

Highlights

- The [Canadian Free Trade Agreement](#) (CFTA) came into force on July 1, 2017 and replaced the Agreement on Internal Trade (AIT) from 1994.
- CFTA will not impact territorial legislation or protections related to Aboriginal Peoples¹, language, water in its natural state, culture, or healthcare.
- **Online Portals:** The Government of Canada will be developing a Canada-wide single point of access where Canadian suppliers will be able to retrieve information on government tenders from all jurisdictions (Article 506).
- **Bid Protest Mechanism:** each jurisdiction must develop its own timely, effective, and transparent and non-discriminatory administrative or judicial review process (Article 518). However, Yukon does not need to provide rapid interim measures to preserve the suppliers' opportunity to participate in the procurement process for contracts with a value under the CETA threshold (see amount below). It also means that corrective action or compensation for the loss or damages suffered by a party will not be compensated.
- **Transparency of Contract Awards:** public entities must promptly inform suppliers that a contract has been awarded and, within 72 days of awarding a contract, disclose the particulars of the contract award including the name of the supplier and the value of the contract (Article 516).
- **Person-to-Government Dispute Resolution:** Individuals can now initiate complaints to address barriers to trade across Canada. The individual's first step is to ask their respective provincial government in writing to bring a dispute on their behalf. If the government declines to bring the matter forward on their behalf, then, the individual may commence dispute-resolution proceedings under the CFTA.

CFTA - Exceptions

CFTA applies to all government trade and economic activity in Canada unless explicitly excluded through "exceptions". Yukon businesses interested in bidding on tenders from the Government of Canada and other jurisdictions should review the relevant exceptions for the province or territory.

Annex I - Exceptions for existing measures ([click](#)) Yukon

Annex II - Exceptions for future measures ([click](#)) Yukon

Annex 520.1 – Exceptions specific to procurement ([click](#)) Party – Specific

Procurement - Exceptions

Where Yukon procurement is concerned, the CFTA does not replace the [Yukon Contracting and Procurement Directive](#). Chapter five of the CFTA details the rules in regard to procurement. Yukon negotiated a number of exceptions that allow the application of local preference under certain circumstances:

Regional Economic Development (RED)

10 times per year and up to \$1M each time, Yukon can use a special RED procurement exception i.e. the procurement qualifies for a derogation from the CFTA and therefore, rules will not be applied.

¹ Article 800 1) This Agreement does not apply to any measure adopted or maintained by a Party with respect to Aboriginal peoples. It does not affect existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982. 2) For greater certainty, nothing in this Agreement shall prevent a Party from fulfilling its obligations under its treaties with Aboriginal peoples, including land claims agreements.

MASH Entities

CFTA procurement rules do not apply to Yukon municipalities, academic institutions, school boards, and health and social service providers (MASH) entities, specifically:

1. Regional, local, district or other forms of municipal government;
2. Francophone School Board;
3. Publicly-funded academic, health and social service entities;
4. The Legislative Assembly;
5. Elections Yukon;
6. The Yukon Information & Privacy Commissioner;
7. The Yukon Conflict of Interest Commissioner;
8. The Yukon Ombudsman; and
9. The Yukon Child and Youth Advocate.

Business Incentive Policy (BIP)

The Yukon Business Incentive Policy or any successor policy having similar objectives is maintained up to thresholds defined by the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

Two-Year Transition Period

Tender Notices (Article 506) and Transparency of Procurement Information (516) do not apply to Yukon for a period of two years, i.e. until July 2019.

Dispute Resolution/Review Procedures

As a party to the CFTA, Yukon is required to develop its own review processes for procurement challenges which will apply to all public-sector entities within the jurisdiction. Article 518.9 clarifies that available remedies must provide for: (a) rapid interim measures to allow the supplier the opportunity to participate in the procurement; and (b) if the complaint is successful, corrective action or compensation for the damages suffered. In Yukon, the Rapid Interim measures apply only at CETA thresholds.

Thresholds

Thresholds are dollar value boundaries above which governments must use a formal, open solicitation method for procurement. Thresholds in the Yukon Contracting and Procurement Directive are lower than the thresholds allowed by the CFTA. Therefore that directive prevails, unless the Yukon thresholds are increased above the CFTA thresholds.

	YG Contracting and Procurement directive	CFTA ²	CFTA	CETA ³	CETA
	<i>Department & Corp</i>	<i>Department</i>	<i>Crown corp.</i>	<i>Departments</i>	<i>Crown Corp.</i>
<i>Goods</i>	\$25,000	\$25,000	\$500,000	\$221,400	\$604,700
<i>Services</i>	\$75,000	\$100,000	\$500,000	\$221,400	\$604,700
<i>Construction</i>	\$75,000	\$100,000	\$5,000,000	\$8,500,000	\$8,500,000

Crowns corporations are: Yukon Development Corporation (including Yukon Energy), Yukon Housing Corporation and the Yukon Liquor Corporation. Yukon Lotteries Commission is not a corporation per se but is considered as one under this model.

² CFTA procurement thresholds are now subject to an inflation adjustment provision

³ CETA thresholds date of entry into force is December 31, 2017 but will be revised on January 1, 2018 ([link](#))

Full list of CFTA non-application for all jurisdictions (Article 504.11)

Procurement measures do not apply to the following situations:

- (a) public employment contracts;
- (b) non-legally binding agreements;
- (c) any form of assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives;
- (d) a contract awarded under a cooperation agreement between a Party and an international cooperation organization if the procurement is financed, in whole or in part, by the organization, only to the extent that the agreement includes rules for awarding contracts that differ from the obligations of this Chapter;
- (e) acquisition or rental of land, existing buildings, or other immovable property, or the rights thereon;
- (f) measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or are a disguised restriction on trade;
- (g) procurement or acquisition of:
 - i) fiscal agency or depository services;
 - ii) liquidation and management services for regulated financial institutions; or
 - iii) services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;
- (h) procurement of:
 - (i) financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
 - (ii) health services or social services;
 - (iii) services that may, under applicable law, only be provided by licensed lawyers or notaries; or
 - (iv) services of expert witnesses or factual witnesses used in court or legal proceedings; or
- (i) procurement of goods or services:
 - (i) financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this Chapter;
 - (ii) by a procuring entity on behalf of an entity not covered by this Chapter;
 - (iii) between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise;
 - (iv) by non-governmental bodies that exercise governmental authority delegated to them;
 - (v) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
 - (vi) under a commercial agreement between a procuring entity which operates sporting or convention facilities and an entity not covered by this Chapter that contains provisions inconsistent with this Chapter;
 - (vii) conducted for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers; or

(viii) conducted:

(A) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(B) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance, if the procedure or condition would be inconsistent with this Chapter.