWARD CRITERIA.....	27	Movement of People & Schengen.....	37
Selection Criteria.....	27	The European Institutions and Legal Framework.....	38
Exclusion grounds	28		
Counter-evidence	28	CHAPTER 11: BACKGROUND INFORMATION: EU	
Timeframe.....	29	LEGISLATION ON PROCUREMENT.....	38
Award Criteria.....	29	Overview	38
Most Economically Advantageous Tender (MEAT).....	29	How EU Directives Work	38
Lowest Price and Life-Cycle Costing	30	2004 Directives on Public Contracts and Utilities.....	39
Abnormally Low Tenders.....	30	2014 Directives on Government Procurement, Public	
		Utilities and Concession Contracts.....	39
CHAPTER 7: PROCUREMENT PROCEDURES	30	Public-Public Procurement.....	40
Overview	30	Vertical Cooperation.....	40
Open Procedure	30	Horizontal Cooperation	40
Restricted Procedure.....	30	Transferring Tasks.....	40
Accelerated Procedures	31	Concession Contracts.....	40
Negotiated Procedure	31	Definition	41
Competitive Dialogue	31	Exclusions	41
Electronic Auction.....	31	Procedures, Selection and Award Criteria.....	41
Innovation Partnerships	31	Defence Procurement.....	41
Rules.....	32	Scope	41
Procedure.....	32	Exemptions	42
Structure.....	32	Procedures.....	42
Intellectual Property.....	32	Subcontracting	42
		Exclusion Grounds	42
CHAPTER 8: THRESHOLDS.....	33	Thresholds.....	42
Thresholds in the EU Directives	33		
Threshold Levels as of January 2016.....	33	BACKGROUND INFORMATION:	
Figure 11. Table of Threshold.....	33	PROCUREMENT & THE EUROPEAN UNION.....	43
CHAPTER 9: REMEDIES.....	34	Background on Procurement.....	43
Remedies Overview	34	EU Procurement.....	43
Time Limits	34	Size of Procurement Market	43
Pre-Contractual Remedies.....	34	Figure 14. Estimate of Total Public Procurement	
Post-Contractual Remedies	34	Expenditure by General Government on Works, Goods	
European Commission Legal Proceedings.....	35	and Services (excluding utilities) in billion euros	43
Hierarchy of Complaints Procedures.....	35	Figure 15 Proportion of Bid types	44
Figure 12. Complaints Procedure Overview	35	Facts on Procedures, Criteria and Processing Times.....	44
		Sectoral Breakdown	45
CHAPTER 10: BACKGROUND INFORMATION:		Existing Government Procurement Agreements	
THE EUROPEAN UNION	36	between the EU and Canada	45
Overview	36	Government Procurement Agreement (GPA) History	
Member States.....	36	and Explanation	45
The European Economy.....	36		
Figure 13: The 28 Member States of the		APPENDIX A:	
European Union.....	36	GENERAL ABBREVIATIONS	46
Single Market and Customs Union.....	37		
The Euro	37	APPENDIX B:	
		LIST OF REFERENCES/SOURCES	46

EXECUTIVE SUMMARY

The Government of Canada developed this EU Government Procurement Guide to help Canadian companies bid successfully for contracts. It has been completed prior to the implementation of the Comprehensive Economic and Trade Agreement (CETA), a trade agreement between the European Union and Canada that is expected to increase the number of government-procurement opportunities for Canadian companies.

The Guide will take the reader step by step through the bidding process, provide context where appropriate, and indicate where further information may be found.

The Guide begins by describing a simplified generic process and later expands on each step in the process. Readers should review the generic procedure before consulting subsequent chapters for additional details about CETA and the opportunities it affords, along with relevant challenges and expectations.

The Guide includes chapters about: the use of online tools for EU government-procurement; how to complete a bid; procurement procedures; threshold levels; and the options for legal recourse in the event of potential unfair treatment.

The final chapters of the Guide present information about the European Union and its legal, political and economic framework, as well as about its government-procurement market and relevant legislation.

WHY THIS GUIDE?

The European Union Government Procurement Guide (EU-GPG) was prepared to ensure that Canadian suppliers and partners, particularly small- and medium-sized enterprises (SMEs), can access accurate information about government-procurement procedures and learn good practices for tendering and winning contracts in the EU market.

Government Procurement

Government procurement, also called public procurement in the EU, refers to the process of governments and public bodies buying goods and services. It is highly regulated to prevent corruption and foster the efficient use of public resources.

The Guide aims to:

- ✓ **Increase awareness** of government-procurement laws, regulations and procedures applicable in the EU;
- ✓ **Foster compliance** with EU requirements; and
- ✓ **Promote the effective and consistent** use of information sources and EU-tendering practices across Canada.

The Guide provides an overview of the EU-level regulations affecting the awarding of government-procurement contracts, but presents only limited details about the legislation of each of the EU's 28 Member States that may also govern procurement procedures.

The Guide is designed to support the information provided by the [Canadian Trade Commissioner Service](#). It is also designed to complement [Exporting to the EU, A Guide for Canadian Business](#), which is primarily aimed at exporters.

Under the Canada-EU Comprehensive Economic and Trade Agreement (CETA), expected to enter into force in 2017, Canadian companies will have preferential access to some of the estimated €450 billion¹ spent on government procurement in the EU. To facilitate the tendering process, government-procurement procedures (notifications and submissions) are now online. This makes it relatively easy to search for potential markets for specific goods or services.

¹ Source: European Commission <http://ec.europa.eu/DocsRoom/documents/11022/attachments/1/translations/en/renditions/native>

Understanding the EU's procurement process is essential to winning government contracts. As new government-procurement information emerges, tools such as this EU-GPG will be revised accordingly. We hope that Canadians take advantage of these tools to secure contracts in the EU.

SMEs

New rules make it easier for SMEs to access EU government-procurement opportunities.

This Guide features helpful information for SME bidders.

[Enterprise Europe Network](#) is an official EU resource designed to help SMEs.

Disclaimer

The information about EU legislation mentioned in this Guide is publicly available on various EU websites and was current at the time of publication. For updated information, please consult the [Europa Website](#) or [SIMAP](#).

The information contained in this Guide is intended solely to provide general guidance to readers who accept full responsibility for its use. The information is provided with the understanding that the authors and publishers are not herein engaged in rendering professional legal advice or services. As such, it should not be used as a substitute for professional consultation.

While we have made every attempt to ensure that the information contained in this Guide comes from reliable sources, the Government of Canada is not responsible for any errors or omissions, or for the results obtained from the use of this information. All information in this Guide is provided as-is with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance. Nothing herein shall to any extent substitute for the independent investigations and the

sound technical and business judgment of the reader. Laws and regulations change continually, and can be interpreted only in light of particular factual situations.

Certain links in this Guide connect to other websites maintained by third parties that may or may not be presented within a frame in this Guide. The Government of Canada has not verified the contents of such third-party sites and does not endorse, warrant, promote or recommend any services or products that may be provided or accessed through them or any person or body which may provide them. The Government of Canada has not issued or caused to be issued any advertisements which may appear on these websites.

Procurement: *An Abbreviated Summary*

The way government procurement, also known as public procurement or public purchasing, works is that a public body first issues a contract notice, a term used repeatedly in this Guide. It's also known as a call to tender and a call for bids. A contract notice is a notification published by a government body, or contracting authority, of a contract for which bids are sought from private companies.

The contract could be for any task: supplying chairs for a courtroom in lower Bavaria; supplying signaling boxes for Stockholm's tram system; the construction of a road in the Highlands of Scotland; maintaining the IT system of the Romanian police force, etc. The list is seemingly endless.

Each contract notice contains important information. It describes the work required: the technical



specifications, the timing, the location, the government body issuing the contract, etc. It also describes who can bid for it, how to bid for it and by which date. It indicates the criteria for selecting the winning bid. It is important to read this notification carefully.

Each bidder then prepares their best response and sends it to the government body by the means outlined in the contract notice, such as by post or email.

Once all bids are received, the government body must select the winner by following the rules listed in the contract notice. The government body must follow the rules to avoid any perception of inappropriate or corrupt practices.

Once a contract is awarded, the government body and the successful bidder establish a relationship and the work can begin.

The strict procedural rules also apply to bidders. If a bidder mistakenly lists a price in the wrong part of their bid, for instance, or fails to conform to the process as outlined, the government body can disqualify the entire bid. To avoid minor mistakes, bidders should read and fully understand the instructions outlined in the contract notice and procurement documents.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 1: OVERVIEW OF THE EU PROCESS

Introduction

This chapter provides a generic overview of the EU government-procurement process used in all business sectors. The process involves [Tenders Electronic Daily \(TED\)](#), the EU's centralized tender registry. It is an essential resource for bidders.

The steps summarized below and outlined in the rest of this chapter are described in greater detail in subsequent chapters. Clicking on a highlighted link navigates to the appropriate chapter.

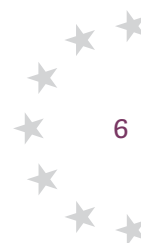
There are six basic steps in the EU government-procurement process.

1. [Use TED to register for email alerts.](#)
2. [Review the contract notice.](#)
 - A) Request the full tender documents.
 - B) Pass the selection process.
3. [Complete the bid including:](#)
 - A) Technical bid
 - B) Financial bid
 - C) Certificates
4. [Understand the procurement procedures.](#)
5. [Understand the selection and award criteria.](#)
6. [Submit the bid on time.](#)

What is TED?

TED (Tenders Electronic Daily) lists calls for tender and contract notices—thousands of them every day from across the EU. Bidders should browse the listings regularly.

[See the Guide to using TED](#)



GP Rules

Government-procurement markets are regulated; government bodies and contracting authorities must follow pre-defined rules to avoid any perception of impropriety.

Information about EU government-procurement can be found on the relevant [European Commission website](#).

Email Alerts

Bidders register to receive automatic notifications when relevant contract notices are posted on TED. The site lists Common Procurement Vocabulary codes for every product and service.

1. Registering for Email Alerts on TED

[Tenders Electronic Daily \(TED\)](#), the online section of the supplement to the Official Journal of the European Union (OJEU), is a centralized platform that displays the contract notices of government bodies from all 28 EU Member States as well as from Iceland, Norway and Lichtenstein. TED does not list contracts valued below [the thresholds outlined in the EU Directives](#).

Using TED

Browse through the contract notices currently available to become more familiar with TED.

[TED](#) publishes approximately 140,000 new contracts each year² with a total estimated value of €450 billion³.

² Source: European Commission http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf

³ Source: European Commission <http://ec.europa.eu/DocsRoom/documents/11022/attachments/1/translations/en/renditions/native>

[TED](#) lists available contracts by country and by sector. Contracts are grouped according to [Common Procurement Vocabulary \(CPV\)](#) codes, with a designated CPV code for each good or service, and general CPV codes various economic sectors. Users can register for email notifications of new contracts that fit specific parameters, such as CPV code. Each alert includes a link to the contract notice on [TED](#).

Although email alerts are helpful, bidders should also conduct independent research about broader market conditions.

[Go to 'Guide to Using TED' to find out how to set up an email alert on TED](#)

2. Review the Contract Notice

The contract notice provides an overview of the contract, contracting authority, contract value and general details about the [procurement procedure](#) (e.g. open, restricted, negotiated, etc.).

The contract notice also lists the technical specifications, award and exclusion criteria, and other important details.

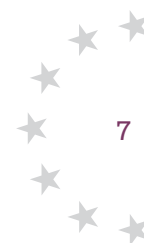
It is important to read the contract notice carefully and to understand the procedure fully. Procurement rules are strict; a bid that fails to adhere to the rules is likely to be excluded from further consideration. The tender documents contain additional information.

Preparing and submitting a bid that complies with all rules can be daunting. Bidders are allowed to use specialists—independent contractors—to help prepare proposals.

[Go to 'Guide to Using TED' to see more about how to review contract notices](#)

2A) Request Full Tender Documents

The contract notice is only a summary; bidders should request copies of all tender documents from the contracting authority. The contract notice includes contact information for the appropriate government body.



Get the Full Tender Documents

Contract notices provide only limited information; bidders must request full tender documents from the relevant government body.

2B) Pass the Selection Process

Some [procurement procedures](#) involve a pre-selection or qualification process. Only the bids of those who complete this process are considered for the contract. The pre-selection process might include financial, technical and performance criteria. A potential bidder who fails to provide all requested information will likely be disqualified. Bidders must typically request pre-selection information from the contracting authority.

3. Completing a Bid

Bidding often follows a double- or triple-envelope system to separate technical, financial and certification aspects of bids. This allows for the independent assessment of each aspect. Failure to organize bids according to the system described in the tender documents could lead to disqualification.

[Go to 'Completing A Bid' to learn more about certificates and the European Single Procurement Document \(ESPD\)](#)

3A) Technical Bid

The technical part of a bid usually includes specific details about the quantity, quality and method of work. It is often one of the most time-consuming tasks of bidding for public contracts.

The [award criteria](#), described in the tender documents or the contract notice, typically inform bidders of the relative importance or weighting of the different aspects of bids. Since evaluators will use this weighting to rank bids, bidders should structure their proposals accordingly to maximize their chances.

Languages

English is not always the language used in EU government-procurement processes. Procurement documents may be published only in languages other than English; similarly, some competitions may require that bids be in a language other than English. Professional translation services are available in Canada and in other countries.

3B) Financial Bid

The financial bid usually contains information such as the cost of completing the work. Cost is often among the most important criteria and an area where bidders typically face tough competition.

The [award criteria](#), contained in the tender documents or the contract notice, typically inform bidders of the relative importance or weighting of the different aspects of bids. Since evaluators will use this weighting to rank bids, bidders should structure their proposals accordingly to maximize their chances.

3C) Certificates

Certificates may be required for criteria such as tax compliance, financial solvency, adherence to quality or environmental standards, etc. Previous EU rules required every bidder to include the necessary certificates in every submission. Now, however, most EU Member States follow a new procedure: bidders include a [European Single Procurement Document \(ESPD\)](#)—a self-declaration that they fulfill all certification requirements. The winning bidder is required to provide the required certificates to secure the contract. This rule change aims to facilitate bidding for SMEs. Not all EU Member States have adopted this procedure, however.

[eCertis](#), an online portal, provides additional information about certificates and about which certificates are commonly required in each Member State. Note that some certificates can be issued only by administrative bodies and may not be available on [eCertis](#).

[Go to 'Certification' to learn more about certificates and the ESPD](#)

4. Understanding Procurement Procedures

EU government bodies use a variety of procurement procedures, such as **Open**, **Closed**, **Negotiated** and **Competitive Dialogue**. Some competitions involve electronic auction (**e-auction**) and new rules will eventually introduce the **Innovation Partnership** contract. Bidders should always understand and follow the appropriate procedure.

[Go to 'Procurement Procedures' to find out more about certificates and the ESPD](#)

For SMEs

The [Enterprise Europe Network](#) is an official website provided by the European Commission to help SMEs take full advantage of business opportunities in Europe. This resource may also help bidders to find partners for government -procurement contracts.

5. Understanding Selection and Award Criteria

Selection and award criteria determine who may bid and how the winning bid will be selected, respectively. The government body sets out these criteria in the tender documents or contract notice and must adhere to them during evaluations.

The [selection criteria](#) aim to ensure that only suitable candidates bid. The criteria may include specifics such as manpower, financial capacity and qualifications.

The [award criteria](#) determine which bid will be successful. The criteria are based either on the lowest cost or the principle of [Most Economically Advantageous Tender \(MEAT\)](#). MEAT may consider price, quality, aesthetics, functionality, operating costs, cost-effectiveness, technical support and other factors.

[Go to 'Selection and Award Criteria' to find out more about certificates and the ESPD](#)

6. Submitting a Bid on Time

Deadlines for government procurement are usually strict and in many cases, absolute. Late bids are almost always disqualified from consideration. When submitting by mail, bidders must recognize that deadlines usually specify receipt of bids rather than mailing date.

There are [minimum lengths of time](#) for government-procurement competitions; depending on the type of bid process, these vary from 15 to 52 days. However, this time period starts when the government body sends from bid specifications to [TED](#); as a result, bidders may have fewer days to prepare and submit proposals.

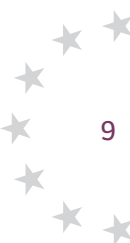
Further Options for Consideration

Consider Identifying a Local Legal Team

As legal systems differ by EU country, and given that complaints about allegedly unfair contract awards must be filed quickly (usually within 30 days), bidders might wish to identify a law firm located in the country that initiated the tender.

Identify Local Lawyers (Optional)

Bidders may wish to identify a local law firm to assist before submitting a bid in the event that they wish to make use of [remedy procedures](#).



Consider Hiring a Local Specialist

Companies in Ireland, the UK⁴, France and other EU countries specialize in helping bidders win contracts. These specialists typically have knowledge, expertise and experience with the procurement processes used in that country. Many of these companies charge fees based on the value of the contract to be awarded.

Identify a Local Tender Company (Optional)

Identifying a local company that specializes in tendering for public contracts could help to maximize a bidder's chances of success.

Consider Promoting Your Company's Additional Competencies

Corporate Social Responsibility (CSR) is often given additional consideration in the EU. If you can provide evidence of additional competencies (such as CSR) that you and/or your company can demonstrate, and that you believe may enhance your chances of success, you should include the relevant documentation in support of this when submitting the tender.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 2: CETA GOVERNMENT PROCUREMENT COMMITMENTS

Overview

The government-procurement chapter in the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union gives Canadian companies more comprehensive and favourable access to the EU's procurement market than those of any other G20 country.

In the sectors that the EU has opened, EU public authorities will be obliged to award the contract to the company (including Canadian companies) that submits the bid scoring highest in the evaluation of specifications and requirements. Provided a bid meets the EU standards, a government body may not discriminate against a Canadian company on the basis of nationality. If a Canadian company has reason to believe it was treated unfairly, it has the legal right to request a review of the process and to submit a claim ([see Remedies](#)).

What CETA Means to Canadian Companies

CETA will give Canadian companies access to a much larger Government Procurement market –almost the same market access that EU states give each other. It is the best access given to any G20 country.

Powers maintained by both sides

The government-procurement chapter of CETA relates only to contracts above a certain value or threshold (see Figure 1 CETA Comparison Table). Competitions for contracts below the stated value are not obliged to consider bids from Canadian companies. The same rule applies to competitions for Canadian government contracts; they are open to EU companies only when the contract value is above a specified threshold. The table below lists a few exceptions to this rule.

⁴ When this guide was written, UK voters elected to leave the EU, although the relevant negotiations had not begun. As such, the Guide refers to the UK as an EU Member State.

What CETA Means for Canadian Companies Access to EU Procurement Markets Before and After CETA

BEFORE CETA

CANADIAN COMPANIES EXCLUDED→
from the GPA in several sectors of the EU economy

NATIONAL GOVERNMENT BODIES→

Access to two EU institutions:

- 1- European Commission,
- 2- Council of the EU

Multiple government bodies at the national level
(see WTO list of central entities [here](#))

SUB-CENTRAL GOVERNMENT BODIES→

Certain sub-central government bodies
(see WTO list of sub-central entities [here](#))

OTHER GOVERNMENT BODIES→

Certain sectors such as urban transport,
electrical and water utilities. These three sections
are carved out for Canada

(see WTO list of other entities [here](#))

AFTER CETA

**CANADIAN COMPANIES GET ALMOST
THE SAME ACCESS** that EU Member States
provide to one another (see exclusions below)

NATIONAL GOVERNMENT BODIES

Access to three EU institutions:

- 1- European Commission,
- 2- Council of the EU, the
- 3- EEAS

All 28 Member State governments

SUB-CENTRAL GOVERNMENT BODIES

All sub-central government bodies (e.g. local
governments, hospitals, health boards etc.) as
defined by EU regulation (NUTS).

OTHER GOVERNMENT BODIES

Large array of utilities, including water, electricity
and gas

EXCLUSIONS

- ✓ Ports and airports
- ✓ Broadcasting
- ✓ Postal sector
- ✓ Shipbuilding and maintenance by certain bodies

MORE COVERAGE THAN EU

Energy bodies governed by public law, cultural
industries and public transit

Figure 1: CETA Comparison Table

For more information see the
[Consolidated Text of CETA](#)

Canada and the EU have retained the right to give preference to domestic companies when using grants, loans or fiscal incentives. Public authorities may also favour local companies when contracts fall below the threshold values outlined in CETA or are in excluded sectors (see the consolidated CETA text and the CETA Comparison Table, Figure 1, above for additional information). Canada and the EU can also specify technical requirements such as experience, and social and environmental criteria.

Public authorities may also choose a [procurement procedure](#) and opt to shorten deadlines if specific conditions have been met, including having been posted (on [TED](#)) for at least 40 days.

Under CETA, Canada and the EU can exclude contracts within specific sectors, such as those involving national security; maintaining order and safety; human, animal and plant health; intellectual property; persons with disabilities; philanthropic institutions; prison labour; and Aboriginal businesses.

Market Access Changes for the EU

Under CETA, Canada opens government-procurement markets to EU companies at the sub-federal level (provinces, territories and municipalities), going beyond the commitments made in the GPA (WTO) and the North American Free Trade Agreement (NAFTA). The procurement chapter of CETA specifies the elimination of some of the asymmetries between the EU and Canada, and provides the most favourable and comprehensive coverage of any of Canada's free trade agreements.

Canada's procurement commitments now involve federal entities, provincial and territorial ministries, most agencies of government, Crown corporations (i.e., state-owned corporations administered at arms-length from government), and regional, local and municipal governments and entities. The EU guarantees Canadian suppliers reciprocal access to European procurement market.

Market Access Changes for Canada

With implementation of the CETA, the EU will give Canadian firms preferential access to its procurement markets. In practical terms this means that Canadian firms will have greater access to the EU procurement market than non-European companies, and better than those based in other G20 nations.

It is worth noting is that the EU does not have so-called buy-EU preferences (except when the value of the contract is below stated thresholds), nor is it permissible to have buy-national clauses at the member-state level that discriminate against other EU Member States.

Excluded sectors

Canada has carved out exceptions within CETA that include healthcare and social services; cultural industries; Aboriginal businesses; security and defense; research and development; financial services; regional development; recreation, sport and education services; airport and port authorities; shipbuilding and repair; and any procurement made on behalf of non-covered entities.

The EU's carved-out sectors include ports and airports; broadcasting; postal services; and shipbuilding and maintenance.

EU thresholds in CETA

The threshold levels for procurement contracts in CETA are similar to those in the EU Directives. This means that Canadian and EU companies have the same access to sectors covered by CETA. The only exception is for sub-central authorities with a threshold of 355,000 [SDR](#) (currently equal to approximately €371,000 or \$604,700). This is to reciprocate Canada's threshold at the sub-central level.

The thresholds levels found in CETA are listed below. To find the relevant threshold level, select the relevant contracting body and the type of contract (goods, services or works). (Note: Euro and CAD values are adjusted every two years).

It is worth noting that the stated threshold level is not usually a relevant issue for bidders, since the notice should only be viewable when the contract value exceeds the level. It may become an issue, however, if the contract value exceeds the threshold and is not advertised on [TED](#). In this case, [legal redress could be sought](#).

For a full list of the procurement thresholds, please see the [consolidated text of the CETA](#).

Contracting Body	Goods contracts	Service contracts	Works contracts
The EU institutions and central government-contracting authorities of EU Member States.	130,000 SDR (€135,000 or \$221,400)	130,000 SDR (€135,000 or \$221,400)	5,000,000 SDR (€5,225,000 or \$8,500,000)
Sub-central entities (regional and local entities, and bodies governed by public law including hospitals, schools, universities and social-service agencies)	200,000 SDR (€209,000 or \$340,600)	200,000 SDR (€209,000 or \$340,600)	5,000,000 SDR (€5,225,000 or \$8,500,000)

CHAPTER 3: CHALLENGES AND EXPECTATIONS FOR BIDDERS

Overview

When bidding for government-procurement contracts, bidders should expect to face challenges and hurdles. This chapter briefly outlines some areas where difficulties may be encountered, such as with certification, selection, submission procedures and partnering.

Market Research

The importance of good market research should not be underestimated. Research should ideally be undertaken before preparing to bid or requesting to participate. Areas to research include assessing the market for a particular good or service, understanding how competitive the market is and where a competitive advantage might be gained, and identifying any specific economic, political or environmental circumstances related to that market.

Understanding the Procurement Process

It is important to avoid procedural mistakes. Bidders should obtain copies of all tender documents from the contracting authority and follow every step included in them. Bidding processes vary from country to country and from one government body to the next. Bidders might consider hiring local bid-preparation specialists.

Languages

Contract notices in [TED](#) generally feature multiple languages; most are in English as well as in the national language of the contract authority. The full tender documents, however, are often only in the national language. Many tenders require that submissions feature the national language of the contracting authority. Professional translators are available in both Canada and across the EU.

Partnering

Some Canadian companies partner with local companies on bids. Choosing an appropriate partner requires research. Some contracting authorities will advise bidders about potential partners. Companies wishing to partner may also search [TED](#) for local SMEs awarded previous contracts.

[Enterprise Europe Network](#) is a website of the European Commission designed to help SMEs take advantage of business opportunities. This resource can also help bidders identify potential partners.

Certification

Obtaining the proper [certification](#) may pose challenges for Canadian SMEs, particularly since certification systems differ from country to country. To learn more, please consult the chapter on [certification](#).

Selection

Some [procurement procedures](#) require bidders to qualify via pre-selection; only companies that meet specific [selection criteria](#) can bid for the contract. The criteria are usually strictly defined and relate to financial, performance and technical matters. Even a minor omission at this stage may lead to disqualification. Bidders must typically request pre-selection documents from the contracting authority.

Go to [Selection Criteria](#) to learn more.

Award

The award of a contract follows the [award criteria](#) stipulated in the tender documents. These criteria, along with their relative weighting, should inform all bids. If environmental considerations account for 50% of the award criteria, bidders should devote a similar percentage of their proposal to these considerations.

Go to [award criteria](#) to learn more.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 4:

GUIDE TO USING TED

Overview

All applicable EU procurement notices are published on [TED](#), a centralized online platform and the online version of the **Supplement to the Official Journal of the EU (OJEU)**.

This chapter provides step-by-step guidance on using [TED](#) and includes the following sections:

1. [Setting Up a TED Account](#)
2. [Browsing TED](#)
3. [Setting Up an Automatic Email Alert on TED](#)
4. [Reviewing the Contract Notice](#)
5. [Using eCertis for Certificates](#)

Introduction to TED

[TED](#) is updated daily from Tuesday to Saturday with approximately 1,700 new notices every day.

e-Procurement

Government procurement in the EU is becoming completely electronic.

The European Commission has produced a [timeline for transitioning to e-Procurement](#).

What **can be found** on [TED](#)?

- ✓ Contract notices from the 28 Member States, Lichtenstein, Norway and Iceland, that are above the stated threshold values of the EU Directives;
- ✓ Contract notices from institutions such as the European Commission, the European Parliament, the Council of the European Union and the European External Action Service;
- ✓ Contract notices funded by the European Central Bank, the European Investment Bank, and the European Bank for Reconstruction and Development;
- ✓ Contract notices from non-EU countries that involve EU funds;

- ✓ Prior information for upcoming contracts; and
- ✓ Contract award notices.

What **cannot be found** on [TED](#)?

- ✓ Contracts whose value is below the [threshold levels](#) outlined in the EU directives; and
- ✓ Contracts in non-EU countries financed by EU funds and managed at the local level.

A summary of the contract notice will be available in English, however the full text of the contract notice and the tender documents are often available only in the original language. It is up to the contracting entity to decide how much information to provide in English and whether it will accept bids in that language.

For a detailed guide on [TED](#) features, please see the [TED Help Pages](#).

Common Procurement Vocabulary (CPV)

The Common Procurement Vocabulary (CPV) used on [TED](#) is a classification system for goods and services included in tenders.

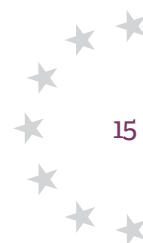
What is Common Procurement Vocabulary?

Common Procurement Vocabulary (CPV) is a code that lets government bodies quickly and precisely identify a product or service.

e.g. "Electrical fitting work" has the CPV 45311200.

Using CPV, bidders can register for email notifications and be alerted whenever an EU government body requests that CPV.

To know more about using CPV, go to [‘Setting Up an Automatic Alert’](#).



CPV assigns a number to every good, service and contract, making it easy to identify, in any language, the contents of a procurement contract.

The first two digits of the nine-digit CPV describe the general category; the remaining digits provide additional specificity. For example, code 03000000-1 refers to “agricultural, farming, fishing, forestry and related products,” while 03212212-9 refers to chick peas.

For more information about CPV, including a full list of codes, please see the [SIMAP page on CPV](#) or the [European Commission page on CPV](#).

Nomenclature of Territorial Units for Statistics (NUTS)

The Nomenclature of Territorial Units for Statistics (NUTS) is a series of codes used on [TED](#) and assigned to various EU territorial areas. The first letters of the code identify the country, while subsequent numbers identify the specific region.

For example: Austria has the code AT; Burgenland has the code AT11; and Nordburgenland has the code AT112.

For a complete list of all codes, please see the [SIMAP page on NUTS](#).

Setting Up a TED Account

Although anyone may use [TED](#), registered users can access TED archives, save settings (such as language preferences) and receive email alerts or RSS feeds, which notify users of new contract notices.

For a detailed guide on [TED](#) features, please see the [TED Help Pages](#).

1. Go to simap.ted.europa.eu/. SIMAP is the primary online resource for EU government procurement. The name is an acronym for Information System for Public Procurements (in French système d’information pour les marchés publics).

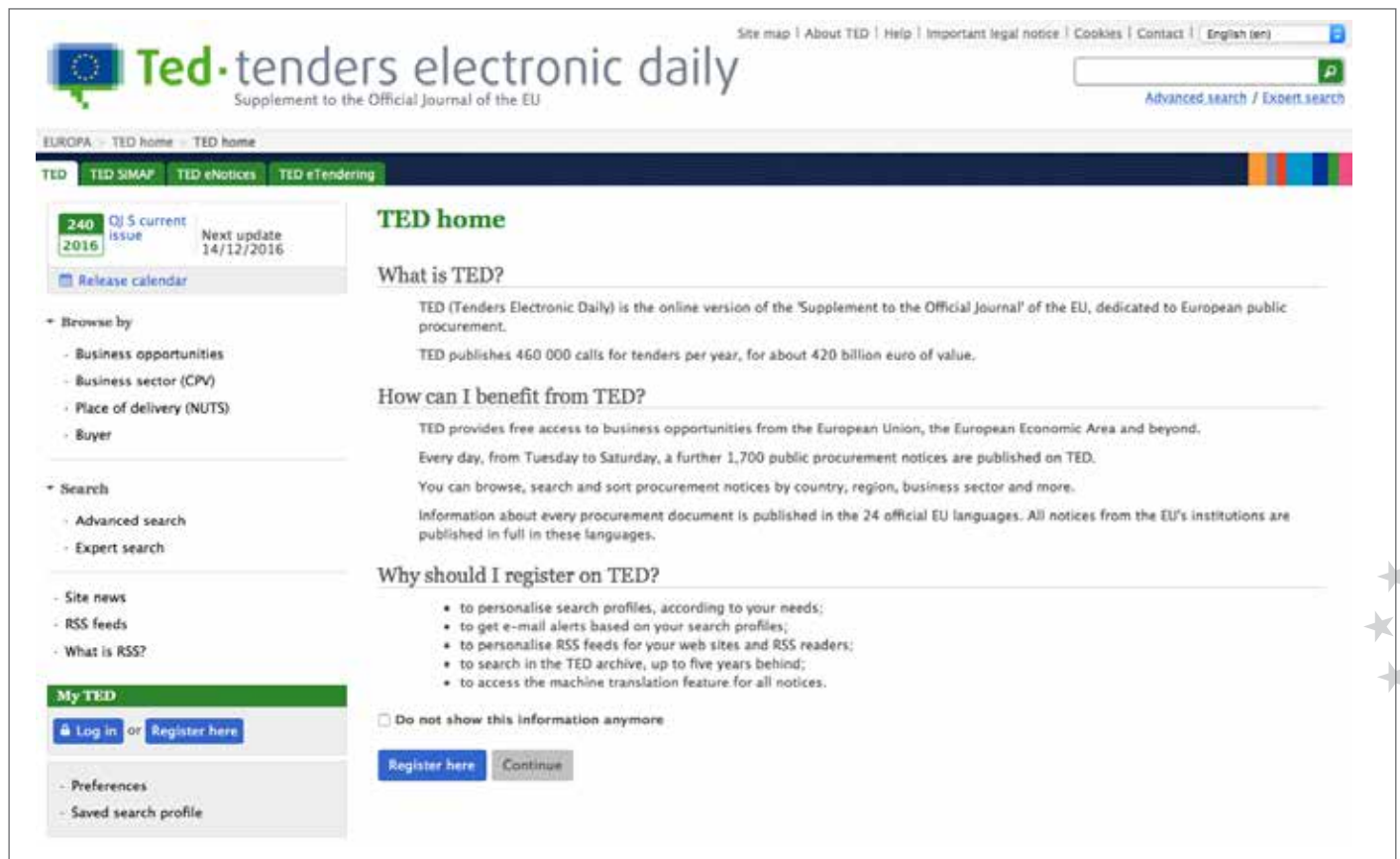
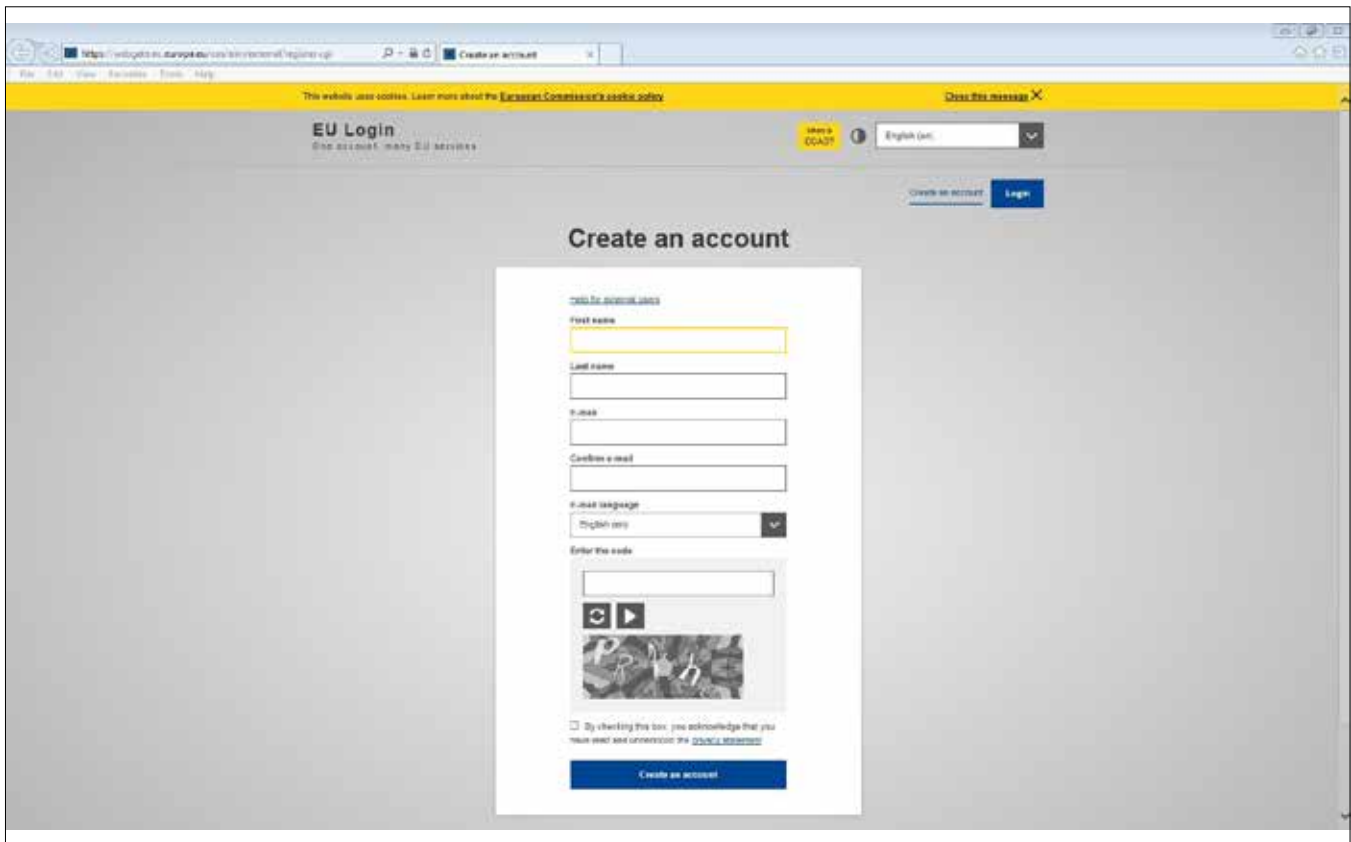


Figure 2. The homepage of Tenders Electronic Daily (TED), (Source: © European Union, <http://ted.europa.eu>, 1998–2016)

2. To register on [TED](http://ted.europa.eu), click on the TED icon and then left-click on log in on the left side of the page. This opens the European Commission Authentication Service (ECAS) website. On this site, click the globe image marked “external.” This is for users who do not work for a EU institution.
3. Enter a username email address and select a password; no further details are required. An email will be sent to the address. Click on the link provided to return to [TED](http://ted.europa.eu) and confirm the account by re-entering an email address.



The screenshot shows the 'EU Login' website's 'Create an account' page. The browser address bar shows 'http://webgate.ec.europa.eu/eas/external/register.cgi'. The page has a yellow header with the text 'This website uses cookies. Learn more about the European Commission's cookie policy' and a 'Close this message' button. Below the header, the 'EU Login' logo is displayed with the tagline 'One account. Many EU services.' To the right of the logo are links for 'What's EAS?' and 'English (en)'. Below these are 'Create an account' and 'Login' buttons. The main content area is titled 'Create an account' and contains a form with the following fields: 'First name', 'Last name', 'Email', 'Confirm e-mail', 'E-mail language' (a dropdown menu currently showing 'English (en)'), and 'Enter the code' (a text box with a CAPTCHA image below it). At the bottom of the form is a checkbox with the text 'By checking this box, you acknowledge that you have read and understood the [privacy statement](#)' and a 'Create an account' button.

Figure 3. The ECAS homepage where bidders can register to use TED. Click on the globe symbol marked “External.”
(Source: © European Union, <http://ted.europa.eu>, 1998–2016)

Browsing TED

TED makes it easy to quickly determine if a procurement market exists for a specific good or service. All users can browse notices by country, sector and type of notice.

1. Those who choose not to register on TED can click “continue” and go to a page displaying notices by country. Select a country of interest.

2. Under “business notices” on the right side of the page, users can select from the various types of available notices. Contract notices are the most common procurement-contract category.
3. Lists of notices for this category are presented with a description, document number, country, publication date and submission deadline. Click on the document number of the notice of interest.

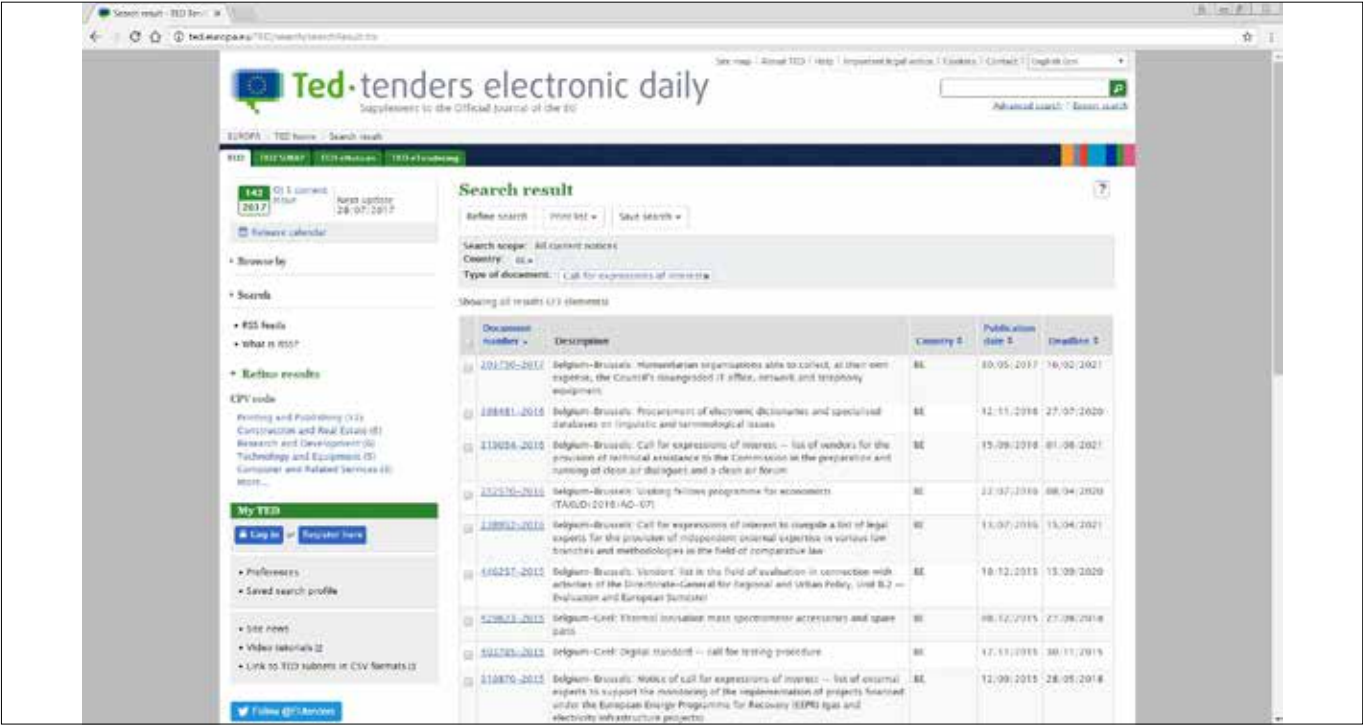


Figure 4. The list of contract notices for Belgium showing (from left to right) document number, description, country, publication date and submission deadline. Click on “Document number” to see the contract notice. (Source: © European Union, <http://ted.europa.eu>, 1998–2016)

4. Users are then taken to the contract notice. Along the top of the page, a tab specifies the language of the documentation—English, as well as the national language of the contracting authority. Occasionally, tenders may be written only in the original language, however the subject headings should also appear in English. In the top-left corner, just below the tabs, a line denotes the date of publication, whether the tender is for goods or services, and the type of procedure (i.e. open, restricted, etc.).

5. This summary section, under section II 1.7, should also indicate whether the tender notice is subject to the GPA of the WTO, meaning that companies from signatory countries’ to this agreement (the GPA of the WTO) can bid for this contract.
6. Click on “summary” to view a more complete version of the request for tenders. Details about the contracting entity, along with contact information, will appear at the top of the summary. Immediately below are details about how to submit bids.

If the address of the contracting entity is not readily available, please refer to the EU's contracting entities, available on the [Annexes to the 2004 Directives](#).

Setting up an automatic email alert TED using a CPV code

Email alerts enable registered users to receive daily, weekly, biweekly and monthly notifications about potential opportunities in the EU. Note, however, that monthly alerts may not be desirable as deadlines can be as short as 15 days. Email alerts are one of the simplest and most useful tools for receiving notifications concerning the EU procurement market.

1. **Log into ECAS to receive alerts (see '[Setting Up a TED Account](#)').**
2. **Once the account is set up, return to the [TED](#) homepage, and click on Business Sector (CPV) on the left side, underneath the SIMAP, eNotices, TED and eTendering tabs.**
3. **Now select, from the categories listed, those you'd like to follow. This will take users to a list of results showing all contract and award notices, along with other document types, in the selected category.**
4. **On the left side of the screen under "Search result," there are several boxes. Use these to narrow your search by "Document type," "Country" and "CPV Code." Moving to the right across the top of the screen, select the "Save search" box. To save the search, hover over "Save search" and select "Save search to search profiles," and assign a name when prompted.**
5. **To make the search more precise, also specify "Document type," "Country" (which includes whether it is covered by the GPA) and/or "CPV Code."**
6. **Under the "CPV Code" box, users can focus their searches and specify an exact product or service.**

For example: Construction and Real Estate, Construction work, Building installation work,

Insulation work, Sound installation work will display results for CPV code 45323000, Sound installation work.

7. **Once you have identified products or services, save the search by clicking on "Saved search profile" on the left side under the "My TED" box. The search will appear. Under "Set as news alert/RSS feed," users can select daily, weekly, biweekly (fortnightly) or monthly email alerts, or RSS feed. The results will be sent by email to the address associated with the ECAS account.**

Reviewing the Contract Notice

This chapter will explain information in [TED](#) contract notices by using an example. Remember that it is always best to obtain copies of the full tender documents from the contracting authority.

Request the Full Tender Documents

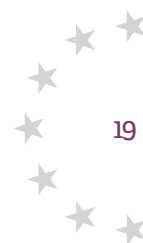
Remember that while understanding a contract notice is important, it is best to get copies of the full tender documents by directly contacting the contracting authority.

For additional information, scroll down to the summary and review the following:

The first line of the summary, on the left side of the screen where the date of publication appears, indicates the type of contract (goods or services) contract and procedure.

Section I provides information on the government body, including contact details.

Section II lists the subject, duration and a description of the contract, the Common Procurement Vocabulary, and whether the contract is divided into lots, covered by the GPA, or renewable.



Section III provides some (but possibly not all) technical, economic and financial specifications. These include applicable conditions, such as enrolment in a trade registry, and the ability to meet economic, financial, and/or technical criteria.

Section IV specifies the contract procedure (open, closed, negotiated etc.) and award criteria.

Section V lists the notice of a contract award; otherwise, it is blank.

Section VI contains supplementary information, as needed.

Example of a Contract Notice

Figure 5: Contact Details

On the top left corner is the date of publication: 12th of March 2013 (note the European date-convention of DD/MM/YY). Below are contact details of the government body—the fictional city of Blandton, United Kingdom—including phone number and email address. It also states that further information and documents may be requested from the government body.

12/03/2013 S51 - - Services - Contract notice - Negotiated procedure

United Kingdom - Blandton: Office cleaning services

2013/S 051-084936

**Contract notice – utilities
Services**

Directive 2004/17/EC

Section I: Contracting entity

I.1) Name, addresses and contact point(s)

Blandton public limited
47 William Tell Street, PO Box 5
For the attention of: Mr. Erwin Higglesbottom
BL07 4FL
UNITED KINGDOM
Telephone: +44 7171 431 4475
Email: e.higglesbottom@blandpeople.co.uk
Fax: +44 9251 540 6674

Internet address (es):

General address of the contracting entity: www.blandpublic.co.uk

Further information can be obtained from: The above mentioned contact point(s)

Specifications and additional documents (including documents for a dynamic purchasing system) can be obtained from: The above mentioned contact point(s)

Tenders or requests to participate must be sent to: The above mentioned contact point(s)

I.2) Main activity

Port-related activities

I.3) Contract award on behalf of other contracting entities

Figure 5. Contact details of the contracting authority (fictitious)



Figure 6: Short Description, CPV, GPA and lots

This Figure provides a short description of the contract. Notice the Common Procurement Vocabulary (CPV) code: 90919200, Office cleaning services. The notice also indicates that the contract is covered by the GPA of the WTO, meaning that companies from signatory countries' to this agreement can bid for this contract. The contract has not been broken down into lots, or smaller contracts.

II.1.5) Short description of the contract or purchase(s):

Blandton town wishes to conclude a contract with a provider for results-oriented cleaning and maintenance of its buildings.

Option on washrooms:

During the term of the contract the contractor may be asked to manage the cleaning of the washrooms.

II.1.6) Common procurement vocabulary (CPV)

90919200

II.1.7) Information about Government Procurement Agreement (GPA)

The contract is covered by the Government Procurement Agreement (GPA): yes

II.1.8) Information about lots

This contract is divided into lots: no

Figure 6. Short description, CPV, GPA and lots

Figure 7: Technical Details

Figure 7 identifies some technical requirements are identified. For example, bidders are requested to provide a “valid ISO 9001 certificate or a certificate or evidence of similar measures in the field of quality control.”

Below, statements are requested concerning absenteeism and staff training. The contract notice then requires “proof of insurance coverage” and “proof of insurance against accidents at work (if applicable).” Bidders can consult [eCertis](#) (see ‘Using eCertis’) to obtain more information.

III.2.3) Technical capacity

Information and formalities necessary for evaluating if the requirements are met: * A list of up to five equivalent result-oriented projects implemented during the last four years, with figures, dates and recipients, public or private, involved. This should include:

- if the services were for public authorities, evidence should be provided in the form of certificates issued or countersigned by the competent authority,
- in the case of services to private individuals, the evidence should be in the form of certificates from the individuals, or failing that a statement from the service provider.

The following must be provided for each reference (max. one page per reference):

- reference
- contact + function + data
- short description of the contract
- annual volume
- type of contract

* the contractor must provide a general explanation of the organization of the company. This must encompass not only cleaning activities, but also the entirety of their services. This will allow the public authority to gauge the possibility of extending the contract into other services.

* A valid ISO 9001 certificate, or a certificate or evidence of similar measures in the field of quality control. The certificate should be in the tenderer’s name and specified for the services of this contract subject (i.e. cleaning, maintenance and window cleaners). If the bidder intends to subcontract part of the work they should also provide an ISO/9001 certification (or equivalent) for the subcontractor.

* A detailed description of the quality-measurement system, including the method of monitoring and reporting services.

* a valid EMAS/ISO 14001 certificate or equivalent, stating the company’s environmental policy, environmental program or action plan for the past year and a statement of the environmental coordinator, or the person responsible for the coordination and implementation of environmental measures in the company.

* an SCC certificate (or an equivalent for foreign bidders) to demonstrate that the company meets the minimum requirements in terms of safety, health and environment.

* an interpretation from the company’s management of Corporate Social Responsibility in relation to relevant sections of the tender

* A statement by figures on the staff rotation and absenteeism. This is represented by the following formula.

The sickness-absence rate indicates the proportion of the working capacity, during a given period of time, has been lost due to absenteeism.

Absenteeism rate (2015): the number of failed calendar days in one year/number of employees x number of calendar days in one year x 100%

The figures will be compared to industry averages.

* Proof of insurance coverage for professional civil liability (if applicable: including liability of subcontractors).

* Proof of insurance against accidents at work (if applicable: including liability of subcontractors).

* a copy of the annual report to the Public Employment Service or equivalent document of the past four years.

Accidents statistics (frequency rate and actual severity) of the last year (2015). The figures will be compared with averages for the sector.

Frequency rate (2015) = Number of accidents x 1 million/total hours of exposure to the risk

Actual severity (2015) = Number (calendar) days incapacitated x 1000/total number of hours of exposure to risk

Figure 8. Procedure, award criteria, time limits and language

In this example, it may be noted that the negotiated procedure will be used but that no candidates have been pre-selected. The relative weighting of the

award criteria are: project plan 50%, price 30%, and Corporate Social Responsibility (CSR) 20%. This information should inform the tender proposal. In this example, bidders should devote a considerable amount of work to the project plan.

Section IV: Procedure

IV.1) Type of procedure

IV.1.1) Type of procedure

Negotiated

Some candidates have already been selected (if appropriate under certain types of negotiated procedures): no

IV.2) Award criteria

IV.2.1) Award criteria

The most economically advantageous tender in terms of the criteria stated below

1. Plan. weighting 50
2. Price. weighting 30
3. CSR. Weighting 20

IV.2.2) Information about electronic auction

An electronic auction will be used: no

IV.3) Administrative information

IV.3.1) File reference number attributed by the contracting entity:

2013-006

IV.3.2) Previous publication(s) concerning the same contract

no

IV.3.3) Conditions for obtaining specifications and additional documents (except for a DPS)

Payable documents: yes

Price: 0 EUR

Terms and method of payment: The tender documents will only be made available to the selected candidates.

IV.3.4) Time limit for receipt of tenders or requests to participate

8.4.2013 - 11:00

IV.3.5) Language(s) in which tenders or requests to participate may be drawn up

English.

IV.3.6) Minimum time frame during which the tenderer must maintain the tender

in days: 120 (from the date stated for receipt of tender)

Figure 8. Procedure, award criteria, time limits and language

Using eCertis for Certificates

eCertis is an online tool for learning more about certificates and tender submission. The tool resource provides additional details about each type of certificate: such as a proof of no criminal record, or never having filed for bankruptcy protection etc., and identifies the issuing authority, how to obtain the requested certificate(s), and equivalent certificates for other countries.

Documents may be searched for by country, type, or name.

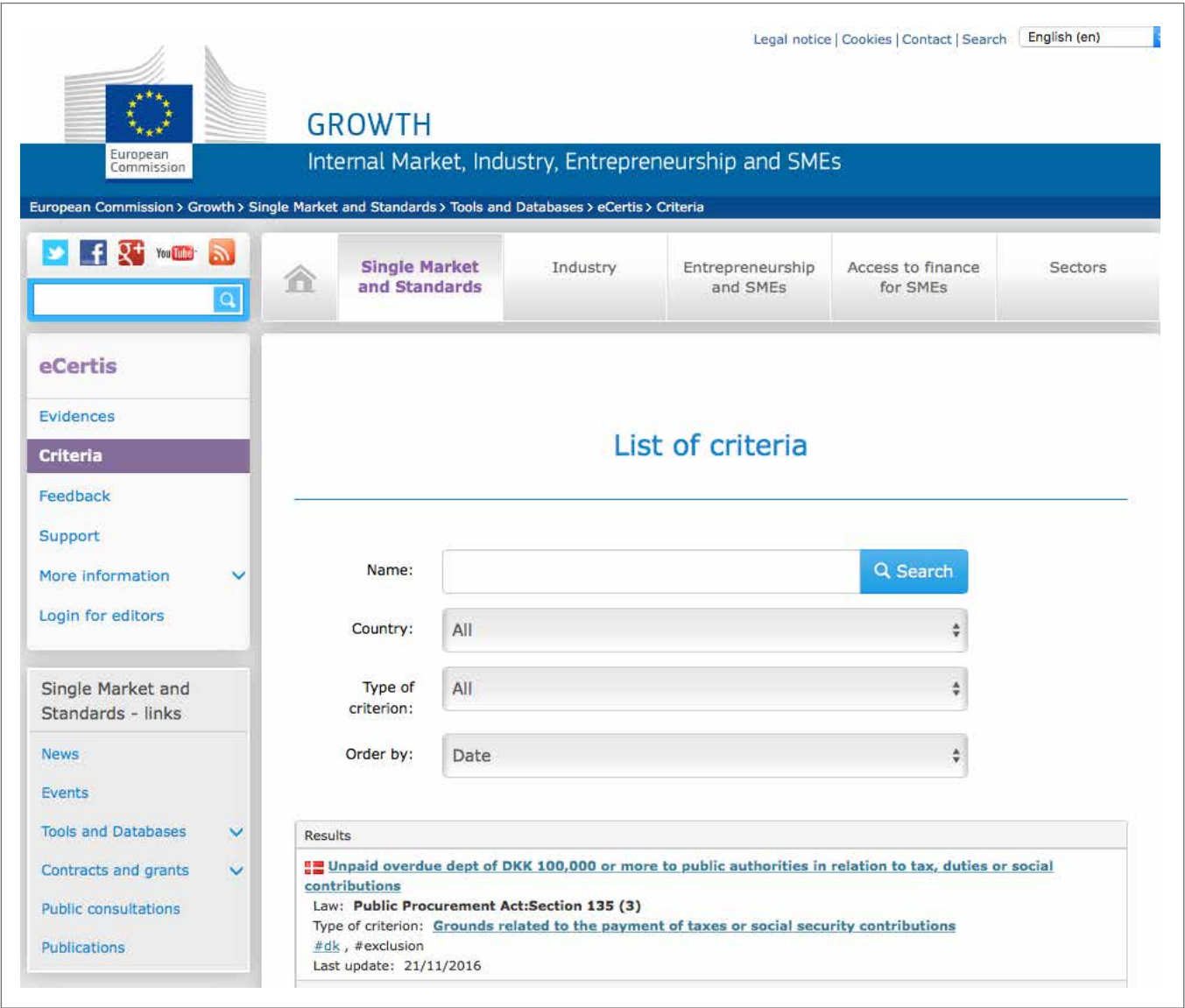


Figure 9. The eCertis homepage, where bidders can search for documents by country, type, or use the search bar. (Source: © European Union, <http://ted.europa.eu>, 1998–2016)

CHAPTER 5:

COMPLETING A BID

Overview

This chapter outlines how to complete a bid.

Bidding often follows a double- or triple-envelope system, which requires technical, financial, and certification aspects of bids be submitted separately. This supports the independent assessment of each aspect of all bids. Failure to correctly separate bid aspects can lead to disqualification.

As technical and the financial aspects vary significantly by sector, contract and company, this chapter focuses on the certification system. Be aware, however, that technical and financial aspects of the bid are usually what distinguish one bidder from another. For assistance in compiling a technical or financial bid, consider using a local specialist.

It is worth noting that submitted bids are legally binding. If a bid is accepted, the bidding firm may be subject to legal penalties if it withdraws.

Technical Bid

The technical bid should list specifications and details on the quantity or quality of the work, etc. This information is specific to every sector and is often one of the longest and most time-consuming aspects of bidding for public contracts.

The [award criteria](#), contained in the tender documents or the contract notice, inform bidders of the relative importance of various aspects. Bidders should use these criteria to maximize their chances.

Financial Bid

The financial bid includes overall cost, which the contracting authority is likely to rank highly.

Certification

This section lists any required certifications. These may include evidence of no criminal record, never having filed for bankruptcy protection, proof of

identity and proof of fiscal compliance. It may also include certificates of quality assurance and environmental or labour management.

A new system, the [European Single Procurement Document \(ESPD\)](#), simplifies some aspects of this process (see next section).

Bidders can use [eCertis](#) to learn more about which documents are required. Note, however, that not all national and regional systems follow the same certification requirements.

Certificates

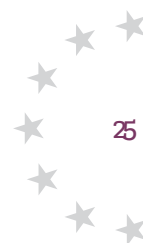
Bidders may need to provide certificates along with their bid to prove, for example, that they are neither bankrupt nor have a criminal record, and that they are abiding by environmental and or labour standards.

The contract notice in [TED](#) will identify what certification may be required. [eCertis](#) will also provide additional information.

European Single Procedure Document (ESPD)

Prior to the ESPD, every bidder had to provide all certification required by national legislation prior to submitting a tender. The [European Single Procurement Document \(ESPD\)](#) changes this requirement by allowing for company self-documentation for preliminary evidence, as part of the government-procurement bidding process. Only the winning bidder has to supply all the certification documents.

This new system is intended to reduce required paperwork, which can vary from Member State to Member State. The ESPD makes one single pre-procedural document applicable in all Member States.



Unless otherwise specified by the contracting authority, the ESPD is accepted as a temporary replacement for all certification requirements.

Certification for Canadians

All EU government bodies are encouraged to use international standards where possible, in particular for quality control and environmental management.

However, bidders may be asked to provide national or even regional, certification.

Should this occur, the bidder can submit an equivalent Canadian certificate and evidence of its equivalency. If this is not accepted, the bidder must obtain the required local certification.

Member State Implementation

The deadline for transposing the ESPD into national law was April 18, 2016; however many countries have yet to implement the new rules, so bidders may not be able to use the ESPD in some countries. Technically, these countries are contravening EU law.

As of May 2016 Belgium, Denmark, France, Italy, Cyprus, Hungary, Slovenia, Slovakia and the United Kingdom have implemented the ESPD. The European institutions, however, have not yet verified whether the ESPD has been implemented correctly, meaning some of these named countries may be using the ESPD incorrectly.

Practical Information

Contracting authorities start an ESPD by entering key information related to the contract before posting the contract notice on [TED](#). If an ESPD is not part of a contract notice, a copy can be requested from the contracting authority along with the full tender documents.

A standard, blank ESPD form is included in the [Annex to the applicable European Regulation](#).



eCertis

[eCertis](#) is a European Commission service that provides additional information about the certificates bidders must typically include with bids. eCertis is the online repository of certificates for EU government-procurement. Search the website by country and by document type to access additional information about a particular document. The system does not, however, contain all documentation, as some may have to be provided by a judge or a notary. The information provided is not legally binding.

Certification: Quality Assurance and Environmental Certification

Other types of certification commonly required relates to quality assurance, and environmental and labour standards. Requirements for this type of certification remain a significant non-tariff barrier to trade,

meaning that they often inhibit trade even though they do not involve duties or taxes. Countries assess safety, quality, environmental and other standards differently; as a result, the same product might meet the standards of one country, but not those of another country. Although progress has been made on eliminating discrepancies, they continue to impede trade.

EU Law, CETA and the GPA

The Government Procurement Agreement (GPA) of the WTO encourages countries to use international standards whenever possible to minimize trade disruption. Authorities can, however, still apply regional and national standards when international standards do not exist. CETA encourages convergence, but does not specify any central standards. The rules exist in the EU Directives rather than in the GPA. This means that a contracting entity can impose the quality-assurance standards of its country (possibly making it difficult for Canadian suppliers to comply).

A tenderer unable to obtain a certification required in an EU country can submit evidence that the Canadian certification it does have is equivalent. The tenderer might show that the Canadian certification involves similar metrics, verifications and issues. If the bidder can prove equivalency and that it is impossible to obtain requested EU certification, the contracting entity is theoretically obliged to accept the substitute. Similarly, an equivalent certificate from another EU state should also be accepted.

For certification of environmental-management standards, EU contracting entities must refer to the [Eco-Management and Audit Scheme \(EMAS\)](#) of the EU, or other management standards established by the EU or international bodies. For more information, consult Article 62 of [2014 Directive on Public Procurement](#). Search the document for “Quality assurance standards” and review the second of the four results presented.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 6: SELECTION AND AWARD CRITERIA

Selection Criteria

Selection criteria determine which bidders may participate in the tender procedure. Contracting entities can exclude participants to restrict the selection process to the most qualified candidates. If a public body wants to build a road, for example, it may exclude bidders without experience in road construction. The contracting entity must indicate selection requirements either in the contract notice or when potential tenderers indicate an intention to bid; the entity must indicate minimum levels of competency and how bidders demonstrate their competency.

Selection criteria may relate only to the following areas:

- ✓ suitability for the professional activity;
- ✓ economic and financial standing;
- ✓ technical and professional ability.

With regards to suitability, the contracting entity can require that bidders register in a national professional body or trade registry. Most EU countries have registrars of companies; a full list appears in Annex XI of the [2014 Directive on Public Procurement](#).

Criteria related to economic and financial standing are designed to confirm that the bidder has the financial and economic capacity to complete the tasks contract. The contracting entity can require, for instance, that bidders have total annual revenues of up to twice the estimated value of the contract. An exception applies when a contracting authority can demonstrate that special risks associated with the contract justify a higher required turnover. The contracting authority may require bidders to submit financial statements covering up to the last three years. As a general rule, bidders may be required to submit information such as financial statements and proof of appropriate professional risk-indemnity insurance. For contracts divided into lots, the rules apply to each individual lot. If a contracting entity awards groups of lots, it may specify the requirements for each group.

With regard to technical and professional ability, the contracting entity can require that bidders demonstrate adequate human and technical resources, and experience. The contracting entity can require, for example, professional references or other evidence of skills, efficiency, experience and reliability.

The list of potential documents is quite long and could include: lists of completed contracts and certifications that the work was completed satisfactorily; descriptions of the technical facilities used to control quality; descriptions of research facilities; statements of professional qualifications and available tools; or photographs of the product. Please refer to Annex XII of the [2014 Directive on Public Procurement](#) for “MEANS OF PROOF OF SELECTION CRITERIA” whereby part I addresses economic and financial standing, and part II addresses technical ability.

Exclusion grounds

A contracting entity is not only allowed, but also obliged to exclude companies from bidding in some cases—specifically if the entity has evidence (e.g. ESPD, judicial records, eCertis) that the bidder has been convicted of:

- ✓ participation in a criminal organization;
- ✓ corruption;
- ✓ fraud within the meaning of Article 1 of the [Convention on the protection of the European Communities’ financial interests](#);
- ✓ terrorist offences, offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit an offence;
- ✓ money laundering or terrorist financing;
- ✓ child labour and other forms of human trafficking.

For more details, review Article 57 of the [2014 Directive on Government Procurement](#) and search for “exclusion grounds.”

The contracting entity is also obliged to exclude bidders that breach the tax or social-security laws of the country where the contract is to take place.

Depending on the country, the contracting entity may be entitled or obliged to exclude companies if:

- ✓ It can show by any appropriate means that the bidder has violated national or EU environmental, social or labour laws, or the same laws as defined by the International Labour Organisation conventions, the Basel Convention, Stockholm Convention or the Vienna Convention;
- ✓ The company is in a state of bankruptcy or insolvency;
- ✓ The contracting entity has plausible indications that the bidder has entered into agreements with competitors to distort competition;
- ✓ The company has a conflict of interest that cannot be remedied by other means;
- ✓ The company’s prior involvement in government-procurement procedures has distorted competition and there is no other, less intrusive way to resolving the matter;
- ✓ The company’s poor performance led to the termination of a contract, sanctions or claims for damages;
- ✓ The company provides misleading information to show it should not be excluded;
- ✓ The company has tried to unduly influence the decision-making procedure, has attempted to gain information that would give it an unfair advantage, or has provided misleading information that might influence decisions about exclusion, selection or contract award.

Counter-evidence

A bidder can contest exclusion decisions by providing appropriate evidence to the contracting entity. This evidence might include proof:

- ✓ of compensation for prior violations;
- ✓ of cooperation with authorities investigating alleged transgressions, or
- ✓ that measures are in place to prevent future violations.

The contracting entity will weigh this evidence against the gravity of the violations and prepare a statement of its decision.



Timeframe

Each EU Member State is entitled to specify how it will implement the EU Directive. This includes deciding how long to exclude a given company from bidding. The maximum exclusion period for bidders convicted of crime, fraud or terrorism is five years from the date of conviction; for other excluded bidders, the maximum is three years from the date of the offense.

Award Criteria

A contracting entity uses award criteria to identify the winning bid. Contracting authorities must establish award criteria and describe how the winning bid will be selected in advance of receiving tenders. Lowest price was once the most common award criterion, but contracting authorities now take into account other important factors such as quality, efficiency, life-cycle costing, etc.

Award Criteria

Award criteria refer to the rules, identified in advance, that will be employed to select the winning contract. Criteria might include price, project plan and proof of relevant experience. The contract notice or full tender documents specify the weighting of each criterion: for example price 45%, quality 45%, and demonstrated CSR 10%.

Contracting entities now select based on the concept of most economically advantageous tender (MEAT). In practice, this means it can assign the greatest weight to price and select the lowest-priced bidder. The contract notice or full tender documents must specify the MEAT criteria and weightings to be used.

As a general rule, manpower, equipment and ability to perform the work are part selection criteria and not award criteria. Furthermore, [recent case law indicates](#) that general experience should be used only as a selection criterion. In other words, amount of experience cannot be an award criterion among qualified bidders.

Most Economically Advantageous Tender (MEAT)

The most economically advantageous tender (MEAT) criterion means that the contracting entity may take into account various aspects of bids including cost, quality of work, as well as proposed technical and environmental measures. Under MEAT, however, award criteria must not enable the contracting entity to have unrestricted freedom of choice.

MEAT may be used for projects, supplies or services, and can relate to the full life cycle of a contract. It may specify production processes, the provision or trading of goods, work or services, and recycling procedures at the end of a project's life cycle. The contract notice on [TED](#) should indicate whether the MEAT criterion is being used.

Each criterion within MEAT must be weighted and published as soon as possible in the contract documentation. When it is not possible to describe weightings by listing percentages, criteria must be listed in descending order of importance. It is also possible to list a fixed price and require tenderers to compete on quality alone. Once the criteria have been published, they cannot be changed.

Sub-criteria are often used when main criteria are very broad. For example: Price 45%, and quality 55%, which will consider the following sub-criteria:

- ✓ quality;
- ✓ price or cost using a cost-effectiveness approach;
- ✓ technical merit;
- ✓ aesthetic and functional characteristics;
- ✓ accessibility;
- ✓ social characteristics;
- ✓ environmental characteristics;
- ✓ innovative characteristics;
- ✓ after-sales service and technical assistance;
- ✓ delivery conditions such as date, process and period.



Lowest Price and Life-Cycle Costing

The contracting entity can decide that price is the most important or even the only criterion; this is used only for the simplest contracts. Price can involve total cost and even total life-cycle cost by taking into account items such as:

- ✓ costs relating to acquisition of the goods or services;
- ✓ costs of use, such as consumption of energy and other resources used in the execution of the contract;
- ✓ maintenance costs;
- ✓ end-of-life costs, such as collection and recycling costs (e.g. disposing of chemical waste);
- ✓ environmental costs relating to the use of the good, work or service, (provided this cost has a monetary value), which can include greenhouse-gas emissions or other pollutants.

When using life-cycle cost, the contracting entity must indicate how this cost will be calculated and the type of data that bidders must provide. A contracting entity must use objective, non-discriminatory criteria to calculate environmental life-cycle costs. The criteria must not “unduly” favour one supplier over another.

Abnormally Low Tenders

When the cost included in a tender submission is unusually low, the contracting entity may require that the tenderer explain the submitted price and reject the bid if the response is unsatisfactory.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 7: PROCUREMENT PROCEDURES

Overview

Public authorities may use various procedures to select suppliers, but they must respect the rules associated with each procurement procedure.

Open Procedure

This procedure is the most common, allows any company to submit, and is often used for lower-value contracts. The public authority simply advertises its specific requirements and invites applicants to bid. The minimum deadline of 52 days from date of publication can be reduced to 36 days if advertised in advance.

Procurement Procedures

Government-procurement procedures can range from evaluating all bids to pre-vetting bidders to negotiating with a specific bidder.

Bidders typically have 35 to 50 days to submit a bid; in accelerated, open and restricted procedures, the period is 15 days.

Restricted Procedure

In this two-stage procedure, the government body selects bidders. In the first stage, the contracting entity sets minimum technical, economic and financial criteria that the suppliers must meet and provides bidders at least 37 days to respond. In the second stage, the contracting authority creates a shortlist of at least five companies (unless fewer qualify) and invites them to submit bids within 40 days (36 days if advertised in advance).

The restricted procedure is typically used to appoint consultants or contractors on traditional procured projects or frameworks. Restricted and negotiated (described below) procedures take the longest time to complete.

Accelerated Procedures

In urgent cases, a government body may accelerate an open and restricted procedure. The deadline for an accelerated-open procedure can be as short as 15 days; in an accelerated-restricted procedure, the deadline for responses can be as short as 15 days and the deadline for bidding as short as 10 days.

A contracting authority must demonstrate why an accelerated procedure is required. Failure to do so could result in the process being challenged.

Negotiated Procedure

Under this procedure, a government body invites three or more companies to negotiate the contract. The competitive-dialogue procedure has largely replaced this once-common procedure, although it remains standard for competitions in the water, electricity, transportation and postal-services sectors. In exceptional circumstances, the negotiated procedure may also be used for other public contracts. Responses must be received within 37 days from the publication date, or within 15 days in urgent cases. Under certain conditions—such as when only one company can complete the work—the government body is not required to publish a contract notice.

Competitive Dialogue

In a competitive dialogue, only a broad description of the work is provided; contract specifications are not determined in advance. Under this procedure, a contracting authority engages in a dialogue with companies to identify the proper specifications and the best bidder. It is typically used for complex projects, such as infrastructure construction. Interested candidates submit bids against the technical, legal and financial aspects identified during the dialogue. This process is often used for the procurement of private-sector partners on Private Finance Initiatives (PFI)/Public Private Partnership (PPP) projects.

Companies have a minimum of 37 days to respond to the contract notice and the government body then pre-qualifies at least three candidates for a dialogue that might have multiple stages. Competitive dialogue may not be used in the water, electricity, transportation and postal-services sectors.

Electronic Auction

Electronic auction (e-auction) may be used to award a contract, or as part of another procedure. A government body pre-selects bidders and identifies how the auction will proceed by specifying the number of rounds in the auction, along with deadlines and how candidates will be ranked. The contract notice must also specify all conditions, such as value limits and minimum bids. After each round, bidders must be informed of their rankings, the identities of other bidders must remain hidden.

Electronic auctions can be used only when precise details, such as technical specifications, have been established and published. Only clearly identifiable factors, such as price or quality indicators (e.g. percentage of titanium content in a metal support), are open to auction. Any non-price factor must be quantifiable and expressible in a score or percentage.

The formula used to evaluate criteria must be made available to all candidates; if an e-auction involves more than price, for instance, then the weighting of each criterion must be provided.

Before initiating an e-auction, the contracting entity must ensure that each candidate meets the appropriate selection criteria (see '[selection criteria](#)').

Innovation Partnerships

Innovation partnerships were introduced as a procurement procedure in the new EU Directives; they should not be confused with the [European Innovation Partnerships or EIPs](#). Under an innovation partnership, the contracting entity uses a competitive process and requires the winning bidder to develop an innovative solution (i.e. not an off-the-shelf solution). To foster innovation, the government body and winning bidder establish a long-term partnership.



Innovation partnerships are designed to facilitate the development and subsequent purchase of solutions that require research and innovation. Current requirements make it difficult for a public entity to select a tenderer that proposes an innovative solution without infringing on the principles of equal treatment and transparency, which would require that other bidders be afforded opportunities to propose innovations of their own.

Innovation Partnerships

The Innovation Partnership is a new procurement procedure designed to enable companies to develop an innovative solution. Rather than describe a solution the contract notice will outline only the minimum requirements.

Candidates are pre-selected based on expertise, experience and cost. Successive stages reduce the number of candidates until only one successful candidate remains.

Rules

An innovation partnership can be used only when innovative goods, services or works are required, and must be developed and purchased. The procedure is subject to many of the same rules as other procedures, such as:

- ✓ The contracting entity must provide bidders the information they need to propose an appropriate solution;
- ✓ The contracting entity must explain why an innovative product or service is required; and
- ✓ The contracting entity must set out performance levels and maximum costs.

Procedure

The contracting entity begins the procedure by issuing a contract notice that describes the scope of the project and provides candidates at least 30 days

to respond. The contracting entity then evaluates the capacity of respondents to research, develop and implement an appropriate solution. Selection criteria must distinguish capacity from experience to avoid discriminating against new companies. A contract is awarded to one or more bidders based on the most economically advantageous tender (MEAT).

Structure

The partnership structure includes successive stages for the development and implementation of the solution and sets intermediate targets and a payment schedule. The procurement documents may set other parameters for the partnership; and at the end of any stage, for instance, the contracting entity may be free to terminate the partnership.

Intellectual Property

For innovative projects, intellectual property is clearly important. Tender documents must address intellectual-property rights.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 8: THRESHOLDS

Thresholds in the EU Directives

Public contracts are generally subject to EU Directives and must be published on TED if the total contract value is above the thresholds outlined in Figure 11. National laws regulate contracts valued below these thresholds (although these laws must align with EU-treaty principles).

Threshold Levels as of January 2016

Contracting Entity	Type of Contract		Value
Central Government authorities	Works contracts, subsidized works contracts		€5 225 000
	All services concerning social and other specific services listed in Annex XIV		€750 000
	All subsidized services		€209 000
	All other service contracts and all design contests		€135 000
	All supplies contracts involving non-defence authorities		€135 000
	Supplies contracts involving defence	Concerning products listed in Annex III	€135 000
		Concerning other products	€209 000
Sub-central contracting authorities	Works contracts, subsidized works contracts		€5 225 000
	All services concerning social and other specific services listed in Annex XIV		€750 000
	All other service contracts, all design contests, subsidized service contracts, all supplies contracts		€209 000
Entities operating in the water, energy, transportation or postal-services sectors	Works contracts		€5 225 000
	All services concerning social and other specific services listed in Annex XVII		€1 000 000
	All other service contracts, all design contests, all supplies contracts		€418 000
All public contractors	Concession contracts		€5 225 000

Figure 11. Table of Thresholds

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 9: REMEDIES

Remedies Overview

Under the 2007 Remedies Directive ([Directive 07/66](#)), bidders have a right to seek redress if a contract has been awarded unfairly. The Directive sets a minimum legal standard that applies in every EU Member State. Eligible Canadian bidders enjoy the same legal rights as European (domestic) companies.

Note that the deadline for challenging a contract award is usually 30 days.

Legal Redress

Bidders can contest an unfair procurement procedure by taking the contracting authority to court. This must usually be done within 30 days of contract award.

Although the EU Directive describes minimum standards, legal proceedings will be conducted in the Member State where the contract originated. In roughly half of all EU Member States, a regulatory body processes challenges; the other half relies on courts. A bidder wishing to challenge a contract award should consider hiring someone with the appropriate legal expertise.

Complainants must exhaust all national legal processes before involving the European Commission. There are two general ways to seek legal redress: pre-contractual remedies and post-contractual remedies.

Time Limits

It is critical to respect deadlines for challenges. As a general rule, a challenge must be filed within 30 days of the “date of knowledge”—the point at which the claimant either was, or should have been, aware of the infringement. Courts have the discretion to extend this period to three months. Declarations of Ineffectiveness have special time limits.

Pre-Contractual Remedies

An unsuccessful applicant who initiates legal proceedings during the tendering process and before contract award can request that the court:

- ✓ Annul any unlawful decision taken thus far;
- ✓ Change any unlawful selection or unlawful elements of tender documents, such as discriminatory specifications or award criteria;
- ✓ Award damages for losses incurred as a result of the breach.

It is important to note that concerns raised prior to the contract signing prevent the contracting entity and successful bidder from concluding a legal contract. This means that a claimant need not request an interim order to block a contract award. The block is effective until legal proceedings conclude or until another solution is in place. The contracting entity can, however, appeal to the courts to suspend the block. Please note that Canadian suppliers have guaranteed access to pre-contractual remedies in the EU for only the first 10 years of the CETA unless our provinces and territories make available similar remedies under their domestic-review regimes.

Post-Contractual Remedies

After the contract has been initiated, there are two ways to seek remedy: damages and a Declaration of Ineffectiveness.

- ✓ Damages: claimants can be compensated for bid-preparation and submission costs. A court may also award a proportion of lost profits, particularly if the claimant’s unsuccessful bid was demonstrably strong. Although courts have awarded damages, many post-contractual challenges end in negotiated settlements.
- ✓ [Declaration of Ineffectiveness](#): issued by a court, a Declaration annuls a concluded contract by making all future rights and obligations under that contract unenforceable, and by imposing fines on the contracting entity. A Declaration of Ineffectiveness can stem from one of three situations (see the relevant [Directive](#)):
 - an illegal direct award;
 - a significant breach of the standstill time (see below);



- a breach of a dynamic purchasing system (typically when the system is not used to award a one-off above-threshold contract).

Be aware that Declarations of Ineffectiveness have special time limits: proceedings must be brought within six months of contract initiation unless the contract award was published in the OJEU. In cases when the contracting entity informs bidders of the award and summarizes why the winning bid was chosen, different time limits apply: 30 days from publication of contract award or six months contract signing.

Case Study German ambulances

In 2006, ambulance-service providers based outside Germany complained to the European Commission that several German federal states (Saxony-Anhalt, North Rhine-Westphalia, Saxony and Lower Saxony) had not posted contract notices at the EU level for ambulance services valued at hundreds of millions of euros. The providers also alleged that the contracts had been awarded in a non-transparent manner.

(The EU challenge followed unsuccessful legal proceedings filed in Germany.)

The European Court of Justice heard the case and ruled that since the procurement directives apply to ambulance services, Germany was in breach of EU law and must end the practice.

[BACK TO TABLE OF CONTENTS](#)

European Commission Legal Proceedings

The European Commission increasingly assumes a direct role in claims of procurement improprieties. The Treaty of the Functioning of the European Union (TFEU) authorizes the Commission to initiate legal proceedings against Member States that fail to comply with EU rules. This is a long and cumbersome procedure, however.

The European Commission can suspend EU funding for projects involved in Commission proceedings.

Hierarchy of Complaints Procedures

To seek redress, a company must exhaust local, regional and national court procedures to be eligible for the European Court of Justice. The diagram below outlines the steps that must be followed.

1. **Take complaint to the contracting entity and its internal procedures.**
2. **Seek contract annulment using local administrative or judicial proceedings.**
Professional legal assistance is recommended but not mandatory. Only once these options are exhausted will the European Commission consider the case. See steps for this below.

Steps of Procedure	Timeframe	Confidentiality
1. Drafting of the Complaint and filing before the EC	3 weeks	100%
2. Assessment of the Complaint by EC	4-12 weeks	100%
3. EU pilot (letter sent to national authorities)	10 weeks for Member States + 10 weeks for EC	<ul style="list-style-type: none">• No public announcement: EC only informs national authorities (contact points who will contact relevant services/local bodies...)• Existence of a complaint: revealed to national authorities• Identity + complaint doc: 100%
4. Formal notice sent to national authorities	8-12 weeks for Member States + 4-8 weeks for EC	<ul style="list-style-type: none">• No public announcement: EC only informs national authorities• Existence of a complaint: revealed to national authorities• Identity + complaint doc: 100%
5. Reasoned Opinion sent to national authorities	8 weeks for Member States + 4-8 weeks for EC	<ul style="list-style-type: none">• Press release on EC decision• Existence of a complaint: revealed to national authorities• Identity + complaint doc: 100%
6. Seizure of the court	1-2 years	<ul style="list-style-type: none">• Press release on EC seizure

Figure 12. Complaints Procedure Overview

CHAPTER 10: BACKGROUND INFORMATION: THE EUROPEAN UNION

Overview

The European Union (EU) is a political and economic union of 28 countries, with a total population of approximately 508 million and GDP of €14 trillion⁵.

The EU features the largest common market in the world, liberalized inter-country travel and a shared currency—the euro (€)—used in 19 countries.

In the aftermath of the Second World War II, many European countries sought to promote political stability by strengthening economic links. These countries formed the European Economic Community (EEC) in 1958. The EEC gradually expanded beyond economic policy and became the European Union in 1993.

Compared to Canada, many EU Member States spend higher proportions of GDP on public expenditures. In France, for example, the figure is more than 55%. Europe spends approximately 14% of its GDP on government procurement; the rules explained in this Guide apply to approximately €450 billion worth of annual procurement spending. The remaining expenditures either fall below the thresholds or are in excluded sectors (such as military).

The European Union

19 of the EU's 28 Member States use the euro. The EU has a single market, a customs union and the largest economy in the world.

Member States

EU membership has grown over the last 60 years and currently includes: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland,

Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Croatia was the last to join the EU on 1 July 2013. Albania, Iceland, Macedonia, Montenegro, Serbia and Turkey are in negotiations to join the EU; Iceland recently suspended negotiations (see European Commission).

For more information, see the European Union page on membership. For more information about enlargement, see the European Commission page on Neighbourhood Policy and Enlargement Negotiations.



Figure 13: The 28 Member States of the European Union

The European Economy

As a single entity, the EU economy is the world's largest in nominal terms. It includes four countries that feature economies among the world's 10 largest: Germany, France, the United Kingdom and Italy. The EU also represents one of the largest markets, with over 500 million consumers. The EU is a highly diverse market and is the world's largest importer and exporter, accounting for approximately 16 percent of total world trade.

For more information see the European Commission website on the economic status of each Member State.

⁵ Source: International Monetary Fund: <http://www.imf.org/external/pubs/ft/weo/2014/01/weodata/weorept.aspx?pr>

Single Market and Customs Union

The EU is a single market (also called the internal market) for goods and services. Rules are harmonized across Member States and some tariffs have been eliminated with the aim of improving competition and trade. The single market means that, in principle, EU companies (including some 23 million SMEs⁶) along with exporters to the EU, have access to over 500 million potential customers.

Within the single market, EU Member States have abolished intra-EU tariffs. The EU also has a common trade policy and customs union; imports from outside the EU are subject to tariffs. Regardless of where in the EU an imported good arrives, the same rules apply; once a good clears customs it can be transported and sold freely within EU customs territory (almost everywhere within the EU).

For more information about customs please see Chapter 2 of [Exporting to the EU, A Guide for Canadian Business](#).

Travel for Canadians

Canadians can travel visa-free for short-stays in all EU and Schengen Area countries. This includes the EU and Iceland, Norway and Switzerland. Always travel with your passport.

The Euro

The euro is the official currency of the Eurozone, which currently includes 19 of the 28 EU Member States (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain). Eurozone membership is an official requirement for EU membership, although Denmark and the United Kingdom were allowed to opt out. Bulgaria, Czech Republic, Hungary, Poland, Romania, Sweden and Croatia are

expected to join the Eurozone once they fulfill specific convergence criteria ([see European Central Bank page on convergence criteria](#)). Some countries, such as Sweden, have deliberately avoided meeting these criteria. No new countries appear likely to join the euro before 2020. The financial crises that began in 2008 have made many countries reluctant to adopt the euro.

The euro is a floating currency and is the second-most traded currency in the world (after the U.S. dollar). Within the EU, the Danish Krone and the Bulgarian Lev are officially pegged to the euro; the Krone has a nominal fluctuation range of 2.5%, but in practice the range is closer to 1%. Many of the EU's other currencies, such as the Bulgarian Lev, are pegged to the euro outside of the Exchange Rate Mechanism II ([see European Commission](#)), the official EU mechanism.

Movement of People & Schengen

Canadian citizens can stay for up to 90 days in EU Member States without a visa, although they must hold a passport valid for at least three months beyond their stay. The EU's Schengen Area, named after "the Schengen Agreement", signifies a geographical zone where 26 different European nations (excluding the Republic of Ireland and the United Kingdom who are not in the Schengen Area and continue to maintain border controls), acknowledge the abolishment of their internal borders with other member nations for the free and unrestricted movement of people, goods, services, and capital. Notably, Croatia, Bulgaria and Romania are candidate countries for inclusion in the Schengen Area but have yet to join.

The EU grants free movement to all of its citizens within the boundaries of the EU. So a citizen from one EU Member State is free to live and work in another Member State. Under the Schengen Agreement, citizens of non-EU countries, such as India, who require a visa to enter the Schengen Area, may also need a separate visa to enter other countries not in the Schengen Area. For more information, see [Chapter 9 of Exporting to the EU; A Guide for Canadian Business](#), the [European Commission page on visa policy](#), and the [Canadian Trade Commissioner Service](#).

⁶ Source: European Commission: http://ec.europa.eu/growth/smes/business-friendly-environment/performance-review-2016_en#annual-report.

The European Institutions and Legal Framework

Three main institutions create laws in the EU: the European Parliament (EP), the Council of the European Union (CEU) and the European Commission (EC). Citizens of Member States directly elect the 751 Members of the European Parliament (MEPs); the EC is considered the civil service of the EU; and the CEU represents Member-State governments. The Presidency of the CEU alternates between Member States every six months.

Be careful not to confuse the CEU with the European Council (quarterly meetings of heads of state) or the Council of Europe (not an EU body—see [European Commission on EU Institutions](#) for further explanation).

The EP, CEU and EC create, via Ordinary Legislative Procedure (see [European Union](#)), the laws and policies that apply throughout the EU. The Procedure involves all three institutions: the EC proposes legislation, and the EP and CEU negotiate and approve the legislation. As a result, it is also known as the trilogue procedure. For more information, see the European Parliament page on [Ordinary Legislative Procedure](#).

EU laws are divided into primary and secondary legislation. Primary legislation includes the founding treaties of the EU, last amended by the Treaty of Lisbon (2009). Secondary legislation is based on the principles founded in the primary legislation, and encompasses [regulations, directives and decisions](#).

The European Court of Justice (ECJ) interprets EU law and ensures its application across the EU, but does not make decisions about applying national legislation. A summary of ECJ case law can be found [here](#). The ECJ can force Member States to transpose EU Directives into national law or codes, and to implement EU Regulations.

[BACK TO TABLE OF CONTENTS](#)

CHAPTER 11: BACKGROUND INFORMATION: EU LEGISLATION ON PROCUREMENT

Overview

EU secondary legislation refers to **Directives**, **Regulations** and **Decisions**.

Directives are laws that must be transposed into national legislation to take effect. A Directive outlines the final objectives that a Member State's individual legal system must achieve within two years.

Regulations are immediately applicable throughout all Member States.

Decisions are immediately binding on those they address (a Member State or an individual) and relate only to specific entities.

For additional information related to government procurement in the EU that is not covered in this Guide, please see the relevant [European Commission pages](#).

How EU Directives Work

Within two years of adoption by the EU, Member States must transpose a Directive into national law (see [European Union Law](#)). It is important to note that the national law of each Member State has the legal force and not the EU Directive.

The Directive has to be transposed “purposely”—i.e. the national law must serve the underlying purpose of the original Directive. For example, the national law must serve the Directive's purpose of opening up government-procurement competitions to bidders from across the EU. Directives specify the ultimate goal of national laws, but not how to achieve it.

Transposing Directives into national legislation can be difficult, since national legal systems differ and Member States do not always interpret Directives the same way. This can lead to slight differences between



EU Member States. Unlike Directives, EU regulations are effective immediately and need no transposition into national laws.

The EU Directives that govern procurement are based on the principles of transparency, non-discrimination, equal treatment and proportionality. The Directives apply to every procurement contract in the EU above the stated threshold values (see ‘[thresholds](#)’) and dictate specific rules about everything from common procedures and thresholds, to remedy mechanisms and standards. All public bodies in the EU must obey these rules.

In 2004, the EU passed two so-called fourth-generation Directives that regulate government procurement: [Directive 2004/17/EC](#) and [Directive 2004/18/EC](#). The first regulates public utilities (water, gas and electricity); the second applies to every other sector. Both remained in force until 18th April 2016, when the 2014 Directives, recently adopted by the EU, came into force.

The 2004 Directives form the basis of the 2014 Directives. This Guide reflects the way in which the Directives are employed including through the thresholds, selection criteria, exclusion grounds, etc.

2004 Directives on Public Contracts and Utilities

The [2004 Public Contracts Directive](#) covers all contracts for public works, supplies and services other than utilities. This includes the vast majority of EU government procurement (see figure 14).

The New Procurement Directives

New Directives on procurement came into force in 2016 and are explained in this Guide.

They are designed to modernize procurement and make it more flexible. Among other changes, they introduce innovation partnerships, life-cycle costing and [MEAT](#) criteria.

Exceptional procurement processes have long applied to utilities, since utilities are often national monopolies exclusively licensed to operate services such as railway or electricity networks.

The [2004 Public Utilities Directive](#) covers any public body or undertaking that a public body exerts a dominant influence over through the ownership of capital or the governing rules, or through the private undertakings that operate the exclusive rights or privileges granted by public authorities. This Directive covers the water, energy, transport and postal-services sectors.

The only relevant difference between the [Public Utilities Directive](#) and the [Public Contracts Directive](#) is that the former applies to utilities (but not concession contracts) and includes special exemptions for the awarding of contracts to affiliated undertakings (essentially sub-contractors).

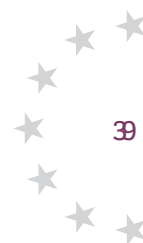
2014 Directives on Government Procurement, Public Utilities and Concession Contracts

The three Directives that came into force on 18th April 2016 are designed to make procurement procedures simpler and more flexible. They include:

- ✓ [Directive 2014/24/EU](#) (public sector)
- ✓ [Directive 2014/25/EU](#) (public utilities)
- ✓ [Directive 2014/23/EU](#) (concession contracts)

The Directives address the various contract models and administrative capacities of Member States. The previous Directives featured complex rules that had been applied inconsistently and processes that had been monitored incorrectly. This resulted in serious errors in EU-funded projects. The new Directives include a range of new features, such as:

- ✓ New procedures for awarding contracts, including competitive dialogues and innovation partnerships (see ‘[procurement procedures](#)’).
- ✓ Contracting authorities must use [MEAT](#) criteria (Most Economically Advantageous Tender (MEAT)).
- ✓ Contracting bodies can consider the life-cycle costs of goods and services (see ‘[MEAT](#)’).



Public-Public Procurement

Public-public procurement involves in-house cooperation among various public entities, and regulations clarify the procedures that must be followed. No procurement procedure is required to move revenue from one government department to another, for instance. Procurement procedures must be followed, however, when the department receiving funds is only partially controlled by government.

Vertical Cooperation

Vertical cooperation refers to when a contracting entity partly controls the contractor (e.g. municipal and regional authorities cooperate). Under the new rules, a contracting entity may award a contract to a bidder without following the standard procurement procedures if the following criteria are all met:

- ✓ The contracting entity controls the bidder to the same extent as that it controls its own departments. In practice, this means decisive influence on strategic objectives and significant decisions.
- ✓ The contracting entity provides at least 80% of the contractor's total volume of work.
- ✓ There is no private investment in the contractor's capital, unless it is required by law, in which case the private partner must have no blocking or controlling rights, and no influence on the undertaking. In other words, private money is involved but exerts no control over the actions of the contractor.

The contracting entity can exert this control over the contractor either alone, or in partnership with other public bodies.

Horizontal Cooperation

Horizontal cooperation occurs between public bodies that do not exert control over one other but nevertheless wish to pool their resources. This can be done without the participation of any privately owned entities if all of the following are met:

- ✓ The contract must specify forms of cooperation that contribute to providing public services that work towards a common objective for all contracting entities.

- ✓ The entire undertaking must serve the public interest.
- ✓ Business performed outside the horizontal cooperation (i.e. on the open market) must be strictly limited to less than 20% of total activities.

Transferring Tasks

Public entities may transfer responsibility as long as no money is exchanged. In other words, the Directives do not apply. For example, if the Government of Andalusia wants the Municipality of Cadiz to take care of street cleaning, EU procurement procedures do not apply.

Concession Contracts

Concessions, the most common form of Public Private Partnership (PPP), involve a public authority granting land, rights or property to a private enterprise. Normal government-procurement contracts specify remuneration for specific tasks or services; with concession contracts, however, most remuneration comes in the form of a permit to run a service or work, which often exposes the contractor to potential loss. Examples include the running of motorway, port, airport and/or waste-management services.

Concession Contracts

Concession contracts are when the government grants a concession, such as use of land or property, to a private company as part of an agreement (e.g. to operate a waste-management facility or motorway).

A new Directive regulates this area and outlines general rules for fair treatment, but does not specify procedures, or award and selection criteria.

The Concession Contracts Directive creates more legal certainty about concession contracts. It features a clear definition of concession contract, stipulates how long it may last, and lists rules for the publication of tender notices, long-term changes to concession contracts, and for the creation of selection and award



criteria. There is no standard, mandatory tender procedure; there are, however, general rules to ensure transparency and equal treatment.

For more information, please see [the European Commission page on concession contracts](#).

Definition

To be considered a concession and exempt from the Utilities and Public Contracts Directives, the operator must assume a significant portion of the risks associated with the work. The contractor must assume: “real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible”⁷.

The type of payment also defines a concession contract. If the right to exploit a work or service accounts for some or all of the payment a contractor receives, it is a concession contract. In practice, this means that the government body does not provide all of the payment due to the winning bidder.

Concessions are not the same as licenses, authorizations, grants, land-lease contracts or rights of way, as these do not concede the use of a pre-existing resource to a private company to be operated for the public benefit (at some risk to the company).

The [Concession Contracts Directive](#) also regulates both services and works, whereas previous Directives regulated only works. However, both Directives feature the same threshold level—currently €5,225,000—considered very high for a service contract.

Exclusions

Specific sectors excluded from the [Concession Contracts Directive](#) include: lotteries resulting from concessions, civil defence and protection, hazard prevention, air-transport services, some types of audio-visual services, financial services, political-campaign services, legal services and the water sector. The EC will revise its policy for the water sector by April 2019.

Procedures, Selection and Award Criteria

Unlike public contracts, there is no mandatory procedure for concession contracts. The government body is simply obliged to follow general rules to ensure transparency and equal treatment. Under the [Concession Contracts Directive](#), the contracting entity is free to choose any award criteria that are fair and transparent. These can include social, environmental and innovation-related criteria and must be listed in descending order of importance.

Defence Procurement

By 2011, all EU Member States had to transpose the [Defense and Security Directive](#) into national law. Previously, most EU states exempted almost all defense procurement from EU-procurement laws by employing [article 346 in the founding treaties of the EU](#), which relates to national security. The new Directive is designed to meet the particular characteristics of the defence sector.

Scope

The [Defense and Security Directive](#) applies to all purchases above established thresholds for “military or sensitive equipment,” or any parts thereof. This includes military equipment, and equipment adapted for military purposes—defined as equipment which has “distinguished military features” and can be used to carry out military missions (unfortunately a vague definition). Equipment with a security purpose, such as border protection, and that involves classified information, may be considered sensitive and therefore subject to this Directive.

When a contract is mixed—when it falls partly under the [Defense and Security Directive](#) and partly under another Directive—the [Defense and Security Directive](#) takes precedence.

⁷ European Commission Communication: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014XC0329\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014XC0329(01))

Defence Procurement

Defence procurement is regulated under a [separate Directive](#), which has its own thresholds (see below). It is designed to open intra-EU military procurement.

As CETA contains exclusions for defence, it is possible that Canadian companies may be excluded from bidding for some defence contracts.

Exemptions

Exempt from the [Defense and Security Directive](#) are contracts related to intelligence activities and contracts between multiple government bodies. EU states can purchase U.S. military equipment through the Foreign Military Sales process because the U.S. government acts as a go-between for the EU states and U.S. defense firms. As such, the Defense and Security Directive does not apply in this instance.

Exports of Canadian military goods are subject to the *Export and Import Permits Act* (1947) and require export permits from Global Affairs Canada (GAC). For more information, please consult the [Government of Canada's page on Export and Import Controls](#).

There is no exclusion for contracts deemed secret and those requiring special security measures.

Procedures

The Directive enables the contracting entity to use "negotiated procedure with the publication of a contract notice" (see [Chapter on Procedures](#) above). This is designed to give the contracting entity flexibility, an important consideration in the defence sector. The contracting entity has to list specifications on each tender notice and receive at least three bids for each contract. As a result, the ensuing negotiations focus solely on adapting bids to the contracting entity's requirements. The contracting entity must negotiate with each candidate equally. Open procedure does not exist in the Defense and Security Directive.

Subcontracting

The Directive allows for up to 30% of a contract to be completed by subcontractors, a measure designed to support SMEs. Member States can specify mandatory minimums for subcontracting, although most countries will likely allow public bodies to decide on a case-by-case basis.

To ensure transparency and fair treatment, however, subcontracts to other companies must follow government-procurement procedures. The procedures resemble standard EU-procurement procedures, but are relatively simple.

When the value of the subcontract is above the thresholds identified below, contracts must be advertised in accordance with the [Defense and Security Directive](#) provisions for subcontracting. Award and selection criteria must follow general treaty principles, for example; more rules are listed in the [Directive](#). If no subcontractor can fulfill the selection criteria, the winning tenderer is not obliged to subcontract. (See the full requirements for subcontracting in the [Directive](#), article 52).

Exclusion Grounds

Contracting entities can exclude companies that have breached obligations related to security of information or of supply. Entities can also exclude companies considered unreliable.

Thresholds

The thresholds for the Defense and Security Directive are €5,225,000 for works contracts, and €418,000 for services and goods.

Estimate of Total Public Procurement Expenditure by General Government on Works

	year				
	2011	2012	2013	2014	Mean
Belgium	54.5	57.1	57.4	59.1	57.0
Bulgaria	4.4	4.5	4.9	5.5	4.8
Czech Republic	23.6	22.0	21.2	21.3	22.0
Denmark	35.1	37.6	37.3	38.2	37.0
Germany	395.4	408.7	425.5	442.0	417.9
Estonia	2.2	2.6	2.6	2.7	2.5
Ireland	17.6	17.1	16.5	17.7	17.2
Greece	22.3	20.0	19.1	18.9	20.1
Spain	131.5	113.0	105.9	104.9	113.8
France	304.3	313.5	319.4	316.8	313.5
Croatia	5.7	5.7	6.0	6.0	5.9
Italy	177.1	171.7	171.7	169.8	172.6
Cyprus	1.6	1.3	1.1	1.0	1.3
Latvia	2.6	2.7	2.7	2.7	2.7
Lithuania	3.7	3.6	3.6	3.7	3.6
Luxembourg	5.4	5.6	5.7	5.9	5.6
Hungary	13.3	13.1	14.3	16.1	14.2
Malta	0.7	0.7	0.7	0.9	0.8
Netherlands	134.7	134.8	133.9	133.8	134.3
Austria	40.3	41.1	42.5	43.5	41.8
Poland	51.2	48.4	47.4	51.3	49.6
Portugal	20.2	17.2	16.6	17.0	17.7
Romania	16.6	15.5	16.0	16.2	16.1
Slovenia	4.9	4.7	4.8	5.1	4.9
Slovakia	9.8	9.5	9.8	10.6	9.9
Finland	33.9	35.7	37.3	37.9	36.2
Sweden	65.2	69.3	71.8	70.8	69.3
United Kingdom	270.7	290.1	284.5	312.1	289.3
EU total	1848.4	1866.8	1880.0	1931.5	1881.7

Figure 14. Estimate of Total Public Procurement Expenditure by General Government on Works, Goods and Services (excluding utilities) in billion euros - © 2011 PwC, London Economics and Ecorys

[BACK TO TABLE OF CONTENTS](#)

8 According to the country and the nature of the projects: State (central governments or delegated agencies), local governments: region, department, municipality, federal state or land, authority representing the district or the city etc.

9 Source: European Commission http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf

BACKGROUND INFORMATION: PROCUREMENT & THE EUROPEAN UNION

Background on Procurement

A government-procurement contract is signed by a public entity⁸ and subsidized by public money to provide goods or services via a tendering process. Without any oversight, there is an obvious moral hazard. In most OECD countries and in EU Member States, contract awards must abide by general rules that promote openness, transparency, non-discrimination, fairness and the efficient use of public money.

EU Procurement

The government-procurement market is a sizeable component of the overall EU economy. However, the EU has not succeeded in creating a single market for government procurement as it has for other goods and services. This discrepancy has long been considered one of the weaknesses of Europe's single market. EU governments tend to buy domestic rather than award contracts to the best bidder, regardless of national origin.

The EU, therefore, created EU-wide legislation in the 1970s that governs the procurement of public goods, works and services. These laws, known as Directives (see [Chapter 11](#) on Directives), harmonize national legislation and set out minimum rules for all EU countries. The Directives promote cross-border procurement and essentially extend the single market to the purchase of goods and services by public bodies.

Size of Procurement Market

The EU's procurement Directives apply to all 28 Member States and to every contract above the defined thresholds (see [Chapter 8](#) on Thresholds). As a result, approximately 140,000 contracts are posted to the online section of the Supplement to the [Official Journal of the European Union \(OJEU\)](#) each year⁹. The registry is also called [TED](#), short for Tenders Electronic Daily.

The more than 250,000 public bodies in the EU range from town councils and regional governments (e.g. German states) to the 28 national governments and the European institutions.

Every year, the EU Member States collectively spend roughly 14% of the EU's GDP to procure goods, works and services. About 20% of this amount, or an estimated €450 billion¹⁰, falls above the thresholds described in the EU's Public Procurement Directive and are therefore governed by EU legislation. The Directives stipulate that notices for these contracts must be displayed on Tenders Electronic Daily (TED). See the table¹¹ in Figure 14 for a breakdown of total expenditure by country.

In terms of the value of contract notices published on TED, approximately 39% were for works, 35% were for services and 25% were for goods¹².

According to 2011 data, France, the UK, Germany, Spain, Poland and Italy together account for approximately three-quarters of all EU procurement by both total value and number of contracts.

GP Breakdown by Sector

Approximately 39% of contracts on TED were for works, 35% for services and 25% on goods.

10 Source: European Commission <http://ec.europa.eu/DocsRoom/documents/11022/attachments/1/translations/en/renditions/native>

11 Source: European Commission <http://ec.europa.eu/DocsRoom/documents/11022/attachments/1/translations/en/renditions/native>

12 Source: European Commission <http://publications.europa.eu/en/publication-detail/-/publication/0cfa3445-7724-4af5-8c2b-d657cd690c03>

13 Source: European Commission DG MARKT, based on TED data

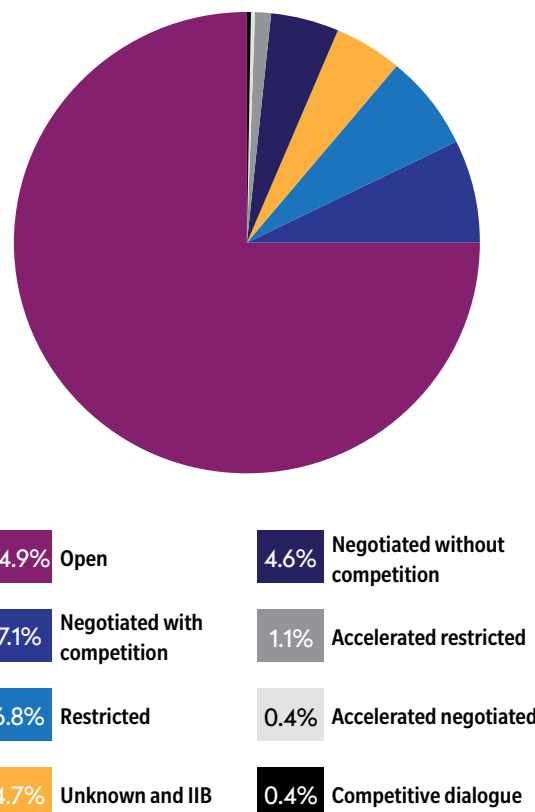


Figure 15 Proportion of Bid types - © 2011 PwC, London Economics and Ecorys

Facts on Procedures, Criteria and Processing Times

Open procedure (anyone can bid) is by far the most popular and accounts for more than 74% of all contract notices (see figure 15 – proportion of bid types¹³). Open procedure is used mostly for low-value contracts, which comprise most contracts. Under restricted procedure only those who pass a preliminary screening can bid, while negotiated procedure authorizes government bodies to negotiate contract terms directly with bidders. Competitive dialogue authorizes public entities to negotiate tender specifications with bidders and is most commonly used for higher value contracts.

MEAT criteria (Most Economically Advantageous Tender, see Chapter on Award Criteria), is used in approximately 70% of tenders; the rest use lowest price. Utilities represent roughly 17% of total EU expenditure but only 10% of contracts. Tender competitions take an average of 108 days to complete, although durations vary considerably. An average of 5.4 bidders vies for each contract.

Sectoral Breakdown

The construction sector appears to be one of the most competitive and lucrative¹⁴ sectors followed closely by the machinery and equipment, and manufactured goods sectors.

Sectors with the largest numbers of contracts awarded to foreign bidders include oil and gas, electricity, ports, railways, defence, airports, education and urban transport (note that many are utilities).

Existing Government Procurement Agreements between the EU and Canada

It is important to remember that having de jure (legal) access to a foreign market does not immediately imply de facto, that is to say real, access. De jure access, however, provides for legal remedies in the event of discriminatory treatment.

Prior to the Comprehensive Economic and Trade Agreement (CETA), Canada and the EU had mutual procurement obligations under the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO). Canadian suppliers enjoyed de jure access to tenders in the EU, but not to procurement opportunities with local-level governments and utilities. CETA enables Canadian companies to participate in EU-procurement competitions.

Government Procurement Agreement (GPA) History and Explanation

Trade in government procurement is in fact a derogation from the international principles governing the multilateral trading system. The General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) are both based on the most favored nation (MFN) clause. According to the principle of multilateralism, the GATT and GATS benefit all members without discrimination and with no consideration of their respective levels of commitment. Current signatories to the Agreement on Government Procurement (GPA) include Armenia, Canada, the EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Moldova, Montenegro, the Kingdom of the Netherlands with Respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Taipei, Ukraine and the U.S.A. Australia, Tajikistan and the Kyrgyz Republic have initiated accession talks.

Each country's offer of market access differs. For a complete list of access offers, consult the World Trade Organization website.

[BACK TO TABLE OF CONTENTS](#)

¹⁴ Source: European Commission <http://publications.europa.eu/en/publication-detail/-/publication/0cfa3445-7724-4af5-8c2b-d657cd690c03>

APPENDIX A: GENERAL ABBREVIATIONS

CETA- Comprehensive Economic and Trade Agreement

CPV- Common Procurement Vocabulary

EC- European Commission

ECB- European Central Bank

ECJ- European Court of Justice

EEA- European Economic Area

EEAS- European External Action Service

EEC- European Economic Community

EP- European Parliament

ESPD- European Single Procurement Document

EU- European Union

FTA- Free Trade Agreement

GATS- General Agreement on Trade in Services

GATT- General Agreement on Trade and Tariffs

GP- Government Procurement

GPA- Government Procurement Agreement

MEAT- Most Economically Advantageous Tender

MFN- Most Favoured Nation

NAFTA- North American Free Trade Agreement

NUTS- Nomenclature of territorial units for statistics
(French acronym)

OJEU- Official Journal of the European Union

SDR- Special Drawing Rights

TED- Tenders Electronic Daily

WTO- World Trade Organization

APPENDIX B: LIST OF REFERENCES/ SOURCES

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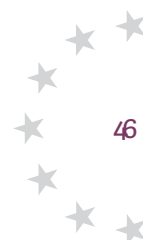
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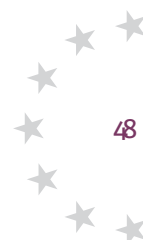
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[BACK TO TABLE OF CONTENTS](#)

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