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PROCUREMENT REVIEW: A PRACTITIONER'S GUIDE

Attwater
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Procurement Review: A Practitioner's Guide is a practical guide to the bid challenge process conducted by the Canadian International Trade Tribunal (CITT), and to issues that arise in procurements conducted by the federal government. It is directed at those "in the trenches" who want to understand the process and how the CITT has interpreted relevant trade agreements. The book provides practical advice for complainants and for government institutions defending against complaints. The book pieces together the CITT's decisions for purposes of elucidating policies governing procurement. It also provides commentary on the CITT's case law.

This release features updates to case law and commentary in Chapter 2 (The Bid Complaint Process), Chapter 3 (Other Procurement Issues), Appendix A (Trade Agreements) and Appendix B2 (CITT Legislation).

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Highlights

- **Chapter 2. The Bid Complaint Process—I. Preliminary Matters: Scope and Coverage—D. Monetary Thresholds—§ 2:102. Adjusting Monetary Thresholds**—The monetary thresholds are revised every two years under the North American Free Trade Agreement (NAFTA), the Canada-Chile Free Trade Agreement (CCFTA), the Canada-Peru Free Trade Agreement (CPFTA), the Canada-Colombia Free Trade Agreement (CCOFTA), the Canada-Panama Free Trade Agreement (CPAFTA), the revised World Trade Organization Agreement on Government Procurement (revised WTO-AGP), the Canada-Honduras Free Trade Agreement (CHFTA), the Canadian Free Trade Agreement (CFTA), the Canada-Ukraine Free Trade Agreement (CKFTA), the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Canada-United Kingdom Trade Continuity Agreement (C-UK TCA). Under the Canada-Korea Free Trade Agreement (CKFTA), the thresholds for goods and services are adjusted, as necessary, based on consultations between the Parties. The threshold for construction services is revised every two years.
- **Chapter 3. Other Procurement Issues—II. Bid Clarification and Bid Modification—§ 3:62. Government Institutions—Compliance at Bid Closing**—As a general proposition, a bid must be fully responsive to all mandatory information requirements at bid closing. Missing information may render a bid non-compliant or impair a rated evaluation. As discussed below, a contracting authority may seek clarification of information contained in a bid but is prohibited from accepting new information. Under PWGSC's Phased Bid Compliance Process (PBCP), a bidder may be given an opportunity to submit information found missing from its bid. In a Complaint by EBC Inc., the CITT found that "missing information" included a bid bond submitted in a format that prevented verification. [footnote 2] The CITT further found that because PWGSC's request for a verifiable version of the bid bond identified the deficiency, set out the information required to address the deficiency and established a time period for submission of the new version, the request constituted "notice" under the PBCP. Having engaged the process and received a verifiable bid bond in response, PWGSC was required to consider the information in its evaluation.