



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

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Canada's  
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AGREEMENT ON INTERNAL TRADE  
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## PART A: INTRODUCTION

### I Purpose of the Guidelines

These Guidelines have been 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 and Saskatchewan;
- (b) the *Agreement on Internal Trade* (AIT) between all Canadian provinces, territories<sup>1</sup> and the federal government;
- (c) the *Agreement between the Government of Canada and the Government of the United States of America on Government Procurement* (CUSPA) between Canada and the United States of America; and
- (d) the World Trade Organization *Agreement on Government Procurement* (GPA).<sup>2</sup>

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 reflect 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](http://www.newwestpartnershiptrade.ca)
- AIT: [www.ait-aci.ca](http://www.ait-aci.ca)
- CUSPA: [www.international.gc.ca/trade-agreements-accords-commerciaux](http://www.international.gc.ca/trade-agreements-accords-commerciaux)
- GPA: [www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

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<sup>1</sup> Except Nunavut.

<sup>2</sup> The CUSPA is based on rules outlined in the GPA. For this reason, in these Guidelines the Agreements CUSPA and GPA are combined and referred to as “CUSPA/GPA”.

## 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 C below.

The NWPTA contains more general obligations than those found in the other Trade Agreements. This being the case, the Guidelines assist procuring entities by providing guidance as to what the NWPTA's general obligations mean in specific instances by drawing on the more specific obligations found in the other Trade Agreements.

## III Thresholds

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

Procurement of	Ministries	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>AIT</b>			
Goods	\$25,000	\$500,000	\$100,000
Services	\$100,000	\$500,000	\$100,000
Construction	\$100,000	\$5,000,000	\$250,000
<b>CUSPA/GPA (updated every two years)</b>			
Goods	\$560,300	Not covered	
Services	\$560,300		
Construction	\$7,800,000		

NOTE: Under the AIT, Alberta Crown corporations follow the thresholds and rules applicable to Ministries.

Additional information on specific coverage, exclusions and other criteria contained in each of the Trade Agreements is identified in Schedules A to C below. Proposed 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
- 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.<sup>3</sup>

### **II Non-Discrimination**

1. Procuring entities must accord to like, competitive or substitutable goods and services of eligible suppliers treatment that is no less favourable than the best treatment they provide to their own or any other supplier.
2. The following is an illustrative list of practices that would be considered inconsistent with paragraph 1:
  - (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) the timing of events in the tender process so as to prevent suppliers from submitting bids;
  - (e) the specification of quantities or schedules 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;

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<sup>3</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.

- (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.

### **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 dividing required quantities or diverting funds to non-covered subsidiary agencies in a manner designed to avoid otherwise applicable obligations.
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. Notwithstanding paragraph 1, 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.

## 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 CUSPA/GPA (as outlined in Schedule C), the estimate of procurement value must also include the total value of any optional renewals or extensions. A procurement which, without options taken into account, would only be subject to the NWPTA or AIT may, when options are included, also be subject to the CUSPA/GPA. **Therefore, procuring entities that are subject to the CUSPA/GPA must also calculate the value of all options for the purpose of ascertaining whether the procurement exceeds the applicable CUSPA/GPA threshold.**
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.

### II Electronic Tendering

1. Procuring entities must post tender notices for all covered procurements on the designated electronic tendering system provided by its own Province, namely:

British Columbia      [www.bcbid.gov.bc.ca](http://www.bcbid.gov.bc.ca);

Alberta                      [www.purchasingconnection.ca](http://www.purchasingconnection.ca); or

Saskatchewan          [www.sasktenders.gov.sk.ca](http://www.sasktenders.gov.sk.ca).

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 CUSPA/GPA (as outlined in Schedule C), the closing date for the submission of bids must not be less than:
  - (a) 30 days from the date on which the tender notice is published (or 25 days where the procuring entity accepts electronic submission of tenders);
  - (b) 13 days if the procuring entity is purchasing commercial goods or services (or 10 days where the procuring entity accepts electronic submission of tenders); and
  - (c) 10 days where a state of urgency, duly substantiated by the procuring entity, renders the usual time-period for tendering impractical.

### **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) the address and final date for the submission of tenders;
  - (d) the date, time and place for any public opening of tenders;
  - (e) 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; and
  - (f) the identification of the Trade Agreement or Agreements to which the tender is subject.
2. For procurements falling under the CUSPA/GPA (as outlined in Schedule C), the following information must be included in addition to that specified in paragraph 1:

- (a) a description of any options;
- (b) the time-frame for delivery of goods or services or the duration of the contract;  
and
- (c) the procurement method that will be used.

## **V Tender Documentation**

1. A procuring entity must make available to suppliers tender documentation 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 and the relative importance of such criteria;
  - (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.
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;
  - (a) the equivalency of goods or services proposed by a bidder as being “equivalent” to the stated technical requirements;

- (b) terms of delivery;
  - (c) servicing and warranty;
  - (d) transitioning implications;
  - (e) the capacity of the supplier to meet the requirements of the procurement;
  - (f) professional competence, managerial ability, corporate stability and business integrity;
  - (g) past performance on similar projects with similar characteristics, including the quality, innovation and life-cycle value of the outcomes;
  - (h) the calibre, experience and availability of staff proposed;
  - (i) ability to meet site, climatic, public safety, code, design, permitting and other project related requirements; and
  - (j) 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 the designated electronic tendering system as found in Part C, Section II (Electronic Tendering).

Paragraphs 5, 6 and 7 currently apply only to procurements that are covered by the CUSPA/GPA.

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 notice referred to in Part C, Section IV (Tender Notices) 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.
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. Subject to the obligation not to prejudice the legitimate commercial interests of particular enterprises (including suppliers), 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. Ministries must post contract award information in a timely manner for all procurements covered by the Trade Agreements. At a minimum, award information must be posted on the designated electronic tendering system outlined in Part C, Section II (Electronic Tendering).

## **IX Access to Bid Protest Mechanism for Suppliers**

*(To be completed when a bid protest mechanism has been put in place).*

## 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 particular goods or services which may be excluded in some cases where such procurements are not being used to discriminate between suppliers or to protect suppliers; and
  - Legitimate objectives: Procurements being 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. The Trade Agreements do not apply to any procurements:
  - (a) relating to Aboriginal peoples; or
  - (b) of treasury services.

## 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 or Saskatchewan through ownership interest;

**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;

**Party** means one of the Governments of British Columbia, Alberta or Saskatchewan;

**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;

**treasury services** means services or financial products relating or ancillary to any of the following:

- (a) borrowing, lending, investing, managing or holding money, securities or other property; and
- (b) without limiting the generality of subparagraph (a),
  - (i) managing debt, loan, asset or investment portfolios,
  - (ii) entering into commodity or other derivative transactions, or
  - (iii) acquiring, exchanging, disposing of or otherwise transacting in securities, foreign currencies or any property acquired as a result of borrowing, lending, managing or investing money or securities.

## 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 and Saskatchewan, 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. In addition to the general exclusions listed Part C, Section X (Exceptions or Qualifications), the NWPTA excludes procurements:
  - (a) of water, and services and investments pertaining to water;
  - (b) for the management or conservation of forests, fish or wildlife;
  - (c) to promote renewable and alternative energy; or
  - (d) 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 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 procurement<sup>4</sup>;
  - (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. If a specific procurement is excluded under the NWPTA, but covered by the AIT or the CUSPA/GPA, that procurement must still be open to NWPTA suppliers.

#### **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 measure 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.

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<sup>4</sup> For guidance on this, please see Schedule B, B-3, paragraph 4.

2. In the context of this Schedule, "legitimate objective" means any of the following objectives pursued within 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.

#### **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

### *Agreement on Internal Trade (AIT)*

This schedule provides additional information on the procuring entities subject to the procurement rules of the AIT, 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 AIT must provide open and non-discriminatory access to the suppliers of all Canadian jurisdictions in accordance with the AIT, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

Procurement of	Thresholds		
	Ministries	Crown corporations	MASH
Goods	\$25,000	\$500,000	\$100,000
Services	\$100,000	\$500,000	\$100,000
Construction	\$100,000	\$5,000,000	\$250,000

NOTE: Under the AIT, Alberta Crown corporations follow the thresholds and rules applicable to Ministries.

2. Each type of procuring entity - Ministries, Crown corporations and MASH – has a separate section of AIT Chapter Five which sets out the entity's procurement obligations in detail, including excluded procurements. These sections are:
  - Ministries: (Main Chapter) Articles 501 to 518;
  - Crown corporations: (Crown Annex) Annex 502.3 (not applicable to Alberta Crown corporations); and
  - MASH: (MASH Annex) Annex 502.4.

Complete lists of the specific entities that fall within each of these categories can be found on the MARCAN (MARket place CANada) website at [www.marcan.net](http://www.marcan.net).

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

1. Procuring entities that are excluded from the procurement obligations of the AIT are not obliged to open their procurements to the suppliers of other Canadian jurisdictions. However, where a procurement is subject to the NWPTA, it must be open to suppliers of British Columbia, Alberta and Saskatchewan.

**(a) British Columbia**

The following procuring entities are not subject to the procurement obligations of the AIT:

Legislative Assembly

**(b) Alberta**

The following procuring entities are not subject to the procurement obligations of the AIT:

Legislative Assembly  
Legislative Assembly Office  
Office of the Auditor General  
Office of the Chief Electoral Officer  
Office of the Ethics Commissioner  
Office of the Information and Privacy Commissioner  
Office of the Ombudsman

**(c) Saskatchewan**

A complete list of Saskatchewan procuring entities excluded from the obligations of the AIT can be found on the MARCAN (MARket place CANada) website at [www.marcan.net](http://www.marcan.net).

**B-3. Excluded Procurements**

1. Where a procurement is excluded under the AIT but covered under the NWPTA or the CUSPA/GPA, procuring entities:
  - (a) may exclude AIT suppliers; but
  - (b) must open the procurement to NWPTA and CUSPA/GPA suppliers, as the case may be.
2. Paragraphs 3, 4 and 5 below provide an overview of excluded procurements. Complete lists of excluded or qualified procurements under the AIT for each type of procuring entity can be found as follows:
  - Ministries: AIT Articles 506(11), 506(12), 507 and 508, and AIT Annex 502.1B;
  - Crown corporations: Section C(9) and Section E of AIT Annex 502.3; and
  - MASH entities: Sections I, K and L of AIT Annex 502.4.

As some exceptions listed below are not available to all entities, please refer to these specific provisions directly to ensure the exclusions set out below are available to your specific procuring entity or specific procurement, as the case may be.

For paragraph 3, 4, and 5 an **X** indicates that the specific exception is not available to such entities.

3. In addition to the general exclusions listed in Part C, Section X (Exceptions or Qualifications) and except as indicated, the AIT does not apply to the procurement:

	Ministries	Crown corps	MASH
(a) of goods intended for resale to the public;	✓	✓	✓
(b) of goods, services or construction:			
(i) purchased on behalf of an entity not covered by AIT Chapter Five (Procurement); or	✓	✓	✓
(ii) purchased by entities which operate sporting or convention facilities in order to comply with a commercial agreement with an entity not covered by AIT Chapter 5 (Procurement) that contains provisions incompatible with AIT Chapter 5 (Procurement);	✓	X	X
(c) from philanthropic institutions, prison labour or persons with disabilities;	✓	X	✓
(d) contracts with a public body or a non-profit organization;	✓	✓	✓
(e) 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 <sup>5</sup> ;	✓	✓	X
(f) of any goods the interprovincial movement of which is restricted by laws not inconsistent with the AIT;	✓	X	✓

<sup>5</sup> The exception for MASH entities is for the procurement of goods and services for use outside Canada as well as construction work done outside Canada (B-3, paragraph 3(I)).

		Ministries	Crown corps	MASH
(g)	of services that may, under the applicable laws of the Province of the procuring entity issuing the tender, only be provided by the following licensed professionals:	✓	✓	✓
	(i) medical doctors;			
	(ii) dentists;			
	(iii) nurses;			
	(iv) pharmacists;			
	(v) veterinarians;			
	(vi) engineers;			
	(vii) land surveyors;			
	(viii) architects;			
	(ix) accountants; and			
	(x) lawyers and notaries;			
(h)	of transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects <sup>6</sup> ;	✓	✗	✗
(i)	health services and social services;	✓	✗	✓
(j)	of advertising and public relations services <sup>7</sup> ;	✓	✓	✗
(k)	of cultural goods or services, or cultural industries <sup>8</sup> ;	✓	✓	✓
(l)	contracts for procuring goods and services to be used outside Canada as well as	✗	✓	✓

<sup>6</sup> See B-3, paragraph 4(d) for qualified exception for MASH entities.

<sup>7</sup> A somewhat different, full exception is available for Crown corporations: contracts for procuring cultural or artistic goods or services including goods and services relating to the creation, production, distribution or broadcasting of programming in Canada including co-productions, sports and news.

<sup>8</sup> This exception for MASH entities includes the procurement of computer software for educational purposes. Cultural industries means persons engaged in any of the following activities: a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing; b) the production, distribution, sale or exhibition of film or video recordings; c) the production, distribution, sale or exhibition of audio or video music recordings; d) the publication, distribution or sale of music in print or machine readable form; or e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.



		Ministries	Crown corps	MASH
	construction work outside Canada;			
(m)	contracts for procuring goods, services and construction that is financed primarily from donations that are subject to the conditions that are inconsistent with the obligations set out in AIT Chapter 5 (Procurement); and	✗	✗	✓
(n)	contracts for the transportation of alcoholic products in bulk, by sea or for the transportation of alcoholic products by air.	✗	✓	✗

4. Alternative procurement procedures 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:

		Ministries	Crown corps	MASH
(a)	where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures <sup>9</sup> ;	✓	✓	✓
(b)	where 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 bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest <sup>10</sup> ;	✓	✓	✓
(c)	where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the Party and the organization includes rules for awarding contracts that differ from the obligations set out in AIT Chapter Five (Procurement) <sup>10</sup> ;	✓	✓	✓
(d)	where construction materials are to be purchased and it can be demonstrated that	✓	✗	✓

<sup>9</sup> This is a full exception for Crown corporations.

	Ministries	Crown corps	MASH
transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads;			
(e) where compliance with the open tendering provisions required under AIT Chapter Five (Procurement) would interfere with a Party's or the entity's ability to maintain security or order or to protect human, animal or plant life or health; and	✓	✗	✓
(f) procurement in the absence of a receipt of any bids in response to a call for tenders.	✓	✗	✓

5. Where only one supplier is able to meet the requirements of a procurement, a procuring entity may use procurement procedures that are different from those required under AIT Chapter Five (Procurement) in the following circumstances:

	Ministries	Crown corps	MASH
(a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative <sup>10</sup> ;	✓	✓	✓
(b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists <sup>10</sup> ;	✓	✗	✓
(c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;	✓	✗	✓
(d) for the purchase of goods on a commodity	✓	✓	✓

<sup>10</sup> A somewhat different, full exception is available for Crown corporations: contracts with the only supplier able to meet the bid requirements, including contracts to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative.



		Ministries	Crown corps	MASH
	market <sup>10</sup> ;			
(e)	for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;	✓	✗	✓
(f)	for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work <sup>11</sup> ;	✓	✓	✓
(g)	for a contract to be awarded to the winner of a design contest;	✓	✗	✓
(h)	for the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases <sup>10</sup> ;	✓	✓	✓
(i)	for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases <sup>10</sup> ;	✓	✓	✓
(j)	for the procurement of original works of art <sup>12</sup> ;	✓	✓	✓
(k)	for the procurement of subscriptions to newspapers, magazines or other periodicals; and	✓	✗	✓
(l)	for the procurement of real property.	✓	✗	✓

<sup>11</sup> A somewhat different, full exception is available for Crown corporations: contracts with the only supplier able to ensure the continuation of guarantees or warranties.

<sup>12</sup> A somewhat different, full exception is available for Crown corporations: contracts for procuring cultural or artistic goods or services including goods and services relating to the creation, production, distribution or broadcasting of programming in Canada including co-productions, sports and news.

**B-4. Legitimate Objectives<sup>13</sup>**

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 does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet that legitimate objective; and
  - (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
  - (d) the measure does not create 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 wellbeing of workers; or
  - (g) affirmative action 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.

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<sup>13</sup> Procuring entities are governed by sections A-4 (Legitimate Objectives) and A-5 (Regional Economic Development) of Schedule A when adopting a procurement-related measure: (i) to achieve a legitimate objective; or (ii) for regional and economic development purposes, as applicable. Adhering to these provisions of Schedule A will also ensure adherence to B-4 (Legitimate Objectives) and B-5 (Regional Economic Development) of this Schedule B. However, note that any challenge by an AIT supplier (other than a NWPTA supplier) can only be defended on the basis of B-4 or B-5, as appropriate.

## **B-5. Regional Economic Development<sup>14</sup>**

1. A procuring entity may, under exceptional circumstances, exclude a procurement from the application of AIT Chapter Five (Procurement) for regional and economic development purposes, provided that:
  - (a) the exclusion of the procurement does not operate to impair unduly the access of persons, goods, services or investments of another Party;
  - (b) the exclusion of the procurement is not more trade restrictive than necessary to achieve its specific objective;
  - (c) the transparency obligations of AIT Article 508(1)(c) are complied with; and
  - (d) the Party seeks to minimize the discriminatory effects of the exclusion on suppliers of the other Parties.

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<sup>14</sup> AIT Article 508(1)(c) provides that:

“[N]otice of all such excluded procurements is provided no later than the time the contract is awarded by the methods usually used to publish this type of procurement under Article 506(2); this notice must provide details of the exceptional circumstances and, when published on an electronic tendering system, it must be accessible for a period of time sufficient to allow suppliers to become aware of the procurement; and notice of all such excluded procurements with details of the exceptional circumstances is also given to other Parties no later than the time the contract is awarded via email transmitted to the Internal Trade Secretariat which will redistribute it to the contact points designated under Article 512...”

## SCHEDULE C

### ***Agreement between the Government of Canada and the Government of the United States of America on Government Procurement (CUSPA) and 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 CUSPA/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 CUSPA/GPA must provide open and non-discriminatory access to the qualified suppliers of the United States<sup>15</sup>, in accordance with the CUSPA/GPA, where the procurement is not otherwise excluded and is valued at or above the following thresholds:

<b>Procurement of</b>	<b>Thresholds</b>
Goods	\$560,300
Services	\$560,300
Construction	\$7,800,000

#### **C-2. Excluded Entities**

1. The following procuring entities are not subject to the procurement obligations of the CUSPA/GPA. These entities are not obliged to open their procurements to the qualified suppliers of the United States<sup>16</sup>. However, if a procurement is also subject to the NWPTA, it must be open to suppliers of British Columbia, Alberta and Saskatchewan.

##### **(a) British Columbia**

Legislative Assembly  
All Crown corporations  
All MASH sector entities

##### **(b) Alberta**

Legislative Assembly  
Legislative Assembly Office  
Office of the Auditor General

<sup>15</sup> Note, it is anticipated that Canada will extend GPA procurement commitments to a number of other WTO-Member countries in the near future.

<sup>16</sup> See footnote 16, above.

Office of the Chief Electoral Officer  
Office of the Ethics Commissioner  
Office of the Information and Privacy Commissioner  
Office of the Ombudsman  
All Crown corporations  
All MASH sector entities

**(c) Saskatchewan**

Legislative Branch Entities  
All Boards and Agencies (except Public Employee Benefits Agency,  
Saskatchewan Archives Board and the Saskatchewan Arts Board)  
All Crown corporations  
All MASH sector entities

**C-3. Excluded Procurements**

1. In addition to the general exclusions listed in Part C, Section X (Exceptions or Qualifications), the CUSPA/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) 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;
  - (c) with preferences or restrictions relating to highway projects;
  - (d) with preferences or restrictions associated with programs promoting the development of distressed areas;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) made by a covered entity on behalf of a non-covered entity;

- (i) services for management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development;
  - (j) by public utilities;
  - (k) of architectural and engineering services related to airfield, communications and missile facilities;
  - (l) of shipbuilding and repair and related architectural and engineering services;
  - (m) of all services, with reference to those goods purchased by provincial police forces which are not identified as subject to coverage by the CUSPA/GPA;
  - (n) of dredging services;
  - (o) of urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
  - (p) of contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
  - (q) of agricultural products made in furtherance of agricultural support programs or human feeding programs;
  - (r) with set-asides for small and minority businesses;
  - (s) of transportation services that form a part of, or are incidental to, a procurement contract;
  - (t) of printing and publishing services;
  - (u) in respect of security exemptions including oil purchases relating to any strategic reserve requirements;
  - (v) in respect of national security exceptions including procurements made in support of safeguarding nuclear materials or technology;
  - (w) made with a view to commercial resale; and
  - (x) made by one government entity from another government entity.
2. Where a procurement is excluded under the CUSPA/GPA but covered under the NWPTA and/or the AIT, procuring entities may limit the procurement to NWPTA and/or AIT suppliers, as the case may be.

#### C-4. Procurements of Services

1. The CUSPA/GPA provide special rules relating to the procurement of services. Generally, these Agreements only apply to those services specifically listed below, and for only those GPA countries that have extended reciprocal access to those same services:

- (a) code and protocol conversion services;
- (b) enhanced or value added telecommunications services for the supply of which the underlying telecommunications facilities are leased from providers of public telecommunications transport networks; and
- (c) the following services, as classified according to the United Nations Central Product Classification System (version "prov.") :

*5. Construction work and constructions; land*

[51](#) Construction work

*6. Trade services; hotel and restaurant services*

[633](#) Repair services of personal and household goods

[641](#) Hotel and other lodging services

[642](#) Food and serving services

[643](#) Beverage servicing services for consumption on the premises

*7. Transport, storage and communications services*

[7471](#) Travel agency and tour operator services

[7512](#) Courier services

[7523](#) Data and message transmission services

*8. Business services agricultural, mining and manufacturing services*

[821](#) Real estate services involving own or leased property

[822](#) Real estate services on a fee or contract basis

[83106](#) Leasing or rental services concerning agricultural machinery and equipment without operator

[83107](#) Leasing or rental services concerning construction machinery and equipment without operator

- [83108](#) Leasing or rental services concerning office machinery and equipment without operator
- [83109](#) Leasing or rental services concerning other machinery and equipment without operator
- [83203](#) Leasing or rental services concerning furniture and other household appliances
- [83204](#) Leasing or rental services concerning pleasure and leisure equipment
- [83209](#) Leasing or rental services concerning other personal or household goods
- [841](#) Consultancy services related to the installation of computer hardware
- [842](#) Software implementation services
- [843](#) Data processing services
- [844](#) Data base services
- [845](#) Maintenance and repair services of office machinery and equipment including computers
- [849](#) Other computer services
- [86501](#) General management consulting services
- [86504](#) Human resources management consulting services
- [86505](#) Production management consulting services
- [8660](#) Services related to management consulting (except 86602 arbitration and conciliation)
- [8674](#) Urban planning and landscape architectural services
- [8676](#) Technical testing and analysis services
- [874](#) Building-cleaning services
- [876](#) Packaging services
- [8814](#) Services incidental to forestry and logging
- [883](#) Services incidental to mining
- [8861](#) Repair services of fabricated metal products, except machinery and equipment, on a fee or contract basis



- [8862](#) Repair services of machinery and apparatus n.e.c., on a fee or contract basis
  - [8863](#) Repair services n.e.c. of office, accounting and computing machinery, on a fee or contract basis
  - [8864](#) Repair services of electrical machinery and apparatus n.e.c., on a fee or contract basis
  - [8866](#) Repair services of medical, precision and optical instruments, watches and clocks, on a fee or contract basis
- 9. Community, social and personal services*
- [940](#) Sewage and refuse disposal, sanitation and other environmental protection services