

EU wants all-access pass to Canadian procurement

Confidential European briefing notes show a desire to bid on contracts with utilities, port and airport authorities.

By Laura Payton

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European Union negotiators want access to procurement competitions in an extensive list of Canadian cities, utilities and Crown corporations in a market they estimate is worth \$86 billion, according to confidential EU briefing notes provided to *Embassy*.

The documents, including the EU's "initial market access request to Canada," dated December 2009, detail some of what the trading bloc is seeking in opening up bilateral trade, investment and labour mobility. And when it comes to government procurement, they want it all.

"All central government entities and all other central public entities," should be open to contracting European goods and services, the request says, pointing to the federal level.

At the provincial and territorial level, the request is similar: "All sub-central government entities including those operating at the local, regional or municipal level."

That includes, for example, opening up bidding for goods and services for the Prime Minister's Office, the House of Commons, the Senate, Elections Canada, the Library of Parliament and Public Safety and Emergency Preparedness Canada. Two of the government's biggest buyers, Public Works and Government Services Canada and Transport Canada, are also on the list.

The access request also lists specific cities the EU wants open for bidding and notes "all entities operating in the so-called MASH sector (municipalities, municipal organizations, school boards and publicly funded academic, health and social service entities)" should be included, "as well as any corporation or entity owned or controlled by one or more of the preceding."

Negotiators are also seeking access to procurement for airports, public transit systems, ports, municipal water services and power and energy authorities like BC Hydro and Hydro Quebec.

Terry Collins-Williams, a former deputy permanent representative for Canada at the WTO and former director general of multilateral trade policy and negotiation at the Department of International Trade, says water, sewage, energy, power generation and power transmission equipment are big ticket items where some European countries have a competitive advantage.

"You can see why the Europeans would put a high priority on getting those products and entities covered," he said.

Canada doesn't necessarily have procurement interests in the EU that equal the same value, but will balance out the negotiations with items from other areas, he continued.

"You don't have to balance or find exact reciprocal matching in each area of negotiations. The overall agreement has to represent a reasonable balance. We know that government procurement is a high priority for the Europeans...Canada would be looking for advantages in other areas too," Mr. Collins-Williams said, pointing to tariffs and restrictions on beef, pork, fish and forestry exports.

Canada and the EU started negotiations in October on what both governments hope will be an ambitious next-generation agreement that sets the standard for future deals around the world, lowering barriers to trade, investment and labour mobility.

One of the documents provided to *Embassy*, known as the "hymn sheet," sets out the EU's objectives and the main messages that negotiators want to convey to the Canadian team.

"The fragmentation of the Canadian procurement regime, the multiplication of rules, the lack of information about tendering rules and opportunities and, more significantly, the existence of local discriminatory provisions and practices against non-domestic and foreign suppliers render access to the Canadian procurement market extremely difficult," the hymn sheet reads.

"Canada's commitments are among the poorest offers under the WTO Government Procurement Agreement (GPA)," reads a line in another document, the public procurement barrier fiche. The document quotes a 2007 estimate showing "Canada only offers to the GPA parties 0.8 per cent of its procurement market."

While the Canadian provinces have agreed to sign onto the GPA to gain an exemption from the Buy American clause in last year's US stimulus package, International Trade Minister Peter Van Loan says the agreement is limited to the US only. While there are multiple signatories to the WTO's procurement agreement, Mr. Van Loan says the new access only allows American companies to bid on provincial and municipal contracts.

"The way that the government procurement agreement under the WTO works is it's a range of bilateral obligations within that framework. We have signed onto obligations in so far as the United States is concerned," said Mr. Van Loan.

Jason Langrish, executive director of the Canada-Europe Roundtable for Business, says he thought the EU had started to move away from pushing for Canadian provinces to sign onto the GPA because it would give the same access to WTO countries not involved in the Canada-EU negotiations.

"It's really not a great added benefit in the context of a bilateral negotiation because...this is supposed to be a bilateral agreement that goes beyond our WTO commitments," said Mr. Langrish, who suspects the EU negotiators were planning to open their markets wide enough to entice the Canadian side to be "ambitious" on procurement and improve upon the agreement under the GPA. Mr. Langrish also expects the EU to push for agreement on lowering technical barriers since the WTO agreement should guarantee their access to the provinces.

But, Mr. Langrish says, signing onto the GPA for the Buy American exemption does help in EU talks.

"It shows that the provinces are prepared to put procurement on the table but it would need to be deeper than this, than what's been negotiated," he said.

A spokesman for Matthias Brinkmann, the EU ambassador to Canada, refused to comment due to the ongoing nature of the negotiations.

The idea of opening provincial, territorial and municipal procurement to bids by non-Canadian companies has raised concern among unions, including the Canadian Union of Public Employees and the Public Service Alliance of Canada, representing a combined 765,000 members.

"Transnational corporations in both Canada and the EU want the right to deliver public services," CUPE and PSAC wrote in a position paper, released last month, along with the National Union of Public and General Employees and the European Federation of Public Service Unions.

"It is hard to accept that any international agreement should prevent municipal, provincial, territorial, state or federal governments from investing public resources in job creation, community economic development and economic renewal through its purchasing policies," they argue in the document. "The right to use taxpayers' money to the benefit of the taxpayers is a very important trust and should be carefully protected."

The unions, as well as the Council of Canadians, have also voiced concern over the secrecy of the negotiations.

One of the documents provided to *Embassy* is a summary of the second round of talks that took place in Brussels Jan. 18-22. The note says "there were good discussions" on procurement, "but Canadian negotiators appeared to need more time for internal consultation" with the provinces.

The provincial negotiating teams were supposed to have reported to the federal team by the end of December on what they were willing to give up in government procurement, but a source with knowledge of the talks told *Embassy* that the Ontario team is dragging its feet and still hasn't provided the information.

"Ontario is essentially a laggard," he said. "A lot of it is just disorganization and poor leadership as well. At the political level it doesn't seem like they're cracking heads and telling them to get moving on this."

Mr. Collins-Williams says it doesn't surprise him that Ontario is acting more slowly than other provinces that traditionally play active roles in international trade.

"They don't dedicate the resources and attention that some other provinces like Quebec and Alberta notably have," he said. "So they're probably not well-prepared or well-staffed to participate, at least at the same level as some of the other provinces have. It is a little surprising given some of the interests that are at stake in the negotiations. But that has been true in the past."

The next round of talks is scheduled for April 19-23 in Ottawa. The note says there will be "considerable inter-sessional work...with the aim of further advancing a jointly agreed text." Updated texts from both sides are to be consolidated in a single document by March 26.