



# Guidelines to the Procurement Obligations of Domestic and International Trade Agreements



August 2021



This document is intended to assist procuring entities in understanding their procurement obligations under the trade agreements. This document is **not** intended to be an interpretive guide, does **not constitute legal advice**, and **does not replace** the specific obligations of the trade agreements.

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## TERMS USED IN THESE GUIDELINES

These definitions apply only to these Guidelines and do not necessarily align with the definitions used in the trade agreements. Different trade agreements may define the same term differently. Refer to each trade agreement for definitions specific to those agreements:

**commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial market place to, and customarily purchased by, non-government buyers for non-government purposes;

**construction** means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering work;

**covered procurement** means a procurement whose estimated value meets or exceeds the applicable threshold of a trade agreement and is not otherwise excluded;

**Crown corporations** means Crown corporations, government-owned commercial enterprises, and other entities that are owned or controlled by the provinces of British Columbia, Alberta, Saskatchewan or Manitoba through ownership interests;

**estimated value** refers to the maximum total value of the procurement, whether awarded to one or more suppliers, taking into account all forms of remuneration to be paid to a supplier, including premiums, fees, commissions, and interest;

**limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

**MASH** means regional, local, district or other forms of municipal government, school boards, publicly-funded academic, health and social service entities, as well as any entity owned or controlled by any one of the preceding;

**measure** includes any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure and includes any action of a procuring entity regarding covered procurements;

**Ministries** means departments, ministries, agencies, boards, councils, committees, commissions, and similar provincial agencies;

**person** means a natural person or an enterprise;

**prequalification** means a process whereby a procuring entity establishes a list of suppliers capable of responding to a specific requirement;

**procurement** means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction, but does not include:



- (a) any form of assistance that a procuring entity provides, including cooperative agreements, grants, loans, equity infusions, guarantees or fiscal incentives; or
- (b) provision by government organizations, including government entities, of goods and services to persons or other government organizations, including government entities;

**procuring entity** means any one of the following entities, when undertaking a procurement:

- (a) a Ministry;
- (b) a Crown corporation; or
- (c) a MASH entity,

as those terms are defined, above;

**standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

**supplier** means a person or group of persons that provides or could provide goods or services;

**technical specification** means a tendering requirement that:

- (a) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- (b) addresses terminology, symbols, packaging, marking or labelling requirements as they apply to a good or service;

**tender** refers to a competitive offer to provide goods, services or construction made by a supplier to respond to a tender notice;

**tender notice** means a notice published by a procuring entity inviting interested suppliers to submit a tender in response to a request for proposal, request for quotation, a request for prequalification, or other form of procurement request;

**trade agreement** means the following international and domestic trade agreements:

- (a) the New West Partnership Trade Agreement (NWPTA),  
[www.newwestpartnershiptrade.ca](http://www.newwestpartnershiptrade.ca);



- (b) the Canadian Free Trade Agreement (CFTA), [www.cfta-alec.ca](http://www.cfta-alec.ca);
- (c) the Canada – European Union Comprehensive Economic and Trade Agreement (CETA), <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>;
- (d) the World Trade Organization Agreement on Government Procurement (GPA), [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm); and
- (e) The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/agreement-entente.aspx?lang=eng>.

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## **PART A: INTRODUCTION**

### **I Purpose of the Guidelines**

These Guidelines have been developed by the Governments of British Columbia, Alberta, Saskatchewan and Manitoba to assist their procuring entities in understanding procurement-related obligations under domestic and international trade agreements.

Each trade agreement includes procurement obligations based on the principles of non-discrimination, openness and transparency, and reflects a commitment to effectively manage public resources.

### **II Application and Scope**

Not all government procuring entities are covered under each of the trade agreements. Further information on the specific coverage of each of the trade agreements is included in [Schedules A to E](#).

### **III Thresholds**

Procurement obligations under the trade agreements are triggered when a procuring entity contemplates a procurement valued at or above certain specified thresholds. A procurement that falls below **all** of the applicable thresholds is not subject to the procurement obligations of any trade agreements.



As of January 2020, these thresholds are:

Trade Agreement	Procurement Type	Ministries/ Departments	Crown Corporations	MASH
<b>NWPTA</b>	Goods	\$10,000	\$25,000	\$75,000
	Services	\$75,000	\$100,000	\$75,000
	Construction	\$100,000	\$100,000	\$200,000
<b>CFTA</b>	Goods	\$26,400	\$528,300	\$105,700
	Services	\$105,700	\$528,300	\$105,700
	Construction	\$105,700	\$5,283,200	\$264,200
<b>CETA</b>	Goods	\$366,200	\$650,000 <sup>1</sup>	\$366,200
	Services	\$366,200	\$650,000	\$366,200
	Construction	\$9,100,000	\$9,100,000	\$9,100,000
<b>WTO/GPA</b>	Goods	\$650,000	Not covered	
	Services	\$650,000		
	Construction	\$9,100,000		
<b>CPTPP</b>	Goods	\$650,000	Not covered	
	Services	\$650,000		
	Construction	\$9,100,000		

**NOTE:** Thresholds for the CFTA, CETA, GPA and CPTPP are adjusted every two years. The next update will occur in January 2022.

Additional information on specific coverage, exclusions and other criteria contained in each of the trade agreements is identified in [Schedules A to E](#).

<sup>1</sup> Entities with any of the following core activities are subject to a threshold of \$732,400 for goods and services: production, transport, or distribution of drinking water, electricity, gas or heat; the treatment of wastewater; and public transportation. This threshold is also adjusted every two years.



## PART B: GENERAL OBLIGATIONS

Under all of the trade agreements procuring entities must ensure that covered procurements meet the following four general obligations:

### I Openness

1. All eligible suppliers that meet the essential requirements for a specific covered procurement must be given the opportunity to submit a tender.<sup>2</sup>

### II Non-Discrimination

1. Procuring entities must accord no less favourable treatment to goods, services and suppliers of other jurisdictions that are parties to a trade agreement than the best treatment the procuring entity provides to goods, services and suppliers of their own or any other jurisdiction.

### III Non-Circumvention

1. Procuring entities must not:
  - (a) prepare, design or otherwise structure a procurement, or
  - (b) select a valuation method or divide procurement requirements,in order to avoid the obligations of the trade agreements.
2. Where a procuring entity uses a third party to conduct procurements on its behalf, the third party must ensure such procurements meet the procuring entity's trade agreement procurement obligations.

### IV Transparency

1. Procuring entities must:
  - (a) post tender notices on their Province's designated electronic tendering system or systems;
  - (b) provide copies of their procurement policies upon request;
  - (c) provide any requested documents in a non-discriminatory manner;

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<sup>2</sup> Eligible suppliers vary by trade agreement and, as such, procuring entities should consult the Schedules to these Guidelines for further details on who may be an eligible supplier under each trade agreement.



- (d) upon request, provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with the applicable obligations; and
  - (e) publish award information in a timely manner, typically within 72 days of the awarding of the contract. (See [Part C, Section VIII](#) (Contract Award) for more details.)
2. Procuring entities are not required to disclose any information that would:
- (a) be contrary to freedom of information or privacy legislation;
  - (b) impede law enforcement;
  - (c) prejudice the legitimate commercial interests of particular enterprises (including suppliers);
  - (d) involve a waiver of privilege; or
  - (e) otherwise be contrary to the public interest.

## **V Illustrative List**

1. The following is an illustrative list of practices that are considered inconsistent with the openness, non-circumvention, non-discrimination, or transparency obligations:
- (a) extending a preference for local or domestic goods, services or suppliers;
  - (b) imposing conditions on the invitation to tender, registration requirements or qualification procedures based on the location of a supplier's place of business;
  - (c) using a technical specification or conformity assessment procedure with the purpose or effect of creating unnecessary obstacles to trade;
  - (d) scheduling events in the tender process to prevent suppliers from submitting a tender;
  - (e) specifying quantities or delivery schedules in a way that may reasonably be judged as deliberately designed to prevent suppliers from meeting the requirements of the procurement;
  - (f) using price discounts or preferential margins to favour particular suppliers;
  - (g) applying fees or other costs to particular suppliers, except to the extent that any difference can be justified by an actual cost-of-service differential;



- (h) limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by a procuring entity;
- (i) requiring prior experience that is not essential to meet the requirements of the procurement;
- (j) providing information so as to give one supplier an advantage over other suppliers; and
- (k) dividing required quantities or diverting funds to non-covered subsidiary agencies in a manner designed to avoid otherwise applicable obligations.

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## PART C: PROCUREMENT PROCEDURES

### I Valuation

1. For the purpose of determining whether a procurement is a covered procurement, procuring entities must calculate the estimated value of the procurement at the time the tender notice will be published. Estimated value refers to the maximum total value of the procurement, whether awarded to one or more suppliers, taking into account all forms of remuneration to be paid to a supplier, including premiums, fees, commissions and interest, excluding taxes.

**IMPORTANT:** Estimated value is calculated differently in the NWPTA with respect to renewals or extensions. See Schedule A for more information.

#### *Goods, Services and/or Construction*

2. Where a procurement is for a combination of goods and services, the threshold applicable to the procurement should be for whichever represents the largest portion of the procurement value. Additionally, goods and services should not be bundled together to avoid the lower thresholds that may apply to the procurement of goods alone.
3. Where a procurement is for construction, the valuation must include the value of all the goods and services which are to be supplied by the contractor. Any goods or services purchased directly by a procuring entity outside the scope of a construction contract with a general contractor are independently subject to the threshold applicable to goods or services, as the case may be.
4. If a procurement is for a good and includes the installation, operation, maintenance or manufacture of the good, the procuring entity must include those additional estimated costs in its valuation.

#### *Unknown Value*

5. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement is considered a covered procurement, unless otherwise excluded.

### II Electronic Tendering

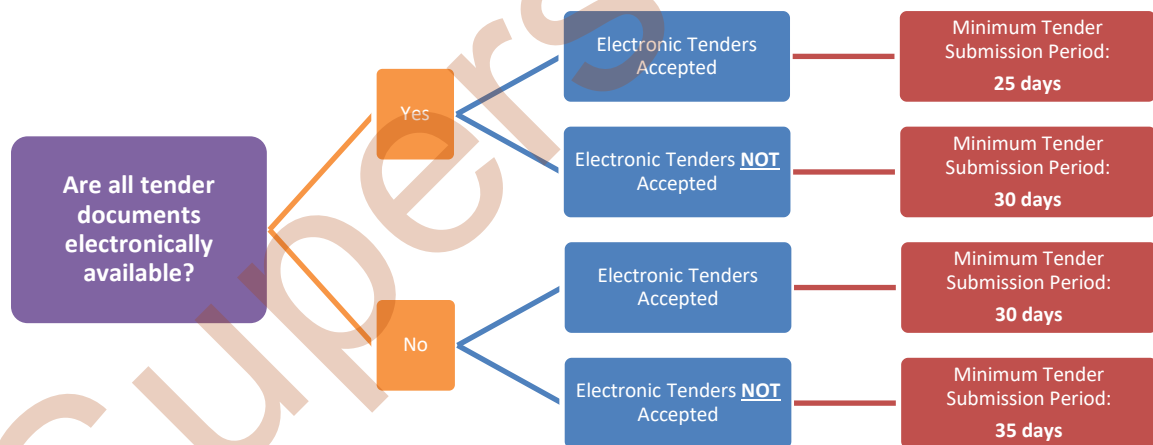
1. Procuring entities must post tender notices for all covered procurements on the electronic tendering site for its jurisdiction:
  - (a) British Columbia - [www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca)
  - (b) Alberta - [www.purchasingconnection.ca](http://www.purchasingconnection.ca)
  - (c) Saskatchewan – [www.sasktenders.ca](http://www.sasktenders.ca)



(d) Manitoba - [www.merx.com](http://www.merx.com)

### III Time to Prepare and Submit Tenders

1. Procuring entities must provide suppliers with a reasonable period of time to submit a tender, taking into account:
  - (a) the nature and the complexity of the procurement;
  - (b) the extent of subcontracting anticipated; and
  - (c) the time necessary for transmitting tenders by non-electronic means.
  
2. Procurements subject to the GPA, CETA or CPTPP (as outlined in [Schedules C – E](#)) require a minimum of 40 calendar days. Since NWPTA procuring entities require tender notices to be posted electronically, the minimum time period for the submission of tenders is reduced by five calendar days to 35 calendar days. The closing date can be further reduced to no less than 25 calendar days from the date on which the tender notice is published when documents and tenders are both available electronically.



3. For procurements subject to the GPA, CETA or CPTPP, shorter minimum time periods may apply in situations such as:

Procurement Practices	Minimum Tender Submission Time Period
Only pre-qualified suppliers can participate in the tender. (See Part C, Section VI (Prequalification))	Set by <b>mutual agreement</b> of the procuring entity and the qualified suppliers, or <b>10 days</b>
Commercial goods or services are to be procured.	<b>13 days</b> , or <b>10 days</b> if electronic tenders are accepted
The procurement is taking place in a situation of duly substantiated urgency.	<b>10 days</b>
The procuring entity has published a notice of planned procurement at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement.	<b>10 days</b>

#### IV Tender Notices

1. Each tender notice must include:
  - (a) the name, address and contact information of the procuring entity;
  - (b) information on how to obtain all relevant documents relating to the procurement and their cost and terms of payment, if any;
  - (c) a brief description of the procurement, including the nature and the quantity or estimated quantity of the goods or services, or categories thereof, to be procured;
  - (d) if applicable, the address and any final date for the submission of requests for participation in the procurement;
  - (e) the address and final date for the submission of tenders;
  - (f) the date, time and place for any public opening of tenders;
  - (g) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers or language(s) in which tenders may be submitted if other than the official language of the Party;
  - (h) a statement that identifies the trade agreement(s) or chapters to which the tender is subject;



- (i) a description of any options;
- (j) the timeframe for delivery of goods or services or the duration of the contract;
- (k) the procurement method that will be used and whether it will involve negotiation or electronic auction; and
- (l) if a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender.

## **V Tender Documentation**

1. A procuring entity must make tender documentation available to suppliers that includes all information necessary to permit suppliers to prepare and submit responsive tenders, including:
  - (a) information required in [Part C, Section IV](#) (Tender Notices); and
  - (b) all relevant details concerning:
    - (i) all criteria that will be used in evaluating the tenders, including methods of weighting and evaluation, unless price is the sole criterion;
    - (ii) any technical specifications;
    - (iii) any requirements for servicing or warranty;
    - (iv) any requirements associated with transitioning from one supplier to another;
    - (v) any applicable conformity assessment certification, plans, drawings or instructional materials;
    - (vi) any requirements related to the submission of tenders; and
    - (vii) any and all other requirements to be fulfilled, or terms or conditions applicable to the tender.

### *Date of Delivery*

2. In establishing the date for the delivery of goods or the supply of services being procured, a procuring entity must take into account such factors as:
  - (a) the complexity of the procurement;
  - (b) the extent of subcontracting anticipated; and



- (c) the realistic time required for production, de-stocking, transport of goods from the point of supply, or for supply of services.

### *Technical Specifications*

- 3. In prescribing technical specifications for the goods or services being procured, a procuring entity must, where appropriate:
  - (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
  - (b) base the technical specifications on recognized standards, where such exist.
- 4. A procuring entity must avoid the use of technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier. However, if there is no other sufficiently precise or intelligible way of describing the procurement requirements, a procuring entity must then indicate that it will consider tenders for equivalent goods or services that demonstrably fulfil the requirement of the procurement by including words such as “or equivalent” in the tender documentation.
- 5. A procuring entity must not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person who has or may have a commercial interest in the procurement.

### *Modifications, Clarification or New Information*

- 6. Questions from one or more suppliers that elicit new information or clarification of the original information provided in the tender documentation must be made available in writing to all suppliers in an open, fair and timely manner.
- 7. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the tender documentation, or amends or reissues a tender notice or tender documentation, the procuring entity must:
  - (a) post all such modifications or amended or reissued tender notice or tender documentation on the designated electronic system indicated in [Part C, Section II](#) (Electronic Tendering); and
  - (b) where appropriate, extend the timeframe for the submission of tenders to allow adequate time for suppliers to incorporate these changes in their tenders or to modify and re-submit amended tenders.

## VI Prequalification<sup>3</sup>

1. A procuring entity may restrict tenders to prequalified goods, services or suppliers provided such prequalification is in accordance with the procurement rules.
2. A notice to prequalify must be published on the designated electronic tendering system of the procuring entity's Province and should include, in addition to the information in [Part C, Section IV](#) (Tender Notices):
  - (a) the criteria that will be used to prequalify suppliers;
  - (b) a statement that only the suppliers on the prequalified list will receive further notices of procurement covered by the list; and
  - (c) the period the list will be valid and the means for its renewal or termination, or, where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

For procurements that fall within the threshold of an international trade agreement, a notice to prequalify must be posted for at least 25 days.

3. In addition to the requirements of paragraph 2, the notice inviting interested suppliers to apply for inclusion on a prequalification list must be published at least annually on the electronic tendering site for its jurisdiction party, as listed in Part C, Section II (Electronic Tendering).
4. Notwithstanding paragraph 3, where a prequalification list will be valid for **three years or less**, a procuring entity may publish the tender notice only once, at the beginning of the period of validity of the list, provided that the notice:
  - (a) states the period of validity and that further notices will not be published; and
  - (b) is published by electronic means and the notice is made available continuously during the period of its validity.
5. A procuring entity must allow all prequalified suppliers to participate in a particular procurement, unless the procuring entity has stated in its notice to prequalify:
  - (a) any limitation on the number of suppliers that will be permitted to tender; and
  - (b) the criteria for selecting the limited number of suppliers.

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<sup>3</sup> The GPA, CETA and the CPTPP all use the terms "Registration Systems and Qualification Procedures/Multi-use List for Prequalification". The CFTA uses the term "Prequalification of Suppliers".



6. If a procuring entity plans to use a prequalification list for more than one procurement (*i.e.* a multi-use prequalification list), a procuring entity shall:
  - (a) allow suppliers to apply at any time for inclusion on the list; and
  - (b) include on the list all qualified suppliers within a reasonably short time.
7. A procuring entity shall allow a supplier that has applied for inclusion on a multi-use prequalification list to participate in a given procurement where, considering the complexity of the procurement, there is sufficient time for the procuring entity to examine if the supplier satisfies the conditions for participation.

## **VII Evaluation**

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that has submitted the most advantageous tender.
3. Procuring entities must base their evaluation of a tender solely on the criteria specified in the tender documentation in accordance with the method of evaluation specified therein. Procuring entities should ensure that the method of evaluation and the weighting of points accorded to each of the various segments of the evaluation can be justified as appropriate to the particular procurement.
4. The trade agreements do not require that procuring entities award contracts based on price alone or lowest price. However, if price is the sole evaluation criteria, then in accordance with paragraph 3, the lowest-priced compliant bid must be awarded the contract, unless a procuring entity determines that awarding the contract is not in the public interest.
5. Provided it is not used by the procuring entity to avoid competition, discriminate between suppliers, or protect local suppliers, procuring entities may evaluate any or all of the following factors if such factors have been specified in the tender notice or tender documentation:
  - (a) quality;
  - (b) quantity;
  - (c) price and other cost factors;
  - (d) technical merit;



- (e) the equivalency of goods or services proposed by a supplier as being “equivalent” to the stated technical requirements;
  - (f) terms of delivery;
  - (g) servicing and warranty;
  - (h) transitioning implications;
  - (i) the capacity of the supplier to meet the requirements of the procurement;
  - (j) professional competence, managerial ability, corporate stability and business integrity;
  - (k) relevant prior experience;
  - (l) the calibre, experience and availability of staff proposed;
  - (m) ability to meet site, climatic, public safety, code, design, permitting and other project related requirements; and
  - (n) any other factor related to the procurement.
6. Where there is supporting evidence, procuring entities may also take into account:
- (a) a potential supplier’s bankruptcy;
  - (b) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
  - (c) final judgments in respect of serious crimes or other serious offences;
  - (d) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier;
  - (e) failure to pay taxes; or
  - (f) false declarations.
7. Procuring entities may, as part of the tender documentation, require potential suppliers to complete a disclosure statement relative to the above.



## VIII Contract Award<sup>4</sup>

1. All procuring entities must, when requested by a supplier, provide an explanation of the reasons why the supplier's tender was not selected and the relative advantage of the successful supplier's tender.
2. A procuring entity must post contract award information, in a timely manner, on the electronic tendering site for its jurisdiction, as listed in Part C, Section II (Electronic Tendering). The contract award information must remain readily accessible for a reasonable period of time (see Section C – Time to Prepare and Submit Tenders).

**NOTE:** For procurements covered by CFTA, CETA or the GPA, such notices must be published within 72 days of awarding the contract.

3. Contract award notices shall include at least the following:
  - (a) a description of the goods or services procured;
  - (b) the name and address of the procuring entity;
  - (c) the name and address of the successful supplier;
  - (d) the value of the contract award;
  - (e) the date of award; and
  - (f) the type of procurement method used and, in the case where a limited tendering exception was relied upon, a description of the circumstances justifying the use of limited tendering.
4. Notwithstanding paragraphs 1, 2 and 3, procuring entities must not prejudice the legitimate commercial interests of particular enterprises (including suppliers).

## IX Access to Bid Protest Mechanism for Suppliers

1. The Bid Protest Mechanism enables suppliers to challenge specific procurements conducted by procuring entities in British Columbia, Alberta, Saskatchewan or Manitoba if the supplier believes a procurement was not conducted in compliance with the procurement obligations of any of the trade agreements.

Information on the Bid Protest Mechanism can be found on the New West Partnership website: [newwestpartnership.ca/bid-protest.html](http://newwestpartnership.ca/bid-protest.html).

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<sup>4</sup> See [Part B, Section IV](#) (Transparency) for more information on Contract Awards.





## X Exceptions or Qualifications

1. The three types of exceptions or qualifications to the trade agreement procurement obligations are as follows:

- **Full exceptions:** Procurements that are themselves fully excluded from the trade agreements with no need to prove or meet any additional criteria;
- **Qualified exceptions:** Procurements of goods or services which may be excluded from all or part of a trade agreement's obligations in specific cases, provided that such exceptions are not being used to discriminate between suppliers or to protect suppliers. Procurements excluded from all or part of a trade agreement's obligations may still be subject to the transparency rules (See [Part B, Section IV](#) (Transparency) for more information); and
- **Legitimate objectives or related exceptions:** Procurements or procurement-related measures undertaken in order to pursue certain "legitimate objectives", such as human health, public safety, environmental protection, etc. Additional criteria must be met before utilizing such provisions.

**NOTE:** An exception can be used only if each agreement to which the procurement is subject provides for the exception, since a procurement excluded from one trade agreement may still be subject to one or more of the other trade agreements. Refer to the attached Schedules for other exceptions or qualifications specific to each of the trade agreements.

All of the trade agreements permit limited tendering (including sole sourcing) in certain narrow circumstances. See [Schedules A through E](#).



## SCHEDULE A

### *New West Partnership Trade Agreement (NWPTA)*

This Schedule provides additional information on the procurement rules of the NWPTA and exclusions to those rules that may be available.

#### **A-1. Scope and Application**

1. All procuring entities must provide open and non-discriminatory access to the suppliers of British Columbia, Alberta, Saskatchewan and Manitoba in cases in which the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement Category	Thresholds		
	Ministries	Crown Corporations	MASH
Goods	\$10,000	\$25,000	\$75,000
Services	\$75,000	\$100,000	\$75,000
Construction	\$100,000	\$100,000	\$200,000

2. For the determination of whether a procurement meets the NWPTA thresholds, one must consider the estimated procurement value includes option renewals only if the compulsory part of the contract is less than a year in duration.

#### **A-2. Excluded Procuring Entities**

1. No procuring entities are excluded from the NWPTA.

#### **A-3. Excluded Procurements**

1. The NWPTA excludes procurements:
  - (a) relating to Aboriginal peoples;
  - (b) of water, and services and investments pertaining to water;
  - (c) for the management or conservation of forests, fish or wildlife;
  - (d) to promote renewable and alternative energy; or
  - (e) for the management or conservation of energy or mineral resources, provided that the procurement is conducted in a non-discriminatory manner.



2. The NWPTA procurement obligations do not apply in the following circumstances, provided that the procurement procedures are not used by a procuring entity to avoid competition, discriminate between suppliers, or protect local suppliers:
  - (a) procurements from philanthropic institutions, prison labour or persons with disabilities;
  - (b) procurement from a public body or non-profit organization;
  - (c) procurement of health services and social services;
  - (d) procurement on behalf of an entity not covered by the NWPTA;
  - (e) by entities which operate sporting or convention facilities, in order to respect a commercial agreement containing provisions incompatible with the NWPTA;
  - (f) where it can be demonstrated that only one supplier is able to meet the requirements of a procurement<sup>5</sup>;
  - (g) where an unforeseeable situation of urgency exists and the goods, services or construction could not be obtained in time by means of open procurement procedures;
  - (h) when the acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest;
  - (i) procurement of services provided by lawyers and notaries;
  - (j) procurement of goods intended for resale to the public; or
  - (k) procurement in the absence of a receipt of any bids in response to a call for tenders.
3. A NWPTA exception can be used only if that same exception is available in any other agreement to which the procurement is also subject.
4. In Saskatchewan, the NWPTA procurement obligations do not apply to the procurement of:
  - (a) goods purchased for representation and promotional purposes, and

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<sup>5</sup> For further guidance on this, see [Schedule B, B-3, paragraph 9](#).



- (b) services or construction purchased for representational or promotional purposes outside of the territory of the province.

#### **A-4. Regional Economic Development**

1. For procurements that are solely subject to NWPTA, procuring entities may adopt regional economic development measures provided that such measures:
  - (a) are only adopted or maintained under exceptional circumstances;
  - (b) are not more trade restrictive than necessary to achieve their specific objective;
  - (c) do not operate to unduly harm the economic interests of persons, goods, services or investments of another party;
  - (d) minimize the discriminatory effects and impacts on trade, investment and labour mobility; and
  - (e) are consistent with the business subsidies obligations of NWPTA, found in Article 12(1) (Business Subsidies).

#### **A-5. Legitimate Objectives**

1. A procuring entity may conduct a procurement in a manner that is inconsistent with the obligations of the NWPTA provided that the entity is able to demonstrate:
  - (a) the purpose of the inconsistency is to achieve a legitimate objective;
  - (b) the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and
  - (c) the measure is not a disguised restriction to trade, investment or labour mobility.
2. In the context of this Schedule, "legitimate objective" means any of the following objectives pursued within the territory of a party:
  - (a) public security and safety;
  - (b) public order;
  - (c) protection of human, animal or plant life or health;
  - (d) protection of the environment;
  - (e) conservation and prevention of waste of non-renewable or exhaustible resources;



- (f) consumer protection;
- (g) protection of the health, safety and well-being of workers;
- (h) provision of social services and health services within the territory of a party;
- (i) affirmative action programs for disadvantaged groups; or
- (j) prevention or relief of critical shortages of goods essential to a party,

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

“**Legitimate objective**” does not include the protection or favouring of the production of an enterprise of a party.

Superseded



## SCHEDULE B

### Canadian Free Trade Agreement (CFTA)

This Schedule provides additional information on the procurement rules of the CFTA and exclusions to those rules that may be available.

#### B-1. Scope and Application

- All procuring entities subject to the procurement obligations of the CFTA must provide open and non-discriminatory access to the suppliers of all Canadian jurisdictions in accordance with the CFTA, in cases in which the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement Category	Thresholds		
	Ministries	Crown Corporations	MASH
Goods	\$26,400	\$528,300	\$105,700
Services	\$105,700	\$528,300	\$105,700
Construction	\$105,700	\$5,283,200	\$264,200

**NOTE:** Thresholds are adjusted for inflation every two years. The thresholds above are valid from January 1, 2020 to December 31, 2021.

#### B-2. Excluded Procuring Entities

- The following procuring entities are *not* subject to the obligations of the CFTA:

Jurisdiction	Excluded Procuring Entity
British Columbia	None
Alberta	None
Saskatchewan	SaskPower
Manitoba	None



### B-3. Excluded Procurements and Limited Tendering

1. Jurisdiction-specific exceptions:

Jurisdiction	Exception
British Columbia	A British Columbia-based procuring entity may exercise reciprocity by excluding a supplier of any other CFTA signatory from participating in a covered procurement if that other CFTA signatory has a procurement exception under which a comparable procurement or procuring entity is excluded.
Alberta	None
Saskatchewan	The CFTA procurement obligations do not apply to the procurement of goods for representational or promotional purposes, and the procurement of services or construction for representational or promotional purposes outside the territory of Canada.
Manitoba	None

2. For all parties, the procurement obligations of the CFTA do not apply to:

- (a) procurements of goods or services, or any combination thereof, purchased for commercial sale or resale or for use in the production or supply of a good or service for commercial sale or resale;
- (b) procurements relating to any measure adopted or maintained with respect to:
  - (i) Aboriginal peoples;
  - (ii) water in its natural state; or
  - (iii) social services;
- (c) public employment contracts;
- (d) non-legally binding agreements;
- (e) any form of assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives;
- (f) contracts 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 Chapter Five of the CFTA;



- (g) the acquisition or rental of land, existing buildings or other immovable property, or the rights thereon;
- (h) 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 signatories to the CFTA where the same conditions prevail or are a disguised restriction on trade;
- (i) 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;
- (j) 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
- (k) procurement of goods or services:
  - (i) financed primarily from donations that require the procurement to be conducted in a manner inconsistent with the procurement obligations of Chapter Five of the CFTA;
  - (ii) by a procuring entity on behalf of an entity not covered by Chapter Five of the CFTA;
  - (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 Chapter Five of the CFTA that contains provisions inconsistent with Chapter Five of the CFTA;
  - (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 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 Chapter Five of the CFTA.
3. A CFTA exception can be used only if that same exception is available in any other agreement to which the procurement is also subject. Procuring entities may use limited tendering in the circumstances indicated below, provided that it is not done for the purpose of avoiding competition, discriminating between suppliers, or protecting its own suppliers:
- (a) if:
    - (i) no tenders were submitted or no suppliers requested participation;
    - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
    - (iii) no suppliers satisfied the conditions for participation; or
    - (iv) the submitted tenders were collusive,provided that the requirements of the tender documentation are not substantially modified;
  - (b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
    - (i) the requirement is for a work of art;
    - (ii) the protection of patents, copyrights, or other exclusive rights;
    - (iii) due to an absence of competition for technical reasons;
    - (iv) the supply of goods or services is controlled by a supplier that is a statutory monopoly;



- (v) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;
  - (vi) work is to be performed on a property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
  - (vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or
  - (viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering;
- (e) for goods purchased on the commodity market;
- (f) if a procuring entity procures a prototype or a first good or service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;
- (h) if a contract is awarded to a winner of a design contest provided that:



- (i) the contest has been organized in a manner that is consistent with the principles of Chapter Five of the CFTA, in particular relating to the publication of a tender notice; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; or
- (i) if goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest.

**NOTE:** Certain other obligations in the CFTA still apply to procurements issued by way of limited tendering, including obligations for transparency and reporting.

#### **B-4. Legitimate Objectives**

1. A procuring entity may conduct a procurement in a manner that is inconsistent with the Chapter Five of the CFTA provided that the entity is able to demonstrate:
  - (a) the purpose of the measure is to achieve a legitimate objective;
  - (b) the measure is necessary to achieve that legitimate objective;
  - (c) the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between signatories to the CFTA where the same conditions prevail; and
  - (d) the measure is not applied in a manner that would constitute a disguised restriction on trade.
2. In the context of this Schedule, "**legitimate objective**" means any of the following objectives pursued within the territory of a party:
  - (a) public security and safety;
  - (b) public order;
  - (c) protection of human, animal or plant life or health;
  - (d) protection of the environment;
  - (e) consumer protection;
  - (f) protection of the health, safety and well-being of workers; or
  - (g) programs for disadvantaged groups,



considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

“**Legitimate objective**” does not include protecting the production of a party, including goods, services, and suppliers of a party.

Superseded



## SCHEDULE C

### World Trade Organization *Agreement on Government Procurement (GPA)*

This Schedule provides additional information on the procurement rules of the GPA and exclusions to those rules that may be available.

#### C-1. Scope and Application

1. All procuring entities subject to the procurement obligations of the GPA must provide open and non-discriminatory access to the qualified suppliers of the GPA signatories,<sup>6</sup> in accordance with the GPA, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement Category	Thresholds
Goods	\$650,000
Services	\$650,000
Construction	\$9,100,000

**NOTE:** Thresholds are adjusted for inflation every two years. The thresholds above are valid from January 1, 2020 to December 31, 2021. The GPA expresses these thresholds in Special Drawing Rights (SDR) and the equivalent Canadian dollar value is determined by the Government of Canada.

#### C-2. Excluded Procuring Entities

1. The GPA uses a “positive list” approach. This means an entity must be specifically listed in the relevant Annexes to the GPA for its procurements to be covered. The following procuring entities have been listed and therefore are subject to the procurement obligations of the GPA:

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<sup>6</sup> In addition to Canada, the GPA signatories are Armenia, Australia, the European Union (and its 27 member states plus the United Kingdom), Hong Kong, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, the Republic of Moldova, Montenegro, the Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, and the United States.



Jurisdiction	Included Entities	Expressly Excluded Entities
British Columbia	<ul style="list-style-type: none"> <li>All Ministries, Boards, Agencies, Commissions and Committees</li> </ul>	<ul style="list-style-type: none"> <li>The Legislative Assembly</li> </ul>
Alberta	<ul style="list-style-type: none"> <li>All Ministries and Agencies (all Government Departments and Provincial Agencies, Boards, Councils, Committees and Commissions)</li> </ul>	<ul style="list-style-type: none"> <li>The Legislative Assembly</li> <li>The Legislative Assembly Office</li> <li>Office of the Auditor General</li> <li>Office of the Chief Electoral Officer</li> <li>Office of the Ethics Commissioner</li> <li>Office of the Information and Privacy Commissioner</li> <li>Office of the Ombudsman</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>All Ministries</li> <li>Public Employee Benefits Agency</li> <li>Saskatchewan Archives Board</li> <li>Saskatchewan Arts Board</li> </ul>	<ul style="list-style-type: none"> <li>Legislative Branch entities</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>All Departments, Boards, Commissions and Committees</li> </ul>	None

### C-3. Excluded Procurements and Limited Tendering

1. The GPA does not cover procurement by MASH sector entities or provincial Crown corporations.
2. While the excluded entities are not obliged to open their procurements to qualified suppliers of the GPA signatories, if a procurement is also subject to the NWPTA, CFTA, CETA or CPTPP, the procurement must be open to suppliers covered by those agreements.
3. For British Columbia, Alberta and Saskatchewan, the GPA does not cover procurement:
  - (a) of goods purchased for representational or promotional purposes; or
  - (b) of services or construction purchased for representational or promotional purposes outside the territory of the province.
4. For all parties, the procurement obligations of the GPA do not apply to:
  - (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;



- (b) non-contractual agreements or any form of assistance that a party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts;
- (e) procurements conducted for the specific purpose of providing international assistance, including development aid;
- (f) preferences or restrictions relating to highway projects;
- (g) preferences or restrictions associated with programs promoting the development of distressed areas;
- (h) procurements of goods, services or construction services purchased for the benefit of, or which is to be transferred to the authority of, school boards or their functional equivalents, publicly-funded academic institutions, social services entities or hospitals;
- (i) the application of restrictions that promote the general environmental quality of a province, as long as such restrictions are not disguised barriers to trade;
- (j) procurement made by a covered entity on behalf of a non-covered entity;
- (k) procurement of architectural and engineering services related to airfield, communications and missile facilities;
- (l) procurement of shipbuilding and repair and related architectural and engineering services;
- (m) procurement of urban rail and urban transportation equipment, systems, components and materials incorporated therein, as well as all project-related materials of iron or steel;
- (n) procurements of contracts respecting Federal Supply Classification (FSC) 58 (communications, detection and coherent radiation equipment);
- (o) procurements of agricultural goods made in furtherance of agricultural support programs or human feeding programs;
- (p) set-asides for small and minority-owned businesses;



- (q) procurement of transportation services that form a part of, or are incidental to, a procurement contract;
  - (r) procurements made with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
  - (s) procurements between one government entity or enterprise and another government entity or enterprise; and
  - (t) any measure adopted or maintained with respect to Aboriginal peoples.
5. Limited tendering may be used in the circumstances indicated below provided that it is not used by a procuring entity to avoid competition, discriminate between suppliers, or protect domestic suppliers. Note that certain other obligations in the GPA apply to procurements issued by way of limited tender, including record-keeping and transparency obligations:
- (a) where:
    - (i) no tenders were submitted or no suppliers requested participation;
    - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
    - (iii) no suppliers satisfied the conditions for participation; or
    - (iv) the tenders submitted have been collusive,provided that the requirements of the tender documentation are not substantially modified;
  - (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
    - (i) the requirement is for a work of art;
    - (ii) the protection of patents, copyrights or other exclusive rights; or
    - (iii) due to an absence of competition for technical reasons;
  - (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:





- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
- (i) the contest has been organized in a manner that is consistent with the principles of the GPA, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

#### **C-4. Procurements of Services**

1. The service coverage in the GPA is subject to the following qualifications:
  - (a) coverage of telecommunications services is limited to enhanced or value-added services for the supply of which the underlying telecommunications facilities are leased from providers of public telecommunications transport networks;
  - (b) the GPA does *not* apply to the procurement of:



- (i) services for the management and operation of government facilities or privately-owned facilities used for government purposes;
- (ii) public utility services;
- (iii) architectural and engineering services related to airfield, communications and missile facilities; and
- (iv) shipbuilding and repair and related architectural and engineering services.

2. The GPA provides special rules relating to the procurement of services. It applies only to those services specifically listed in Canada's Annexes to the GPA, and for only those GPA countries that have extended reciprocal access to those same services. The following services are covered, subject to the general exclusions in C-3 and some special exclusions in paragraph 2 of C-5. These services are classified according to the United Nations Provisional Central Product Classification (CPC Prov.)<sup>7</sup> and are as follows:

Description	CPC Prov. Reference No.
Repair services of personal and household goods	633
Hotel and similar accommodation services	641
Food and beverage serving services	642-643
Travel agency and tour operator services	7471
Commercial courier services, including multi-modal	7512
Electronic data interchange	7523
Electronic mail	7523
Enhanced/value-added facsimile services, including store and forward, store and retrieve	7523
Code and protocol conversion	
Online information and data base retrieval	7523
Voice mail	7523
Real estate services involving own or leased property	821
Real estate services on a fee or contract basis	822
Leasing or rental services concerning machinery and equipment without operator	83106-83109 only
Leasing or rental services concerning personal and household goods	83203-83209 only
Consultancy services related to the installation of computer hardware	841
Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
Data processing services, including processing, tabulation and facilities management services	843

<sup>7</sup> The United Nations CPC Prov. is available here: <http://www.tralac.org/files/2013/12/UN-CPC-Provisional-central-product-classification.pdf>.



Description	CPC Prov. Reference No.
Online information and/or data processing, including transaction processing	843
Database services	844
Maintenance and repair services of office machinery and equipment including computers	845
Other computer services	849
General management consulting services	86501
Human resources management consulting services	86504
Production management consulting services	86505
Services related to management consulting (except 86602 Arbitration and conciliation services)	8660
Urban planning and landscape architectural services	8674
Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)	8676
Building-cleaning services	874
Packaging services	876
Services incidental to forestry and logging, including forest management	8814
Services incidental to mining, including drilling and field services	883
Repair services incidental to metal products, machinery and equipment	8861-8864, 8866
Sewage and refuse disposal, sanitation and similar services	940

### **C-5. Procurement of Construction Services**

1. Unless otherwise specified and subject to paragraph 2, the GPA covers all construction services identified in CPC Prov., Division 51.
2. The GPA does *not* cover procurement of dredging services.

### **C-6. Security and General Exceptions**

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between GPA countries where the same conditions prevail or a disguised restriction on international trade, procuring entities may impose and enforce measures:
  - (a) necessary to protect public morals, order, or safety;
  - (b) necessary to protect human, animal, or plant life or health;
  - (c) necessary to protect intellectual property; or
  - (d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.



Superseded



## SCHEDULE D

### Canada – European Union Comprehensive Economic and Trade Agreement (CETA)

This Schedule provides additional information on the procurement rules of the CETA and exclusions to those rules that may be available.

#### D-1. Scope and Application

1. All procuring entities subject to the procurement obligations of the CETA must provide open and non-discriminatory access to the suppliers of all EU member states<sup>8</sup> in accordance with the CETA, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement Category	Thresholds			
	Ministries	Crown Corporations		MASH
		Section A	Section B	
Goods	\$366,200	\$650,000	\$732,400	\$366,200
Services	\$366,200	\$650,000	\$732,400	\$366,200
Construction	\$9,100,000	\$9,100,000		\$9,100,000

**NOTE:** Thresholds are adjusted for inflation every two years. The thresholds above are valid from January 1, 2020 to December 31, 2021. The CETA expresses these thresholds in Special Drawing Rights (SDR) and the equivalent Canadian dollar value is determined by the Government of Canada.

**NOTE:** Section B entities are those involved in energy transmission, transit networks, distribution and treatment of water or the distribution of electricity or gas (see CETA, Annex 19-3, Section B).

#### D-2. Excluded Procuring Entities

1. The CETA uses a “positive list” approach. This means an entity must be specifically listed in the relevant Annex of the Market Access Schedules to the CETA for its procurements to be covered. The following entities have been listed and, therefore, are subject to the procurement obligations of the CETA:

<sup>8</sup> The 27 EU Member states are Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, and Sweden.

Jurisdiction	Included Entities	Expressly Excluded Entities
British Columbia	<ul style="list-style-type: none"> <li>• All ministries, agencies, boards, councils, committees, commissions and similar agencies of government</li> <li>• All regional, local, district or other forms of municipal government</li> <li>• All school boards and publicly-funded academic, health and social service entities</li> <li>• All Crown corporations, government-owned commercial enterprises, and other entities that are owned by the Government of British Columbia through ownership interest</li> <li>• All corporations or entities owned or controlled by one or more municipal governments</li> </ul>	<ul style="list-style-type: none"> <li>• The Legislative Assembly and its independent offices</li> </ul>
Alberta	<ul style="list-style-type: none"> <li>• All departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of government</li> <li>• All regional, local, district or other forms of municipal government</li> <li>• All school boards and publicly-funded academic, health and social service entities</li> <li>• All Crown corporations, government-owned commercial enterprises, and other entities that are owned by the Government of Alberta through ownership interest</li> <li>• All corporations or entities owned or controlled by a regional, local, district or other form of municipal government</li> </ul>	<ul style="list-style-type: none"> <li>• The Legislative Assembly</li> <li>• The Legislative Assembly Office</li> <li>• Office of the Auditor General</li> <li>• Office of the Chief Electoral Officer</li> <li>• Office of the Ethics Commissioner</li> <li>• Office of the Information and Privacy Commissioner</li> <li>• Office of the Ombudsman</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>• All ministries, agencies, Treasury Board Crown corporations, boards, and commissions</li> <li>• All municipalities</li> <li>• All school boards and publicly-funded academic, health and social service entities</li> <li>• All provincial Crown corporations and corporations owned or controlled by one or more municipal governments</li> </ul>	None

Jurisdiction	Included Entities	Expressly Excluded Entities
Manitoba	<ul style="list-style-type: none"> <li>• All departments, boards, commissions, committees and similar agencies of government</li> <li>• All municipalities and municipal organizations</li> <li>• All school boards and publicly-funded academic, health and social service entities</li> <li>• All provincial Crown corporations, <i>except</i> Manitoba Public Insurance Corporation and Venture Manitoba Tours Limited</li> </ul>	<ul style="list-style-type: none"> <li>• Manitoba Public Insurance Corporation</li> <li>• Venture Manitoba Tours Limited</li> </ul>

### D-3. Excluded Procurements and Limited Tendering

1. Where a procurement is excluded under the CETA but covered under the NWPTA, CFTA, GPA and/or CPTPP, procuring entities may limit the procurement to NWPTA, CFTA, GPA and/or CPTPP suppliers, as the case may be.
2. The CETA does not cover the procurement:
  - (a) for British Columbia, Alberta and Saskatchewan:
    - (i) goods purchased for representational or promotional purposes; or
    - (ii) services or construction purchased for representational or promotional purposes outside the territory of the province; and
  - (b) for entities in British Columbia and Manitoba, procurement in respect of shipbuilding and repair, including related architectural and engineering services.
3. For all parties, the procurement obligations of the CETA do not apply to:
  - (a) any measure adopted or maintained with respect to Aboriginal peoples, nor to set asides for aboriginal businesses;
  - (b) procurements undertaken with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;
  - (c) non-contractual agreements or any form of assistance that a party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
  - (d) public employment contracts;



- (e) procurements by a procuring entity on behalf of another entity where the procurement would not be covered by Chapter 19 of the CETA if it were conducted by the other entity itself;
- (f) procurements by a procuring entity from a government entity;
- (g) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- (h) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (i) procurements conducted for the specific purpose of providing international assistance, including development aid;
- (j) procurement in respect of agricultural goods made in furtherance of agricultural support programs or human feeding programs;
- (k) procurement of transportation services that form a part of, or are incidental to, a procurement contract;
- (l) procurement in relation to an international crossing between Canada and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;
- (m) procurement between subsidiaries or affiliates of the same entity, or between an entity and any of its subsidiaries or affiliates, or between an entity and a general, limited or special partnership in which the entity has a majority or controlling interest;
- (n) procurement of services contracts, excluding construction services contracts, which grant to a supplier the right to provide and exploit a service to the public as complete or partial consideration for the delivery of a service under a procurement contract;
- (o) procurement for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- (p) procurement by any municipality, academic institution or school board with respect to cultural industries; and
- (q) procurement in connection with activities in the fields of drinking water, energy, transport and the postal sector, unless such contracts are covered by CETA Annex 19-3, Section B.





4. Limited tendering may be used in the circumstances indicated below provided that it is not used by a procuring entity to avoid competition, discriminate between suppliers, or protect domestic suppliers:
- (a) if:
    - (i) no tenders were submitted or no suppliers requested participation;
    - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
    - (iii) no suppliers satisfied the conditions for participation; or
    - (iv) the tenders submitted have been collusive,provided that the requirements of the tender documentation are not substantially modified;
  - (b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
    - (i) the requirement is for a work of art;
    - (ii) the protection of patents, copyrights or other exclusive rights; or
    - (iii) due to an absence of competition for technical reasons;
  - (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:
    - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
  - (d) only when strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
  - (e) for goods purchased on a commodity market;
  - (f) if a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for



research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) if a contract is awarded to a winner of a design contest provided that:
  - (i) the contest has been organised in a manner that is consistent with the principles of Chapter 19 of the CETA, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

**NOTE:** Certain other obligations in the CETA apply to procurements issued by way of limited tender, including record-keeping and transparency obligations.

#### **D-4. Procurement of Goods**

1. The CETA covers procurement of all goods unless otherwise noted.
2. The CETA does *not* cover procurement of the following goods by Manitoba Hydro Electric Board:
  - (a) textiles, specifically fire retardant clothing and other work apparel;
  - (b) prefabricated buildings;
  - (c) bridges, bridge sections, towers and lattice masts, or iron or steel;
  - (d) steam turbines and other vapour turbines; hydraulic turbines and water wheels; gas turbines other than turbo-jets and turbo-propellers;
  - (e) electrical transformers, static converters and inductors;
  - (f) electricity distribution or control apparatus;
  - (g) parts of electricity distribution or control apparatus;
  - (h) co-axial cable and other co-axial electrical conductors;



- (i) other electric conductors, for a voltage exceeding 1000V;
- (j) gates;
- (k) woodpoles and crossarms; or
- (l) generators.

## D-5. Procurement of Services

1. The CETA provides special rules relating to the procurement of services. It applies only to those services specifically listed in Canada's Annexes to the CETA. The following services are covered, subject to the general exclusions in D-3 and some special exclusions in paragraph 2 of D-6. These services are classified according to the United Nations Provisional Central Product Classification (CPC Prov.), and are as follows:

Description	CPC Prov. Reference No.
Repair services of personal and household goods	633
Commercial courier services (including multi-modal)	7512
Electronic data interchange	7523
Electronic mail	7523
Enhanced/value-added facsimile services, including store and forward, store and retrieve	7523
Code and protocol conversion	-
Online information and data base retrieval	7523
Voice mail	7523
Real estate services on a fee or contract basis	822
Consultancy services related to the installation of computer hardware	841
Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
Data processing services, including processing, tabulation and facilities management services	843
Online information and/or data processing, including transaction processing	843
Database services	844
Maintenance and repair services of office machinery and equipment including computers	845
Other computer services	849
General management consulting services	86501
Marketing management consulting services	86503
Human resources management consulting services	86504
Production management consulting services	86505
Services related to management consulting (except 86602 Arbitration and conciliation services)	866



Description	CPC Prov. Reference No.
Architectural services	8671
Engineering services	8672
Integrated engineering services (excluding 86731 Integrated engineering services for transportation infrastructure turnkey projects)	8673
Urban planning and landscape architectural services	8674
Technical testing and analysis services, including quality control and inspection (except with reference to Federal Supply Code 58 and transportation equipment)	8676
Building-cleaning services	874
Repair services incidental to metal products, machinery and equipment	8861 to 8864 and 8866
Sewage and refuse disposal, sanitation and similar services	94

2. The service coverage in the CETA is subject to the following further qualifications:

- (a) For procuring entities listed in the CETA Annex 19-2, the threshold is \$650,000<sup>9</sup> when an entity procures consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to public interest; and
- (b) The Chapter 19 of the CETA does not apply to instruments of monetary policy, exchange rates, public debt, reserve management or other policies involving transactions in securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital. It does not apply to contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments. Central bank services are also excluded.

3. The CETA does *not* cover procurement of services by the Manitoba Hydro Electric Board.

#### **D-6. Procurement of Construction Services**

1. Unless otherwise specified and subject to paragraph 2, the CETA covers all construction services identified in CPC Prov., Division 51.
2. The CETA does *not* cover procurement of construction services by Manitoba Hydro Electric Board.

#### **D-7. Security and General Exceptions**

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between signatories to the

<sup>9</sup> This threshold is updated every two years.



CETA where the same conditions prevail, or are a disguised restriction on international trade, nothing in Chapter 19 of the CETA shall be construed to prevent a procuring entity from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

Superseded



Superseded



## SCHEDULE E

### *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*

This Schedule provides additional information on the procurement rules of the CPTPP and exclusions to those rules that may be available.

#### **E-1. Scope and Application**

1. All procuring entities subject to the procurement obligations of the CPTPP must provide open and non-discriminatory access to the suppliers of the other signatories to the CPTPP<sup>10</sup> in accordance with the CPTPP, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement Category	Thresholds
	Ministries
Goods	\$650,000
Services	\$650,000
Construction	\$9,100,000

**NOTE:** Thresholds are adjusted for inflation every two years. The thresholds above are valid from January 1, 2020 to December 31, 2021. The CPTPP expresses these thresholds in Special Drawing Rights (SDR) and the equivalent Canadian dollar value is determined by the Government of Canada.

#### **E-2. Excluded Procuring Entities**

1. The CPTPP uses a “positive list” approach. This means an entity must be specifically listed in the relevant Annex to the CPTPP for its procurements to be covered. The following procuring entities have been listed and therefore are subject to the procurement obligations of the CPTPP:

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<sup>10</sup> Any State or separate customs territory for which the CPTPP is in force.

Jurisdiction	Included Entities	Expressly Excluded Entities
British Columbia	<ul style="list-style-type: none"> <li>All Ministries, Boards, Agencies, Commissions and Committees</li> </ul>	<ul style="list-style-type: none"> <li>The Legislative Assembly</li> </ul>
Alberta	<ul style="list-style-type: none"> <li>All Ministries and Agencies (all Government Departments and Provincial Agencies, Boards, Councils, Committees and Commissions)</li> </ul>	<ul style="list-style-type: none"> <li>The Legislative Assembly</li> <li>The Legislative Assembly Office</li> <li>Office of the Auditor General</li> <li>Office of the Chief Electoral Officer</li> <li>Office of the Ethics Commissioner</li> <li>Office of the Information and Privacy Commissioner</li> <li>Office of the Ombudsman</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>All Ministries</li> <li>Public Employee Benefits Agency</li> <li>Saskatchewan Archives Board</li> <li>Saskatchewan Arts Board</li> </ul>	<ul style="list-style-type: none"> <li>Legislative Branch entities</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>All Departments, Boards, Commissions and Committees</li> </ul>	None

### E-3. Excluded Procurements and Limited Tendering

- The CPTPP does *not* cover procurement by MASH sector entities or provincial Crown corporations.

Where a procurement is excluded under the CPTPP but covered under the NWPTA, CFTA, GPA or CETA, procuring entities may limit the procurement to NWPTA, CFTA, GPA and/or CETA suppliers, as the case may be.

- For British Columbia, Alberta and Saskatchewan, the CPTPP does *not* cover procurement of:
  - goods purchased for representational or promotional purposes; or
  - services or construction purchased for representational or promotional purposes outside the territory of the province.
- For all parties, the procurement obligations of the CPTPP do *not* apply to:
  - the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
  - non-contractual agreements or any form of assistance that a party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;



- (c) the procurement or acquisition of: fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts;
- (e) procurement conducted for the specific purpose of providing international assistance, including development aid;
- (f) procurement of a good or service outside the territory of Canada, for consumption outside of Canada;
- (g) preferences or restrictions on highway projects;
- (h) preferences or restrictions associated with programmes promoting the development of distressed areas;
- (i) procurement of goods, services or construction services purchased for the benefit of, or which is to be transferred to the authority of, school boards or their functional equivalents, publicly-funded academic institutions, social services entities or hospitals;
- (j) procurement of urban rail and urban transportation equipment, systems, components and materials incorporated therein, as well as all project-related materials of iron or steel;
- (k) procurement of services for the management and operation of government facilities or privately-owned facilities used for government purposes, including federally-funded research and development;
- (l) procurement of public utilities services;
- (m) procurement of shipbuilding and repair and related architectural and engineering services;
- (n) procurement of services related to culture or cultural industries;
- (o) procurement of agricultural goods made in furtherance of agricultural support programmes or human feeding programmes;
- (p) procurement of transportation services that form a part of, or are incidental to, a procurement contract;
- (q) procurement related to an international crossing between Canada and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;



- (r) procurement by a procuring entity from another government entity;
  - (s) any form of preference, including set-asides, to benefit micro, small and medium enterprises; and
  - (t) any measure adopted or maintained with respect to Aboriginal peoples, nor to set-asides for aboriginal businesses;
4. Limited tendering may be used in the circumstances indicated below provided that it is not used by a procuring entity to avoid competition, discriminate between suppliers or protect domestic suppliers:
- (a) if, in response to a prior notice, invitation to participate or invitation to tender:
    - (i) no tenders were submitted or no suppliers requested participation;
    - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation;
    - (iii) no suppliers satisfied the conditions for participation; or
    - (iv) the tenders submitted were collusive,provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;
  - (b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:
    - (i) the requirement is for a work of art;
    - (ii) the protection of patents, copyrights or other exclusive rights; or
    - (iii) due to an absence of competition for technical reasons;
  - (c) for additional deliveries by the original supplier or its authorized agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:
    - (i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

- (d) for a good purchased on a commodity market or exchange;
- (e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to Chapter 15 of the CPTPP;
- (f) if additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the value of the initial contract;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;
- (h) if a contract is awarded to the winner of a design contest, provided that:
  - (i) the contest has been organised in a manner that is consistent with Chapter 15 of the CPTPP; and
  - (ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or
- (i) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

**NOTE:** Certain other obligations in the CPTPP apply to procurements issued by way of limited tender, including record-keeping and transparency obligations.

#### E-4. Procurements of Services

1. The CPTPP provides special rules relating to the procurement of services. It applies only to those services specifically listed in Canada's Annexes to the CPTPP. The following services are covered, subject to the general exclusions in E-3 and some special exclusions in paragraph 2 of E-5. These services are classified according to the United Nations Provisional Central Product Classification (CPC Prov.), and are as follows:



Description	CPC Prov. Reference No.
Repair services of personal and household goods	633
Hotel and restaurant services	64
Travel agency and tour operator services`	7471
Commercial courier services, including multi-modal	7512
Electronic data interchange	7523
Electronic mail	7523
Enhanced/value-added facsimile services, including store and forward, store and retrieve Code and protocol conversion	7523
Online information and data base retrieval	7523
Voice mail	7523
Real estate services involving own or leased property	821
Real estate services on a fee or contract basis	822
Leasing or rental services concerning machinery and equipment without operator	83106 to 83109
Leasing or rental services concerning personal and household goods	83203 to 83209
Consultancy services related to the installation of computer hardware	841
Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
Data processing services, including processing, tabulation and facilities management services	843
Online information and/or data processing, including transaction processing	843
Database services	844
Maintenance and repair services of office machinery and equipment including computers	845
Other computer services	849
General management consulting services	86501
Human resources management consulting services	86504
Production management consulting services	86505
Services related to management consulting (except 86602 Arbitration and conciliation services)	866
Urban planning and landscape architectural services	8674
Technical testing and analysis services, including quality control and inspection (except with reference to Federal Supply Code 58 and transportation equipment)	8676
Building-cleaning services	874
Packaging services	876
Services incidental to forestry and logging, including forest management	8814
Services incidental to mining, including drilling and field services	883
Repair services incidental to metal products, machinery and equipment	8861 to 8864 and 8866
Sewage and refuse disposal, sanitation and similar services	94



## **E-5. Procurement of Construction Services**

1. Unless otherwise specified and subject to paragraph 2, the CPTPP covers all construction services identified in CPC Prov., Division 51.
2. The CPTPP does *not* cover procurement of dredging services.

## **E-6. Security and General Exceptions**

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between signatories to the CPTPP where the same conditions prevail, or a disguised restriction on international trade between CPTPP countries, nothing in Chapter 15 of the CPTPP shall be construed to prevent a party, including its procuring entities, from adopting or maintaining a measure:
  - (a) necessary to protect public morals, order or safety;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) necessary to protect intellectual property; or
  - (d) relating to the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour,

including environmental measures necessary to protect human, animal or plant life or health.