

Guidelines to the Procurement Obligations of Domestic and International Trade Agreements



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PART A: INTRODUCTION

I Purpose of the Guidelines

These Guidelines have been modified by the Government of Saskatchewan, based on the original 2015 Guidelines developed by the Governments of British Columbia, Saskatchewan, and Alberta, to assist procuring entities in understanding their procurement-related obligations under the following domestic and international trade agreements (the “Trade Agreements”):

- (a) the *New West Partnership Trade Agreement* (NWPTA) between British Columbia, Alberta, Saskatchewan and Manitoba;
- (b) the *Canadian Free Trade Agreement* (CFTA) between all Canadian provinces, territories and the federal government;
- (c) the *Comprehensive Economic and Trade Agreement* (CETA) between Canada and the members of the European Union;
- (d) the *World Trade Organization Agreement on Government Procurement* (GPA); and
- (e) The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP) between Canada and 10 other Pacific Rim countries¹.

The Trade Agreements aim to reduce barriers to trade in order to increase competitiveness, economic growth and stability amongst their signatories. Each agreement includes procurement obligations based on the principles of non-discrimination, openness and transparency, and reflects a commitment to the effective management of public resources.

A procuring entity that follows these Guidelines when undertaking its procurements should be assured that its actions will generally meet the applicable obligations of the Trade Agreements. However, these Guidelines should not be taken to constitute legal advice and do not in any way replace the specific obligations of the Trade Agreements.

The following websites provide access to the texts of the Trade Agreements:

- NWPTA: www.newwestpartnershiptrade.ca
- CFTA: www.cfta-alec.ca
- CETA: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>
- GPA: www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm
- CPTPP: <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/toc-tdm.aspx?lang=eng>

¹ Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam

II Application and Scope

Not all Ministries, Crown corporations or MASH sector 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 below.

The NWPTA contains fewer specific obligations for procurement than the other Trade Agreements. These Guidelines draw on the more specific obligations found in other Trade Agreements to inform and provide guidance on the NWPTA's more general obligations.

III Thresholds

Procurement obligations under the Trade Agreements are triggered when a procuring entity contemplates a procurement valued at or above certain specified thresholds.

Category	Ministries	Crown corporations	MASH
NWPTA			
Goods	\$10,000	\$25,000	\$75,000
Services	\$75,000	\$100,000	\$75,000
Construction	\$100,000	\$100,000	\$200,000
CFTA (adjusted every two years)			
Goods	\$26,400	\$528,300	\$105,700
Services	\$105,700	\$528,300	\$105,700
Construction	\$105,700	\$5,283,200	\$264,200
CETA (adjusted every two years)			
Goods	\$366,200	\$650,000 ²	\$366,200
Services	\$366,200	\$650,000	\$366,200
Construction	\$9,100,000	\$9,100,000	\$9,100,000
GPA (adjusted every two years)			
Goods	\$650,000	Not covered	
Services	\$650,000		
Construction	\$9,100,000		
CPTPP (adjusted every two years)			
Goods	\$650,000	Not covered	
Services	\$650,000		
Construction	\$9,100,000		

NOTE: the thresholds for the CFTA, CETA, GPA and CPTPP will be adjusted every two years to account for inflation. For the CETA, GPA and CPTPP, thresholds are adjusted to establish a fixed currency conversion for Canadian dollars. The next update will be in January 2022.

² 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.

Additional information on specific coverage, exclusions and other criteria contained in each of the Trade Agreements is identified in Schedules A to E below. Procurements which exceed the applicable financial threshold(s) and are not otherwise excluded are referred to in these Guidelines as “covered procurements”.

PART B: GENERAL OBLIGATIONS

Generally, procuring entities must ensure that covered procurements meet four principles of:

- Openness;
- Non-Discrimination;
- Non-Circumvention; and
- Transparency.

Each of these general obligations is further explained below.

I Openness

1. All eligible suppliers that meet the essential requirements and characteristics for a specific procurement must be given the opportunity to submit a tender.³

II Non-Discrimination

1. Procuring entities must accord to the goods and services of other provinces, territories, and eligible countries⁴ treatment that is no less favourable than the best treatment they provide to Canadian or Saskatchewan-made goods and services. Likewise, procuring entities must accord suppliers from other provinces, territories, and eligible countries treatment no less favourable than the best treatment they provide to Saskatchewan suppliers.

III Non-Circumvention

1. Procuring entities must not prepare, design or otherwise structure a procurement, select a valuation method or divide procurement requirements in order to avoid the obligations of the Trade Agreements. This would include actions such as:
 - (a) dividing required quantities or diverting funds to non-covered subsidiary agencies in a manner designed to avoid otherwise applicable obligations; or
 - (b) Bundling goods and services together to avoid the lower thresholds that may apply to the procurement of goods alone.

³ 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.

⁴ See Schedules C-1, paragraph 1 and D-1, paragraph 1 and E-1, paragraph 1 for a list of the signatory countries to the GPA, CETA and CPTPP.

2. Where a procuring entity uses a third party to conduct procurements on its behalf, the third party should ensure such procurements are conducted in accordance with the entity's procurement commitments under the Trade Agreements.

IV Transparency

1. Procuring entities must:
 - (a) make their tender notices accessible to all eligible suppliers by posting them on their Province's designated electronic tendering system;
 - (b) make their procurement policies available upon request;
 - (c) ensure that documents requested are provided in a non-discriminatory manner and that any fees charged for the provision of documents reflect actual costs; and
 - (d) upon request, provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with the applicable obligations.
2. Publish award information in a timely manner (see Part C, Section VII (Contract Award) below for more details).
3. Notwithstanding paragraph 1 or 2, procuring entities are not required to disclose any information that would:
 - (a) be contrary to provincial or federal 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 would be considered inconsistent with the non-discrimination, openness, and transparency provisions:
 - (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 that are 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) timing events in the tender process so as to prevent suppliers from submitting bids;
- (e) specifying quantities or 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 in order 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 where not essential to meet the requirements of the procurement; and
- (j) providing information so as to give one supplier an advantage over other suppliers.

PART C: PROCUREMENT PROCEDURES

I Valuation

1. For the purpose of ascertaining whether a procurement is covered by a Trade Agreement, procuring entities must calculate the estimated value of the procurement at the time the tender notice is or would 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.
2. For procurements subject to the CFTA, GPA, CETA or CPTPP (as outlined in Schedules B to E), the estimate of procurement value must also include the total value of any optional renewals or extensions. The NWPTA includes the value of optional renewals only when the compulsory portion of the contract is shorter than one year's duration. Consequently, it is possible for a contract of a year or more in duration with optional renewals to have an estimated value less than the NWPTA thresholds and not be covered by that agreement, while still being covered by one or more of the CFTA, GPA, CETA or CPTPP.
3. 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.
4. Where a procurement is for construction, the value of all the goods and services required for the project for which a contractor will be held accountable must be included in the valuation. Any goods or services purchased directly by a procuring entity outside the scope of a construction contract are not considered construction, and are independently subject to the thresholds applicable to goods or services.

5. Where a procurement is for a good and includes the installation, operation, maintenance or manufacture of such goods, the procuring entity should include in its valuation those estimated costs.
6. For CPTPP, 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 SaskTenders, located at www.sasktenders.ca.
2. Additional means of providing tender notices may also be used.

III Time to Prepare and Submit Tenders

1. Where practicable, 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. In addition, for procurements subject to the GPA, CETA or CPTPP (as outlined in Schedules C, D and E), the closing date for the submission of bids must not be less than 35 days from the date on which the tender notice is published.

However, if tender documents are provided electronically or tenders can be received electronically, the minimum time periods for submission of tenders can be reduced as follows:

Are the tender documents electronically available?	Is the procuring entity accepting electronic tenders?	Minimum time period for submission of tender
No	No	35 days
Yes	No	30 days
No	Yes	30 days
Yes	Yes	25 days

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

Procurement Practices	Minimum time period for submission of tender
The procuring entity previously published a “notice of planned procurement” between 40 days and 12 months of the notice of intended procurement.	10 days
The procurement is open only to suppliers that have pre-qualified.	Set by mutual agreement of the procuring entity and the qualified suppliers. In the absence of agreement, the minimum is 10 days .
The procurement is for commercial goods or services.	13 days , or 10 days if the procuring entity accepts electronic tenders
The procuring entity is using selective tendering.	25 days (for submission of request for participation)
The procurement taking is place in a situation of duly substantiated urgency.	10 days

IV Tender Notices

1. Each tender notice must include:
- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
 - (b) 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;
 - (c) if applicable, the address and any final date for the submission of requests for participation in the procurement;
 - (d) the address and final date for the submission of tenders;
 - (e) the date, time and place for any public opening of tenders;
 - (f) 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;
 - (g) a statement that identifies the Trade Agreement or Agreements to which the tender is subject;
 - (h) a description of any options;

- (i) the time-frame for delivery of goods or services or the duration of the contract;
- (j) the procurement method that will be used; and
- (k) 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 bids. In addition to the information required in paragraphs 1 and 2 of Part C, Section IV (Tender Notices), tender documentation should also include all pertinent details concerning:
 - (a) all criteria that will be used in evaluating the bids, including methods of weighting and evaluation, unless price is the sole criterion;
 - (b) any technical specifications;
 - (c) any requirements for servicing or warranty;
 - (d) any requirements associated with transitioning from one supplier to another;
 - (e) any applicable conformity assessment certification, plans, drawings or instructional materials;
 - (f) any requirements related to the submission of bids; and
 - (g) any and all other requirements to be fulfilled, or terms or conditions applicable to the tender.
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 the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and 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 a commercial interest in the procurement.

Modifications, Clarification or New Information

6. Questions from one or more bidders that elicit new information or clarification of the original information provided in the tender documentation must be made available in writing to all bidders 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 re-issued 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 bids to allow adequate time for suppliers to incorporate these changes in their bids.

VI Evaluation

1. Procuring entities must base their evaluation of a bid solely on the criteria specified in the tender documentation in accordance with the method of evaluation specified therein.
2. The Trade Agreements do not require that procuring entities award contracts based on price alone or lowest price.
3. Procuring entities may evaluate any or all of the following factors provided 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 bidder 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) past performance on similar projects with similar characteristics, including the quality, innovation and life-cycle value of the outcomes;
 - (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 provided it is not used by the procuring entity to avoid competition, discriminate between suppliers, or protect local suppliers.
4. Where there is supporting evidence, procuring entities may take into account a potential supplier’s bankruptcy; significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts; final judgments in respect of serious crimes or other serious offences; professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; failure to pay taxes; or false declarations. Procuring entities may, as part of the tender documentation, require potential suppliers to complete a disclosure statement relative to the above.

VII Prequalification

1. A procuring entity may limit tenders to prequalified goods, services or suppliers. The notice to prequalify must state whether the prequalification process will result in a single-use or multi-use prequalification list.
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 Section IV (Tender Notices):
 - (a) the criteria that will be used to prequalify suppliers; and
 - (b) a statement that only the suppliers on the prequalified list will receive further notices of procurement covered by the list.

3. 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 any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
4. In addition to the requirements of paragraph 2, the notice inviting interested suppliers to apply for inclusion on a multi-use prequalification list must be published at least annually on [SaskTenders](#).
5. Multi-use prequalification lists must specify 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.
6. Notwithstanding paragraph 4, where a multi-use 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.

Paragraph 7 applies only to procurements covered by GPA, CETA and CPTPP:

7. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use prequalification list and shall include on the list all qualified suppliers within a reasonably short time. A procuring entity should normally allow a supplier that has applied for inclusion on a multi-use prequalification list to participate in a given procurement where there is sufficient time for the procuring entity to examine if the supplier satisfies the conditions for participation.

VIII Contract Award

1. All procuring entities must, when requested by a bidder, provide an explanation of the reasons why the bidder's tender was not selected and the relative advantage of the successful supplier's tender.
2. A procuring entity must post contract award information on [SaskTenders](#) in a timely manner. For procurements covered by CFTA, CETA or the GPA, such notices must be published within 72 days of awarding the contract.
3. Award notices shall include at least the following:
 - (a) a description of the good or service 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 (in the case where limited tendering was used, a description of the circumstances justifying the use of limited tendering).
4. Notwithstanding paragraphs 1, 2 and 3, procuring entities are obliged not to prejudice the legitimate commercial interests of particular enterprises (including suppliers). See Part B, Section IV (Transparency) for more information.

IX Access to Bid Protest Mechanism for Suppliers

1. The Bid Protest Mechanism enables suppliers to challenge a specific procurement conducted by a procuring entity in British Columbia, Alberta, Saskatchewan, or Manitoba if the supplier believes the procurement was not conducted in compliance with the procurement obligations of the any of the four Trade Agreements. Information on the Bid Protest Mechanism can be found on the NWP website: www.newwestpartnership.ca.

X Exceptions or Qualifications

1. There are three types of exceptions or qualifications to the procurement obligations of the Trade Agreements:
- **Full exceptions:** Procurements that are themselves fully excluded from the Trade Agreements with no need to prove 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 procurements 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, IV (Transparency) for more information; and
 - **Legitimate objectives:** Procurements or procurement-related measures undertaken in order to pursue certain "legitimate objectives". Additional criteria must be met before utilizing such exceptions.

Procuring entities should refer to the attached Schedules for other exceptions or qualifications specific to each of the Trade Agreements. In addition, any procurement which falls below the applicable thresholds will not be subject to any of the obligations of the Trade Agreements.

2. Most of the Trade Agreements permit limited tendering (e.g. sole sourcing) in narrow circumstances. These circumstances are explored further in Schedules A through E. Note that, for contracts subject to the CETA, GPA or CPTPP, the procuring entity must document its decision to use limited tendering. Contracts awarded by limited tender are still subject to most of the transparency rules. See Part B, IV (Transparency) for more information.

XI Definitions

1. In these Guidelines:

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 or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement;

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

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

multi-use prequalification list means a prequalified list of goods, services or suppliers that a procuring entity intends to use for more than one procurement;

person means a natural person or an enterprise;

prequalification means a process whereby a procuring entity establishes a list of goods, services or 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 Party or its procuring entities provides, including cooperative agreements, grants, loans, equity infusion, 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 a Party's:

- (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of government;
- (b) Crown corporations, government owned commercial enterprises, and other entities that are owned or controlled by the Party through ownership interest;
- (c) regional, local, district or other forms of municipal government as well as any corporation or entity owned or controlled by any such form of municipal government; and
- (d) school boards, publicly funded academic, health and social service entities as well as any corporation or entity owned or controlled by one or more of the preceding entities;

single-use prequalification list means a list of prequalified goods, services or suppliers that a procuring entity intends to use for a specific procurement;

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.

SCHEDULE A

New West Partnership Trade Agreement (NWPTA)

This schedule provides additional information on the procuring entities subject to the procurement rules of the NWPTA, and additional 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, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement of	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

A-2. Excluded Procuring Entities

1. There are no excluded procuring entities.

A-3. Excluded Procurements

1. The NWPTA excludes procurements in a number of situations, including 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. Alternative procurement procedures, including limited tendering, may be used in the circumstances listed below provided that they are not used by a procuring entity to avoid competition, discriminate between suppliers, or protect suppliers of its Party:
 - (a) procurements from philanthropic institutions, prison labour or persons with disabilities;
 - (b) procurement from a public body or non-profit organization;

- (c) procurement of goods purchased for representation and promotional purposes, and services or construction purchased for representational or promotional purposes outside a procuring entities' Province;
 - (d) procurement of health services and social services;
 - (e) procurement on behalf of an entity not covered by the NWPTA;
 - (f) by entities which operate sporting or convention facilities, in order to respect a commercial agreement;
 - (g) where it can be demonstrated that only one supplier is able to meet the requirements of a procurement⁵;
 - (h) 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;
 - (i) 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;
 - (j) procurement of services provided by lawyers and notaries;
 - (k) procurement of goods intended for resale to the public; or
 - (l) procurement in the absence of a receipt of any bids in response to a call for tenders.
3. A supplier located in the NWPTA region may also qualify for procurements under the CFTA, even if a specific procurement is excluded under the NWPTA.

A-4. 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 a Party:
 - (a) public security and safety;

⁵ For guidance on this, please see Schedule B, B-3, paragraph 5.

- (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.

A-5. Regional Economic Development

1. 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).

SCHEDULE B

Canadian Free Trade Agreement (CFTA)

This schedule provides additional information on the procuring entities subject to the procurement rules of the CFTA, and additional exclusions to those rules that may be available.

B-1. Scope and Application

1. 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, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement of	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

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

B-2. Excluded Procuring Entities

1. Procuring entities that are excluded from the procurement obligations of the CFTA are not obliged to open their procurements to the suppliers of other Canadian jurisdictions. However, where a procurement is subject to the NWPTA, GPA, CETA or CPTPP, it must be open to suppliers of those respective regions.
2. For Saskatchewan, SaskPower is excluded from the procurement obligations of the CFTA.

B-3. Excluded Procurements

1. Where a procurement is excluded under the CFTA but covered under the NWPTA, the GPA, CETA or CPTPP, procuring entities:
 - (a) may exclude CFTA suppliers; but
 - (b) must open the procurement to NWPTA, GPA, CETA and CPTPP suppliers, as the case may be.
2. Paragraphs 3, 4, 5 and 6 below provide an overview of excluded procurements.
3. For 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 a Party.

4. The procurement obligations of the CFTA do not apply to:
- (a) procurements relating to:
 - (i) Aboriginal peoples;
 - (ii) water in its natural state; or
 - (iii) social services;
 - (b) public employment contracts;
 - (c) non-legally binding agreements;
 - (d) any form of assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives;
 - (e) 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 the procurement obligations of the CFTA;
 - (f) the acquisition or rental of land, existing buildings or other immovable property, or the rights thereon;
 - (g) measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or are a disguised restriction on trade;
 - (h) 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;
 - (i) 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
- (j) 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 the CFTA;
 - (ii) by a procuring entity on behalf of an entity not covered by the CFTA procurement obligations;
 - (iii) between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise;
 - (iv) by non-governmental bodies that exercise governmental authority delegated to them;
 - (v) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
 - (vi) under a commercial agreement between a procuring entity which operates sporting or convention facilities and an entity not covered by this the CFTA procurement obligations that contains provisions inconsistent with the CFTA procurement obligations;
 - (vii) conducted for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers; or
 - (viii) conducted:
 - A. under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
 - B. under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance, if the procedure or condition would be inconsistent with the procurement obligations of the CFTA.

5. Limited tendering may be used in the circumstances indicated below provided that they are not used by a procuring entity to avoid competition, discriminate between suppliers, or protect suppliers of its Party. Note that certain other obligations in the CFTA still apply to procurements issued by way of limited tender, including record-keeping and transparency obligations.
- (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 the procurement obligations 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.
6. The procurement obligations of the CFTA do not apply to procurement that is part of a small business set-aside program provided that the program is fair, open, transparent, and does not discriminate on the basis of origin or location within Canada of the goods, services, or suppliers.

B-4. Legitimate Objectives

1. A procuring entity may conduct a procurement in a manner that is inconsistent with the procurement obligations of the AIT 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 Parties 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 the protection or favouring of the production of an enterprise of a Party.

SCHEDULE C

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

This schedule provides additional information on the procuring entities subject to the procurement rules of the GPA and additional 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,⁶ in accordance with the GPA, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

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

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

C-2. Excluded Procuring Entities

2. The following procuring entities are not subject to the procurement obligations of the GPA. These entities are not obliged to open their procurements to the qualified suppliers of the GPA signatories. However, if a procurement is also subject to the NWPTA, CFTA, CETA or CPTPP, it must be open to suppliers covered by those agreements:
 - (a) Legislative Branch Entities;
 - (b) All Boards and Agencies (except Public Employee Benefits Agency, Saskatchewan Archives Board and the Saskatchewan Arts Board);
 - (c) All Crown corporations; and
 - (d) All MASH sector entities.

⁶ In addition to Canada, the GPA signatories are Armenia, the European Union (for 28 member states), 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.

C-3. Excluded Procurements

1. The GPA does not apply to procurements:
 - (a) for 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) or the 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) with preferences or restrictions relating to highway projects;
 - (f) with preferences or restrictions associated with programs promoting the development of distressed areas;
 - (g) of:
 - (i) goods purchased for representational or promotional purposes; or
 - (ii) services or construction purchased for representational or promotional purposes outside the territory of a Party;
 - (h) 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) with 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) made by a covered entity on behalf of a non-covered entity;
 - (k) services for management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development;
 - (l) of public utilities;
 - (m) of architectural and engineering services related to airfield, communications and missile facilities;
 - (n) of shipbuilding and repair and related architectural and engineering services;

- (o) of all services, with reference to those goods purchased by provincial police forces which are not identified as subject to coverage by the GPA;
 - (p) of dredging services;
 - (q) of urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
 - (r) of contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
 - (s) of agricultural products made in furtherance of agricultural support programs or human feeding programs;
 - (t) set-asides for small and minority businesses;
 - (u) of transportation services that form a part of, or are incidental to, a procurement contract;
 - (v) 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; and
 - (w) made by one government entity or enterprise from another government entity or enterprise.
2. Where a procurement is excluded under the GPA but covered under the NWPTA, CFTA, CETA and/or the CPTPP, procuring entities may limit the procurement to NWPTA, CFTA, CETA and/or CPTPP suppliers, as the case may be.
 3. Limited tendering may be used in the circumstances indicated below provided that they are not used by a procuring entity to avoid competition, discriminate between suppliers, or protect domestic suppliers. Note that certain other obligations in the GPA still 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 this Agreement, 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.

4. 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, Saskatchewan 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.

C-4. Procurements of Services and Construction

1. 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-4. These services are classified according to the United Nations Provisional Central Product Classification:

Description	CPC Prov. Reference No.
1. Repair services of personal and household goods	633
2. Hotel and similar accommodation services	641
3. Food and beverage serving services	642-643
4. Travel agency and tour operator services	7471
5. Commercial courier services (including multi-modal)	7512
6. Electronic data interchange (EDI)	7523
7. Electronic mail	7523
8. Enhanced/value-added facsimile services, including store and forward, store and retrieve	7523
9. Code and protocol conversion	
10. On-line information and data base retrieval	7523
11. Voice mail	7523
12. Real estate services involving own or leased property	821
13. Real estate services on a fee or contract basis	822

14.	Leasing or rental services concerning machinery and equipment without operator	83106-83109 only
15.	Leasing or rental services concerning personal and household goods	83203-83209 only
16.	Consultancy services related to the installation of computer hardware	841
17.	Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
18.	Data processing services, including processing, tabulation and facilities management services	843
19.	On-line information and/or data processing (including transaction processing)	843
20.	Data base services	844
21.	Maintenance and repair services of office machinery and equipment including computers	845
22.	Other computer services	849
23.	General management consulting services	86501
24.	Human resources management consulting services	86504
25.	Production management consulting services	86505
26.	Services related to management consulting (except 86602 Arbitration and conciliation services)	8660
27.	Urban planning and landscape architectural services	8674
28.	Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)	8676
29.	Building-cleaning services	874
30.	Packaging services	876
31.	Services incidental to forestry	8814

	and logging, including forest management	
32.	Services incidental to mining, including drilling and field services	883
33.	Repair services incidental to metal products, machinery and equipment	8861-8864, 8866
34.	Sewage and refuse disposal, sanitation and similar services	940

2. The service coverage in the GPA is subject to the following qualifications:
- (a) coverage in 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) services for the management and operation of government facilities or privately-owned facilities used for government purposes are not covered by the GPA; and
 - (c) the GPA does not cover the procurement of public utilities.

SCHEDULE D

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

This schedule provides additional information on the procuring entities subject to the procurement rules of the CETA and additional 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 states⁷ in accordance with the CETA, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement of	Ministries	Thresholds*		MASH
		Crown corporations		
		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

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

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. Included Procuring Entities

1. For Saskatchewan, Annex 19-2 of the CETA prescribes that the following entities are covered at the Ministries and MASH thresholds:
 - (a) Ministries, agencies, Treasury Board Crown Corporations, boards, and commissions;
 - (b) Municipalities; and
 - (c) School boards and publicly-funded academic, health, and social service entities.

⁷ The EU Member states are Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom.

2. Annex 19-3 of the CETA prescribes that the following entities are covered at the Crown corporation thresholds:

- (a) All provincial Crown corporations, corporations owned or controlled by one or more municipal governments and the Saskatchewan Liquor and Gaming Authority.

D-3. Excluded Procurements

1. Where a procurement is excluded under the CETA but covered under the NWPTA, CFTA, GPA or CPTPP, procuring entities:

- (a) may exclude CETA suppliers; but
- (b) must open the procurement to NWPTA, CFTA, GPA and CPTPP suppliers, as the case may be.

2. The procurement obligations of CETA do not cover procurement:

- (a) with respect to Aboriginal peoples;
- (b) procured 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) procurement 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) procurement by a procuring entity from a government entity;
- (g) of 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) in respect of agricultural goods made in furtherance of agricultural support programs or human feeding programs;
- (j) of transportation services that form a part of, or are incidental to, a procurement contract;

- (k) 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;
 - (l) 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; and
 - (m) of goods purchased for representational or promotional purposes, or of services or construction services purchased for representational or promotional purposes outside the province;
 - (n) 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) for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.
3. Limited tendering may be used in the circumstances indicated below provided that they are not used by a procuring entity to avoid competition, discriminate between suppliers, or protect domestic suppliers. Note that certain other obligations in the CETA still apply to procurements issued by way of limited tender, including record-keeping and transparency obligations.
- (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;
 - (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.
4. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in Chapter 19 of the CETA shall be construed to prevent a Party 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.

D-4. Procurements of Services and Construction

1. The CETA provides special rules relating to the procurement of services. The following services are covered, subject to the general exclusions in D-3 and some special exclusions in paragraph 2 of D-4. These services are classified according to the United Nations Provisional Central Product Classification (CPC) (<http://www.tralac.org/files/2013/12/UN-CPC-Provisional-central-product-classification.pdf>):

Services:

Description	CPC Reference
1. Repair services of personal and household goods	633
2. Commercial courier services (including multi-modal)	7512
3. Electronic data interchange (EDI)	7523
4. Electronic mail	7523
5. Enhanced/value-added facsimile services, including store and forward, store and retrieve	7523
6. Code and protocol conversion	-
7. On-line information and data base retrieval	7523
8. Voice mail	7523
9. Real estate services on a fee or contract basis	822
10. Consultancy services related to the installation of computer hardware	841
11. Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
12. Data processing services, including processing, tabulation and facilities management services	843
13. On-line information and/or data processing (including transaction processing)	843
14. Data base services	844
15. Maintenance and repair services of office machinery and equipment including computers	845
16. Other computer services	849
17. General management consulting services	86501
18. Marketing management consulting services	86503
19. Human resources management consulting services	86504
20. Production management consulting services	86505

21. Services related to management consulting (except 86602 Arbitration and conciliation services)	866
22. Architectural services	8671
23. Engineering services	8672
24. Integrated engineering services (excluding 86731 Integrated engineering services for transportation infrastructure turnkey projects)	8673
25. Urban planning and landscape architectural services	8674
26. Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)	8676
27. Building-cleaning services	874
28. Repair services incidental to metal products, machinery and equipment	8861 to 8864 and 8866
29. Sewage and refuse disposal, sanitation and similar services	94

Construction:

The CETA covers all construction services identified in Division 51 of the CPC unless otherwise noted.

1. The service coverage in the CETA is subject to the following qualifications:
 - (a) For procuring entities listed in paragraph 1 of D-2, the thresholds will be \$650,000⁸ 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 CETA procurement Chapter 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.

⁸ This threshold is updated every two years.

SCHEDULE E

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

This schedule provides additional information on the procuring entities subject to the procurement rules of the CPTPP and additional 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 Parties⁹ in accordance with the CPTPP, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

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

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

E-2. Included Procuring Entities

1. For Saskatchewan, Annex 15-A of the CPTPP prescribes that the following entities are covered at the Ministries thresholds:
 - (a) All Ministries of the Province; and
 - (b) The following Boards and Agencies are covered:
 - (i) Public Employee Benefits Agency;
 - (ii) Saskatchewan Archives Board; and
 - (iii) Saskatchewan Arts Board.

⁹ Any State or separate customs territory for which this Agreement is in force

E-3. Excluded Procurements

1. Where a procurement is excluded under the CPTPP but covered under the NWPTA, the CFTA, CETA or the GPA, procuring entities:
 - (a) may exclude CPTPP suppliers; but
 - (b) must open the procurement to NWPTA, CFTA, CETA and GPA suppliers, as the case may be.
2. The procurement obligations of CPTPP do not cover:
 - (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, 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 of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party;
 - (f) preferences or restrictions on highway projects;
 - (g) preferences or restrictions associated with programmes promoting the development of distressed areas.
 - (h) procurement:
 - (i) of goods purchased for representational or promotional purposes; or
 - (ii) of services or construction services purchased for representational or promotional purposes outside the province or territory;
 - (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) services for the management and operation of government facilities or privately owned facilities used for government purposes, including federally-funded research and development;
 - (l) public utilities services;
 - (m) shipbuilding and repair and related architectural and engineering services;
 - (n) services related to culture or cultural industries;
 - (o) dredging services;
 - (p) agricultural goods made in furtherance of agricultural support programmes or human feeding programmes;
 - (q) transportation services that form a part of, or are incidental to, a procurement contract;
 - (r) an international crossing between Canada and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;
 - (s) procurement by a procuring entity from another government entity;
 - (t) any form of preference, including set asides, to benefit micro, small and medium enterprises; and
 - (u) any measure adopted or maintained with respect to Aboriginal peoples, nor to set asides for aboriginal businesses; existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada protected by section 35 of the *Constitution Act, 1982*.
3. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers or in a manner that discriminates against suppliers of any other Party, a procuring entity may use limited tendering. Note that certain other obligations in the CPTPP still apply to procurements issued by way of limited tender, including record-keeping and transparency obligations. A procuring entity may use limited tendering only under the following circumstances:
- (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 authorised 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 CPTPP Chapter 15;
- (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
 - (iii) 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.
4. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, 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.

E-4. Procurements of Services and Construction

1. The CPTPP provides special rules relating to the procurement of services. The following services are covered, subject to the general exclusions in D-3 and some special exclusions in paragraph 2 of D-4. These services are classified according to the United Nations Provisional Central Product Classification:

Services:

Description	CPC Reference
1. Repair services of personal and household goods	633
2. Hotel and Restaurant services	64
3. Travel agency and tour operator services	7471
4. Commercial courier services (including multi-modal)	7512
5. Electronic data interchange (EDI)	7523
6. Electronic mail	7523
7. Enhanced/value-added facsimile services, including store and forward, store and retrieve Code and protocol conversion	7523

8.	On-line information and data base retrieval	7523
9.	Voice mail	7523
10.	Real estate services involving own or leased property	821
11.	Real estate services on a fee or contract basis	822
12.	Leasing or rental services concerning machinery and equipment without operator	83106 to 83109
13.	Leasing or rental services concerning personal and household goods	83203 to 83209
14.	Consultancy services related to the installation of computer hardware	841
15.	Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services	842
16.	Data processing services, including processing, tabulation and facilities management services	843
17.	On-line information and/or data processing (including transaction processing)	843
18.	Data base services	844
19.	Maintenance and repair services of office machinery and equipment including computers	845
20.	Other computer services	849
21.	General management consulting services	86501
22.	Human resources management consulting services	86504
23.	Production management consulting services	86505
24.	Services related to management consulting (except 86602 Arbitration and conciliation services)	866
25.	Urban planning and landscape architectural services	8674
26.	Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)	8676
27.	Building-cleaning services	874
28.	Packaging services	876

29.	Services incidental to forestry and logging, including forest management	8814
30.	Services incidental to mining, including drilling and field services	883
31.	Repair services incidental to metal products, machinery and equipment	8861 to 8864 and 8866
32.	Sewage and refuse disposal, sanitation and similar services	94

Construction:

The CPTPP covers all construction services identified in Division 51 of the CPC unless otherwise noted.