

## Chapter Ten

### Government Procurement

#### Article 1001: Objectives

The Parties shall strive to achieve the liberalization of their measures regarding government procurement, as specified by the obligations in this Chapter, so as to provide balanced, non-discriminatory, predictable and transparent government procurement opportunities for the suppliers of each Party.

#### Article 1002: Scope and Coverage

1. Subject to Annexes 1002.1 through 1002.7, this Chapter applies to any measure regarding the procurement of goods or services or any combination thereof, by any entity listed in Annex 1002.1 (Federal Government Entities), Annex 1002.3 (Government Enterprises) and, when completed, Annex 1002.2 (State and Provincial Government Entities), where the value of the contract to be awarded is estimated, at the time of publication of a notice in accordance with Article 1010 (Invitation to Participate), to equal or exceed the applicable threshold as set forth in paragraph 3.

2. Where the contract to be awarded by the entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract. However, no Party shall prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.

3. Subject to Annex 1002-A, the applicable thresholds in U.S. dollars are:

(a) for entities listed in Annex 1002.1 (Federal Government Entities),

(i) \$50,000 for goods contracts,

(ii) \$50,000 for services contracts, except for construction services contracts, and

(iii) \$6.5 million for construction services contracts; and

(b) for entities listed in Annex 1002.3 (Government Enterprises)

(i) \$250,000 for goods contracts,

(ii) \$250,000 for services contracts, except for construction services contracts, and

(iii) \$8.0 million for construction services contracts.

4. Threshold values are denominated in real terms and therefore shall incorporate the inflation rate of the United States. The United States shall, every two years, calculate and notify to the other Parties the threshold values denominated in nominal terms according to of Annex 1002.8 (1) (Indexation and Conversion of Thresholds).

5. Each Party shall comply with Annex 1002.8 with respect to the calculation and conversion of the value of thresholds into national currencies.

6. For purposes of this Chapter, procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy, in accordance with the thresholds and coverage applicable in this Chapter. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

7. As between any Parties who are also party to the GATT Agreement on Government Procurement or any successor agreement to which such Parties are party, this Chapter shall prevail to the extent of any inconsistency between the provisions of such agreement and this Chapter.

#### Article 1003: Valuation of Contracts

1. Each Party shall ensure that its entities, in determining whether any contract is subject to this Chapter, apply paragraphs 2 through 6 in calculating the value of that contract.

2. An entity, in calculating the value of a contract, shall take into account all forms of remuneration, including premiums,

fees,  
commissions and interest.

3. An entity shall not select a valuation method, or divide procurement requirements into separate contracts, to avoid the application of this Chapter.

4. Where an individual requirement for a procurement results in:

(a) the award of more than one contract, or

(b) in contracts being awarded in separate parts,

the basis for valuation shall be either:

(c) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months; or

(d) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

5. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:

(a) in the case of a fixed-term contract, where the term is 12 months or less, the total contract value for its duration or, where the term exceeds 12 months, the total contract value including the estimated residual value; or

(b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set forth in subparagraph (b).

6. In cases in which tender documentation specifies the need for optional purchases, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of all possible optional purchases.

Article 1004: National Treatment and Non-discrimination

1. With respect to all measures regarding government procurement covered by this Chapter, each Party shall accord to goods of any other Party, as determined in accordance with the rules of origin referred to in Article 1005(1) (Rules of Origin), to services of any other Party, as determined in accordance with Article 1005(2), and to the suppliers of such goods or services, treatment no less favorable than the most favorable treatment that it accords to:

(a) goods, services and suppliers of that Party; and

(b) goods, services and suppliers of any other Party.

2. With respect to all measures regarding government procurement covered by this Chapter, no Party may:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier if the goods or services offered by that supplier for the particular procurement are goods or services of any other Party.

3. Paragraph 1 does not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations, including restrictions and formalities.

4. Each Party reserves the right to deny to an enterprise of any other Party the benefits of this Chapter in accordance with the provisions of Article 1113 (Denial of Benefits), except subparagraph (a).

#### Article 1005: Rules of Origin

1. No Party shall apply to goods that are imported from any other Party for purposes of government procurement covered by this Chapter, rules of origin that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which will be the non-preferential rules set out in Chapter

Three (for country of origin marking purposes) at such time as they become the rules of origin applied in the normal course of trade.

2. Notwithstanding any other provision of this Chapter, a Party may deny to an enterprise that is a supplier of services of another Party the benefits of this Chapter if:

(a) nationals of any non-Party own or control that enterprise; and

(b) that enterprise has no substantial business activities in the territory of the Party under whose laws it is constituted.

#### Article 1006: Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of bids and the award of contracts, consider, seek or impose offsets.

#### Article 1007: Technical Specifications

1. Each Party shall ensure that its entities do not, with the purpose or the effect of creating unnecessary obstacles to trade, prepare, adopt or apply any technical specification laying down:

(a) the characteristics of the goods or services to be procured such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling;

(b) the processes and methods for their production related to the goods characteristics; or

(c) requirements relating to conformity assessment.

2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:

(a) specified in terms of performance criteria rather than design or descriptive characteristics; and

(b) based on international standards, national technical regulations, recognized national standards or building codes.

3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or service provider unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

4. Each Party shall ensure that its entities do 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 that may have a commercial interest in that procurement.

#### Article 1008: Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities:

(a) are applied in a non-discriminatory manner; and

(b) are consistent with the provisions of this Article and with Articles 1009 (Qualification of Suppliers) through 1016 (Limited Tendering).

2. In this regard, each Party shall ensure that its entities:

(a) do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition; and

(b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

#### Article 1009: Qualification of Suppliers

1. No entity of a Party may, in the process of qualifying suppliers in tendering procedures, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.

2. The qualification procedures followed by an entity of a Party shall be consistent with the following:

(a) any conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;

(b) any conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;

(c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity and its activity, if any, in the territory of the Party of the procuring entity;

(d) no entity may misuse the process of, including the time required for, qualification in order to exclude suppliers of any other Party from a suppliers' list or from being considered for a particular procurement;

(e) an entity shall recognize as qualified suppliers those suppliers of any other Party that meet the conditions for participation in a particular procurement;

(f) an entity shall consider for a particular procurement those suppliers of any other Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;

(g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of any such list or of their removal from it;

(h) if, after publication of a notice in accordance with Article 1010 (Invitation to Participate), a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start

the qualification procedure;

(i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and

(j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, upon request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

(a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, upon request of any other Party, to demonstrate such need; and

(b) make efforts to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding any supplier on grounds such as bankruptcy or false declarations.

#### Article 1010: Invitation to Participate

1. An entity shall, in accordance with paragraphs 2, 3 and 5, publish an invitation to participate for all procurements, except as otherwise provided for in Article 1016 (Limited Tendering), in the appropriate publication listed in Annex 1010.1 (Publications).

2. The invitation to participate shall take the form of a notice of proposed procurement, which notice shall contain the following information:

(a) a description of the nature and quantity of the goods or services to be procured, including any options for further procurement and, if possible

(i) an estimate of the timing when such options may be exercised, and



(ii) in the case of recurring contracts, an estimate of the timing of the subsequent tender notices for the goods or services to be procured;

(b) a statement as to whether the procedure is open or selective and whether it will involve negotiation;

(c) any date for starting delivery, or completion of delivery, of goods or services to be procured;

(d) the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, the final date for receiving such an application and the language or languages in which it may be submitted;

(e) the address to which tenders must be submitted, the final date for receiving tenders and the language or languages in which tenders may be submitted;

(f) the address of the entity that will award the contract and that will provide any information necessary for obtaining specifications and other documents;

(g) a statement of any economic and technical requirements to be met and of any financial guarantees, information and documents required from suppliers;

(h) the amount and terms of payment of any sum payable for the tender documentation; and

(i) a statement as to whether the entity is inviting offers for purchase, lease or rental with or without an option to buy, or more than one of these methods.

3. Notwithstanding paragraph 2, any entity listed in Annex 1002.2

(State and Provincial Government Entities) or Annex 1002.3

(Government Enterprises) may use, as an invitation to participate,

a notice of planned procurement, which shall contain as much of the

information referred to in paragraph 2 as is available to the entity but which shall include, at a minimum, the following information:

(a) a description of the subject matter of the procurement;

(b) the time limits set for the receipt of tenders or an application to be invited to tender;

(c) the address at which requests for documents relating to

the procurement should be made;

(d) a statement that interested suppliers should express their interest in the procurement to the entity; and

(e) the identification of a contact point within the entity from which further information may be obtained.

4. Any entity that uses a notice of planned procurement as an invitation to participate shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest on the basis of information provided by the entity, which information shall include at least the information referred to in paragraph 2.

5. Notwithstanding paragraph 2, any entity listed in Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) may use, as an invitation to participate, a notice regarding a qualification system. Any entity that uses such a notice shall, subject to the considerations referred to Article 1015 (8) (Submission, Receipt and Opening of Tenders and Awarding of Contracts), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally include the information contained in the notices referred to in paragraph 2. Information provided to one interested supplier shall be provided in a non-discriminatory manner to all other interested suppliers.

6. In the case of selective tendering procedures, any entity that maintains a permanent list of qualified suppliers shall publish annually in one of the publications listed in Annex 1010.1 (Publications) a notice containing the following information:

(a) an enumeration of any lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;

(b) the conditions to be fulfilled by suppliers in view of their inscription on the lists referred to in subparagraph (a) and the methods according to which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists and the formalities for their renewal.

7. If, after publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, an entity finds that it has become necessary to amend or reissue the notice or tender documentation, the entity shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by an entity to one supplier with respect to a particular procurement shall be given simultaneously to all other suppliers concerned and sufficiently in advance so as to provide all suppliers concerned adequate time to consider such information and to respond to it.

8. An entity shall indicate, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by this Chapter.

#### Article 1011: Selective Tendering Procedures

1. To ensure optimum effective competition between the suppliers of all Parties under selective tendering procedures, an entity of a Party shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Parties, consistent with the efficient operation of the procurement system.

2. Subject to paragraph 3, any entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making any selection, the entity shall provide for equitable opportunities for suppliers on the list.

3. Subject to Article 1009 (2)(f) (Qualification of Suppliers), an entity shall allow any supplier that requests to participate in a particular procurement to submit a tender and shall consider

the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. If an entity does not invite or admit a supplier to tender, the entity shall, upon request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

## Article 1012: Time Limits for Tendering and Delivery

1. An entity of a Party shall:

(a) in prescribing any time limit, provide adequate time to allow suppliers of the other Parties to prepare and submit tenders before the closing of the tendering procedures;

(b) in determining any time limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and

(c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

2. Subject to paragraph 3, an entity shall provide that:

(a) in open procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate);

(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate), and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender. If the date of

initial issuance of invitations to tender does not coincide with the date of publication of the notice referred to in Article 1010 (Invitation to Participate), there shall not be less than 40 days between those two dates.

3. An entity may reduce the periods referred to in paragraph 2 in accordance with the following:

(a) where a notice referred to Article 1010 (3) or (5) (Invitation to Participate) has been published for a period of no less than 40 days and no more than 12 months, the 40 day limit for receipt of tenders may be reduced to no less than 24 days;

(b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 1010 (2) (Invitation to Participate), the 40 day limit for receipt of tenders may be reduced to no less than 24 days;

(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods may be reduced to no less than 10 days from the date of publication of the notice referred to in Article 1010 (Invitation to Participate); or

(d) where an entity listed in Annex 1002.2 (State and Provincial Government Entities) or Annex 1002.3 (Government Enterprises) is using as an invitation to participate a notice referred to in of Article 1010 (5) (Invitation to Participate), the periods may be fixed by mutual agreement between the entity and all selected suppliers; but in the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive bidding and shall not be less than 10 days.

4. An entity shall, in establishing any delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.

#### Article 1013: Tender Documentation

1. Where an entity provides tender documentation to suppliers,

the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice of procurement, except for Article 1010 (2)(h) (Invitation to Participate). It must also include the following information:

(a) the address of the entity to which tenders should be sent;

(b) the address where requests for supplementary information should be sent;

(c) the language or languages in which tenders and tendering documents may be submitted;

(d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;

(e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;

(f) a statement of any economic and technical requirement to be met and of any financial guarantee, information and documents required from suppliers;

(g) a complete description of the goods or services required and any requirements to be fulfilled, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;

(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of goods or services of any other Party, customs duties and other import charges, taxes and currency of payment;

(i) the terms of payment; and

(j) any other terms or conditions.

2. An entity shall:

(a) forward tender documentation at the request of any supplier that is participating in open procedures or has

requested to participate in selective procedures, and  
reply promptly to any reasonable request for explanations  
relating thereto; and

(b) reply promptly to any reasonable request for relevant  
information made by a supplier participating in the  
tendering procedure, on condition that such information  
does not give that supplier an advantage over its  
competitors in the procedure for the award of the  
contract.

#### Article 1014: Negotiation Disciplines

1. An entity may conduct negotiations:

(a) in the context of procurements in which the entity has,  
in the notice referred to in Article 1010 (Invitation to  
Participate), indicated its intent to negotiate; or

(b) when it appears from the evaluation of the tenders that  
no one tender is obviously the most advantageous in terms  
of the specific evaluation criteria set forth in the  
notices or tender documentation.

2. Negotiations shall be used primarily to identify the  
strengths  
and weaknesses in the tenders.

3. An entity shall treat all tenders in confidence. In  
particular, an entity may not provide to any person information  
intended to assist any supplier to bring its tender up to the  
level  
of any other tender.

4. An entity may not, in the course of negotiations,  
discriminate  
between different suppliers. In particular, an entity shall:

(a) carry out any elimination of suppliers in accordance  
with  
the criteria set forth in the notices and tender  
documentation;

(b) provide in writing all modifications to the criteria or  
to the technical requirements to all suppliers remaining  
in the negotiations;

(c) permit all remaining suppliers to submit new or amended  
tenders on the basis of the revised criteria or  
requirements; and

(d) when negotiations are concluded, permit all remaining  
suppliers to submit final tenders in accordance with a

common deadline.

## Article 1015: Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail;

(b) if tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms, conditions and provisions of the invitation to tender;

(c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;

(d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;

(e) tenders presented by telephone shall not be permitted;

(f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and

(g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

In this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.



2. An entity may not penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.

3. All tenders solicited by an entity under open or selective procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The entity shall retain the information on the opening of tenders and the information shall remain at the disposal of the competent authorities of the respective Party so that it may be used if required under the procedures of Article 1017 (Bid Challenge), Article 1019 (Provision of Information) or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

4. An entity shall award contracts in accordance with the following:

(a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;

(b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may enquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;

(c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender that in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;

(d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and

(e) option clauses shall not be used in a manner that circumvents the provisions of this Chapter.

5. No entity of a Party shall make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party, or that the supplier has prior work experience within the territory of that Party.

6. An entity shall:

(a) upon request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and

(b) upon request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender and the characteristics and relevant advantages of the tender selected, as well as the name of the winning supplier.

7. An entity shall publish a notice in the appropriate publication listed in Annex 1010.1 (Publications) no later than 72 days after the award of a contract, which notice shall contain the following information:

(a) a description of the nature and quantity of goods or services included in the contract;

(b) the name and address of the entity awarding the contract;

(c) the date of the award;

(d) the name and address of each winning supplier;

(e) the value of the contract, or the highest and lowest tenders considered in the process of awarding the contract; and

(f) the tendering procedure used.

8. Notwithstanding any other provision of this Article, an entity may withhold certain information on the award of a contract, where disclosure of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of a particular person, or might

prejudice fair competition between suppliers.

#### Article 1016: Limited Tendering

1. An entity of a Party may, in the circumstances and subject to the conditions specified in paragraph 2, deviate from the provisions of Articles 1008 (Tendering Procedures) through 1015 (Submission, Receipt and Opening of Tenders and Awarding of Contracts), provided that such limited tendering is not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.

2. An entity may use limited tendering in the following circumstances and subject to the following conditions, as applicable:

(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or when the tenders submitted come from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) when, for works of art or for reasons connected with the protection of patents, copyrights or other exclusive rights, proprietary information, confidential consulting services or, when there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, when a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with

already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

(e) when an 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. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to Articles 1008 (Tendering Procedures) through 1015 (Submission, Receipt and Opening of Tenders and Awarding of Contracts). Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs;

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers; or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers; and

(h) for a contract awarded to the winner of an architectural design contest, on condition that the contest

(i) has been organized in a manner that is consistent with the principles of this Chapter, notably as regards the publication, in the sense of Article 1010 (Invitation to Participate), of an invitation to suitably qualified suppliers to participate in the contest,

(ii) has been organized with a view to awarding the design contract to the winner, and

(iii) is to be judged by an independent jury.

3. An entity shall prepare a report in writing on each contract awarded by it under the provisions of paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and

conditions described in paragraph 2 that justified the use of limited tendering. Each report shall remain with the entity concerned at the disposal of the competent authorities of the respective Party, so that it may be used if required under the procedures of Article 1017 (Bid Challenge), Article 1019 (Provision of Information) or Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures).

#### Article 1017: Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurements covered by this Chapter in accordance with the following:

(a) each Party shall allow suppliers of any good or service of another Party to submit bid challenges concerning any aspect of the procurement process, which for purposes of this Article begins after an entity has decided on its procurement requirement, leading up to and including the contract award;

(b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;

(c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity, or upon an unsuccessful attempt at such a resolution, no Party shall prevent the supplier from initiating a bid challenge or seeking any other relief available to such supplier;

(e) a Party may require a supplier to notify the entity upon initiation of a bid challenge;

(f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known, or reasonably should have become known, to the supplier;

- (g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;
- (h) upon receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge, and may be required to limit its considerations to the challenge itself;
- (i) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where such a delay would be contrary to the public interest;
- (j) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to reevaluate offers, terminate or re-compete the contract in question;
- (k) entities normally shall follow the recommendations of the reviewing authority;
- (l) each Party should authorize its reviewing authority, following the conclusion of a bid challenge, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with the obligations of this Chapter;
- (m) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and all interested persons;
- (n) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and
- (o) each Party shall ensure that each of its entities maintains complete documentation concerning each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with the obligations of this Chapter.

2. A Party may require that a bid challenge be initiated only

after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. If a Party imposes such a requirement, the 10 working day period described in paragraph 1(f) shall begin not earlier than the date that the notice is published or the tender documentation is made available.

#### Article 1018: Exceptions

1. Notwithstanding Article 2102 (National Security), for purposes of this Chapter nothing shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Provided 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 trade between the Parties, nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining 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 handicapped persons, of philanthropic institutions or of prison labor.

#### Article 1019: Provision of Information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications listed in Annex 1010.1 (Publications).

2. Each Party shall:

(a) be prepared, upon request, to explain to any other Party its government procurement procedures; and

(b) ensure that its entities, upon request from a supplier, promptly explain their procurement practices and procedures.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders and further to Article 1015(6) (Submission, Receipt and Opening of Tenders and Awarding Contracts). To this end, the Party of the procuring entity shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. In cases where release of this information would prejudice competition in future tenders, the information shall not be released except after consultation with and agreement of the Party which gave the information to the requesting Party.

4. Each Party shall provide, upon request, to any other Party, information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party shall disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect statistics and provide to the other Parties each year an annual report in accordance with the following reporting requirements, unless the Parties unanimously agree to modify such requirements:

(a) statistics on the estimated value of all contracts awarded, both above and below the applicable threshold



values, broken down by entities;

(b) statistics on the number and total value of contracts covered by this Chapter above the applicable threshold values, broken down by entities, categories of goods or services according to uniform classification systems to be determined by the Parties, and country of origin of the contract;

(c) statistics, broken down by entities, and by categories of goods or services, on the number and total value of contracts awarded under each use of the procedures described in Article 1016 (Limited Tendering), and country of origin of the contract; and

(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Chapter listed in the appropriate annexes.

8. With respect to the reports described in paragraph 7 that pertain to entities listed in Annex 1002.2 (State and Provincial Government Entities), each Party may organize such reports by state or province.

9. Each Party shall give favorable consideration, where appropriate, to a request from any other Party for the exchange of additional information on a reciprocal basis.

10. The Parties shall undertake and complete by the date of entry into force of this Agreement further technical work to make available the complete goods and services classification list to be used by their entities in procuring goods and services under this Chapter and develop concordances between each of these systems, and, if necessary, the agreed uniform system.

#### Article 1020: Technical Cooperation

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for the suppliers of all Parties.

2. Each Party shall provide to the other Parties and to the suppliers of such Parties, on a cost recovery basis, information concerning training and orientation programs regarding its

government procurement system, and access on a non-discriminatory basis to such programs as it conducts.

3. The training and orientation programs referred to in paragraph 2 include:

- (a) training of personnel directly involved in government procurement procedures;
- (b) training of suppliers interested in pursuing government procurement opportunities;
- (c) explanation and description of specific elements of each Party's government procurement system, such as the bid challenge mechanism; and
- (d) information about government procurement market opportunities.

4. Each Party shall establish at least one contact point to provide the information regarding the training and orientation programs pertaining to its government procurement system.

#### Article 1021: Joint Programs for Small Business

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business comprising representatives of the Parties. The Committee shall meet as mutually agreed, but no less than once a year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.

2. The Committee shall work to facilitate the following activities of the Parties:

- (a) identification of available opportunities for the training of small business personnel in their government procurement procedures;
- (b) identification of small businesses interested in becoming trading partners of small businesses in the territory of any other Party;
- (c) development of data bases of small businesses in the territory of each Party for use by entities of any other

Party wishing to procure from small businesses;

(d) consultations regarding the factors that each Party uses in establishing its criteria for eligibility for small business programs, if any; and

(e) actions to address any related matter.

#### Article 1022: Rectifications or Modifications

1. A Party may make modifications to its coverage under this Chapter only in exceptional circumstances.

2. Where a Party makes modifications to its coverage under this Chapter, the Party shall:

(a) notify the other Parties and its Section of the Secretariat of the modification;

(b) reflect the change in its schedule of the appropriate Annex; and

(c) propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a comparable level of coverage as existed prior to the modification.

The other Parties shall consider whether any proposed adjustment made pursuant to subparagraph (c) is adequate to maintain a comparable level of the mutually agreed coverage under this Chapter. Where any Party does not agree that the proposed adjustment is sufficient, it may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Annexes 1002.1 through 1002.7, provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and any other Party does not object to such proposed rectification within 30 days. In such cases, subparagraph 2(c) shall not apply. If a Party does object that the proposed rectification would result in a substantive change in the balance of coverage under this Chapter, it may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

4. Notwithstanding any other provision of this Chapter, a

Party  
may undertake legitimate reorganizations of its government  
procurement entities covered by this Chapter, including programs  
through which the procurement of such entities is decentralized  
or  
the corresponding government functions cease to be performed by  
any  
government entity, whether or not subject to this Chapter. In  
such  
cases, subparagraph 2(c) shall not apply. No Party shall  
undertake  
such reorganizations or programs to avoid the obligations of  
this  
Chapter. If a Party objects to the withdrawal on the grounds  
that  
the functions continue to be performed by a government entity,  
that  
Party may have recourse to dispute settlement procedures under  
Chapter Twenty (Institutional Arrangements and Dispute  
Settlement  
Procedures).

#### Article 1023: Divestiture of Entities

1. Nothing in this Chapter shall be construed to prevent a  
Party  
from divesting an entity subject to the obligations of this  
Chapter.
2. If, upon the public offering of shares of an entity listed  
in  
Annex 1002.3 (Government Enterprises), or through other methods,  
such entity is no longer subject to federal government control,  
the  
respective Party may delete the entity from Annex 1002.3  
(Government Enterprises), and withdraw the entity from the  
obligations of the Chapter, upon notification to the other  
Parties.
3. If a Party objects to the withdrawal on the grounds that  
the  
entity remains subject to federal government control, that Party  
may have recourse to dispute settlement procedures under Chapter  
Twenty (Institutional Arrangements and Dispute Settlement  
Procedures).

#### Article 1024: Further Negotiations

1. The Parties shall commence further negotiations no later  
than  
December 31, 1998, with a view towards the substantial  
liberalization of their respective procurement markets. The

Parties  
recognize that such liberalization would ensure more competitive  
opportunities for all suppliers of the Parties in their  
respective  
procurement markets.

2. The Parties will review all features of government  
procurement  
practices for the purposes of:

- (a) assessing the workings of the procurement system;
- (b) seeking to expand the coverage of this Chapter;
- (c) including within the obligations of this Chapter
  - (i) government enterprises, and
  - (ii) legislated and administrative exceptions; and
- (d) reviewing thresholds.

3. Prior to the review specified in paragraph 2, the Parties  
will  
endeavor to consult with their state and provincial governments  
with a view to obtaining commitments, on a voluntary and  
reciprocal  
basis, to include within the obligations of this Chapter  
procurement by state and provincial government entities and  
enterprises.

4. If the negotiations pursuant to Article 96B of the GATT  
Agreement on Government Procurement (the Code) are completed  
prior  
to the new review specified in paragraph 2, the Parties shall:

- (a) immediately begin consultations with their state and  
provincial governments with a view to obtaining  
commitments, on a voluntary and reciprocal basis, to  
include within the obligations of this Chapter  
procurement by state and provincial government entities  
and enterprises; and
- (b) increase the obligations and coverage of this Chapter  
to  
a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations no later  
than  
December 31, 1998, on the subject of electronic transmission of  
tender information with a view to exploring the feasibility of  
amending this Chapter to permit electronic transmission as an  
additional or alternate means of publication.

## Article 1025: Definitions

For purposes of this Chapter:

construction services contract means a contract which has as its objective the realization by whatever means of civil or building works, as specified in the Appendix of Annex 1002.5

(Construction Services);

entity means an entity listed in Annexes 1002.1 (Federal Government

Entities), Annex 1002.2 (State and Provincial Government Entities)

or Annex 1002.3 (Government Enterprises) to this Chapter;

offsets means conditions imposed or considered by an entity prior

to or in the course of its procurement process that encourage local

development or improve its Party's balance of payments accounts, and can involve requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

services includes construction services contracts, unless otherwise specified;

supplier means a person that has provided or could provide goods or

services in response to an entity's call for tender; and

tendering procedures means:

(a) open tendering procedures, being those procedures under which all interested suppliers may submit a tender;

(b) selective tendering procedures, being those procedures under which, consistent with Article 1011 (3) (Selective Tendering Procedures), those suppliers invited to do so by an entity may submit a tender; and

(c) limited tendering procedures, being those procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 1016 (Limited Tendering).

ANNEX 1002.1

Federal Government Entities

Schedule of Canada

1. Department of Agriculture
2. Department of Communications
3. Department of Consumer and Corporate Affairs
4. Department of Employment and Immigration
5. Immigration and Refugee Board
6. Canada Employment and Immigration Commission
7. Department of Energy, Mines and Resources
8. Atomic Energy Control Board
9. National Energy Board
10. Department of the Environment
11. Department of External Affairs
12. Canadian International Development Agency (on its own account)
13. Department of Finance
14. Office of the Superintendent of Financial Institutions
15. Canadian International Trade Tribunal
16. Municipal Development and Loan Board
17. Department of Fisheries and Oceans
18. Department of Forestry
19. Department of Indian Affairs and Northern Development
20. Department of Industry, Science and Technology
21. Science Council of Canada
22. National Research Council of Canada
23. Natural Sciences and Engineering Research Council of Canada
24. Department of Justice
25. Canadian Human Rights Commission
26. Statute Revision Commission
27. Supreme Court of Canada
28. Department of Labour
29. Canada Labour Relations Board
30. Department of National Health and Welfare
31. Medical Research Council
32. Department of National Revenue
33. Department of Public Works
34. Department of Secretary of State of Canada
35. Social Sciences and Humanities Research Council
36. Office of the Co-ordinator, Status of Women
37. Public Service Commission
38. Department of the Solicitor General
39. Correctional Service of Canada
40. National Parole Board
41. Department of Supply and Services (on its own account)
42. Canadian General Standards Board
43. Department of Transport (Pursuant to Article 1018 the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard.)
44. Secretariat and the Office of the Controller General
45. Department of Veterans Affairs
46. Veterans Land Administration
47. Department of Western Economic Diversification
48. Atlantic Canada Opportunities Agency
49. Auditor General of Canada

50. Federal Office of Regional Development (Quebec)
51. Canadian Centre for Management Development
52. Canadian Radio-television and Telecommunications Commission
53. Canadian Sentencing Commission
54. Civil Aviation Tribunal
55. Commission of Inquiry into the Air Ontario Crash at Dryden,  
Ontario
56. Commission of Inquiry into the Use of Drugs and Banned  
Practices Intended to Increase Athletic Performance
57. Commissioner for Federal Judicial Affairs
58. Competition Tribunal Registry
59. Copyright Board
60. Emergency Preparedness Canada
61. Federal Court of Canada
62. Grain Transportation Agency
63. Hazardous Materials Information Review Commission
64. Information and Privacy Commissioners
65. Investment Canada
66. Multiculturalism and Citizenship
67. The National Archives of Canada
68. National Farm Products Marketing Council
69. The National Library
70. National Transportation Agency
71. Northern Pipeline Agency
72. Patented Medicine Prices Review Board
73. Petroleum Monitoring Agency
74. Privy Council Office
75. Canadian Intergovernmental Conference Secretariat
76. Commissioner of Official Languages
77. Economic Council of Canada
78. Public Service Staff Relations Office
79. Office of the Secretary to the Governor General
80. Office of the Chief Electoral Officer
81. Federal Provincial Relations Office
82. Procurement Review Board
83. Royal Commission on Electoral Reform and Party Financing
84. Royal Commission on National Passenger Transportation
85. Royal Commission on New Reproductive Technologies
86. Royal Commission on the Future of the Toronto Waterfront
87. Statistics Canada
88. Tax Court of Canada, Registry of the
89. Agricultural Stabilization Board
90. Canadian Aviation Safety Board
91. Canadian Centre for Occupational Health and Safety
92. Canadian Transportation Accident Investigation and Safety  
Board
93. Director of Soldier Settlement
94. Director, The Veterans' Land Act
95. Fisheries Prices Support Board
96. National Battlefields Commission
97. Royal Canadian Mounted Police
98. Royal Canadian Mounted Police External Review Committee
99. Royal Canadian Mounted Police Public Complaints Commission
100. Department of National Defence



The following goods purchased by the Department of National Defence and the Royal Canadian Mounted Police are included

in

the coverage of this Chapter, subject to the provisions of Article 1018(1) (Exceptions).

(Numbers refer to the Federal Supply Classification code)

22. Railway equipment

23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)

24. Tractors

25. Vehicular equipment components

26. Tires and tubes

29. Engine accessories

30. Mechanical power transmission equipment

32. Woodworking machinery and equipment

34. Metal working equipment

35. Service and trade equipment

36. Special industry machinery

37. Agricultural machinery and equipment

38. Construction, mining, excavating and highway maintenance equipment

39. Materials handling equipment

40. Rope, cable, chain and fittings

41. Refrigeration and air conditioning equipment

42. Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)

43. Pumps and compressors

44. Furnace, steam plant, drying equipment and nuclear reactors

45. Plumbing, heating and sanitation equipment

46. Water purification and sewage treatment equipment

47. Pipe, tubing, hose and fittings

48. Valves

49. Maintenance and repair shop equipment

52. Measuring tools

53. Hardware and abrasives

54. Prefabricated structures and scaffolding

55. Lumber, millwork, plywood and veneer

56. Construction and building materials

61. Electric wire and power and distribution equipment

62. Lighting fixtures and lamps

63. Alarm and signal systems

65. Medical, dental and veterinary equipment and supplies

66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)

67. Photographic equipment

68. Chemicals and chemical products

69. Training aids and devices  
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)  
71. Furniture  
72. Household and commercial furnishings and appliances  
73. Food preparation and serving equipment  
74. Office machines, text processing system and visible record equipment  
75. Office supplies and devices  
76. Books, maps and other publications (except 7650 drawings and specifications)  
77. Musical instruments, phonographs and home-type radios  
78. Recreational and athletic equipment  
79. Cleaning equipment and supplies  
80. Brushes, paints, sealers and adhesives  
81. Containers, packaging and packing supplies  
85. Toiletries  
87. Agricultural supplies  
88. Live animals  
91. Fuels, lubricants, oils and waxes  
93. Non-metallic fabricated materials  
94. Non-metallic crude materials  
96. Ores, minerals and their primary products  
99. Miscellaneous

Notes:

1. Notwithstanding anything in this Annex, this Chapter does not apply to procurements in respect of:

(a) the Departments of Transport Canada, Communications Canada and Fisheries and Oceans respecting FSCs 70 (automatic data processing equipment, software supplies and support equipment), 74 (office machines, text processing systems and visible record equipment) and 36 (special industry machinery); and

(b) agricultural products made in furtherance of agricultural support programs or human feeding programs.

2. The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.1

Schedule of Mexico

1. Secretaría de Gobernación
  - Centro Nacional de Estudios Municipales
  - Comisión Calificadora de Publicaciones y Revistas Ilustradas
  - Consejo Nacional de Población
  - Archivo General de la Nación
  - Instituto Nacional de Estudios Históricos de la Revolución Mexicana
  - Patronato de Asistencia para la Reincorporación Social
  - Centro Nacional de Prevención de Desastres
  - Consejo Nacional de Radio y Televisión
  - Comisión Mexicana de Ayuda a Refugiados
2. Secretaría de Relaciones Exteriores
  - Sección Mexicana de la Comisión Intercontinental de Límites y Aguas México-EEUU
  - Sección Mexicana de la Comisión Internacional de Límites y Aguas México-Guatemala
3. Secretaría de Hacienda y Crédito Público
  - Comisión Nacional Bancaria
  - Comisión Nacional de Valores
  - Comisión Nacional de Seguros y Fianzas
  - Instituto Nacional de Estadística , Geografía e Inform tica
4. Secretaría de Agricultura y Recursos Hidráulicos
  - Instituto Mexicano de Tecnología del Agua
  - Instituto Nacional de Investigaciones Forestales y Agropecuarias
  - Apoyos a Servicios a la Comercialización Agropecuaria, Aserca
5. Secretaría de Comunicaciones y Transportes (including the Instituto Mexicano de Comunicaciones and the Instituto Mexicano de Transporte)
  - Comisión Nacional Coordinadora de Puertos
6. Secretaría de Comercio y Fomento Industrial
7. Secretaría de Educación Pública
  - Instituto Nacional de Antropología e Historia
  - Instituto Nacional de Bellas Artes y Literatura
  - Radio Educación
  - Centro de Ingeniería y Desarrollo Industrial
  - Consejo Nacional para la Cultura y las Artes
  - Comisión Nacional del Deporte
8. Secretaría de Salud
  - Administración del Patrimonio de la Beneficencia Pública
  - Centro Nacional de la Transfusión Sanguínea
  - Gerencia General de Farmacias
  - Gerencia General de Biológicos y Reactivos
  - Consejo Interno del Centro de Obras y Equipamiento en

Salud  
- Instituto de la Comunicación Humana Dr. Andrés Bustamante  
Gurría  
- Instituto Nacional de Medicina de la Rehabilitación  
- Instituto Nacional de Ortopedia  
- Consejo Nacional para la Prevención y Control del  
Síndrome de la Inmunodeficiencia Adquirida, Conasida

9. Secretaría del Trabajo y Previsión Social  
- Procuraduría Federal de la Defensa del Trabajo  
- Unidad Coordinadora del Empleo, Capacitación y  
Adiestramiento

10. Secretaría de la Reforma Agraria  
- Instituto de Capacitación Agraria

11. Secretaría de Pesca  
- Instituto Nacional de la Pesca

12. Procuraduría General de la República

13. Secretaría de Energía Minas e Industria Paraestatal  
- Comisión Nacional de Seguridad Nuclear y Salvaguardias  
- Centro de Promoción y Evaluación de Proyectos  
- Centro Nacional de Ahorro Energético

14. Secretaría de Desarrollo Social

15. Secretaría de Turismo

16. Secretaría de la Contraloría General de La Federación

17. Comisión Nacional de Zonas Áridas

18. Comisión Nacional de Libros de Texto Gratuito

19. Comisión Nacional de Derechos Humanos

20. Consejo Nacional de Fomento Educativo

21. Secretaría de la Defensa Nacional

22. Secretaría de Marina

The following products purchased by the Secretaría de la  
Defensa Nacional and the Secretaría de Marina are included  
in  
the coverage of this Chapter, subject to the application of  
paragraph 1 in Article 1018(1) (Exceptions).

(Numbers refer to the Federal Supply Classification Code,  
FSC)

22. Railway equipment

- 23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
- 24. Tractors
- 25. Vehicular equipment components
- 26. Tires and tubes
- 29. Engine accessories
- 30. Mechanical power transmission equipment
- 32. Woodworking machinery and equipment
- 34. Metal working machinery
- 35. Service and trade equipment
- 36. Special industry machinery
- 37. Agricultural machinery and equipment
- 38. Construction, mining, excavating and highway maintenance equipment
- 39. Materials handling equipment
- 40. Rope, cable, chain and fittings
- 41. Refrigeration and air conditioning equipment
- 42. Fire fighting, rescue and safety equipment
- 43. Pumps and compressors
- 44. Furnace, steam plant, drying equipment and nuclear reactors
- 45. Plumbing, heating and sanitation equipment
- 46. Water purification and sewage treatment equipment
- 47. Pipe, tubing, hose and fittings
- 48. Valves
- 49. Maintenance and repair shop equipment
- 52. Measuring tools
- 53. Hardware and abrasives
- 54. Prefabricated structures and scaffolding
- 55. Lumber, millwork, plywood and veneer
- 56. Construction and building materials
- 61. Electric wire and power and distribution equipment
- 62. Lighting fixtures and lamps
- 63. Alarm and signal systems
- 65. Medical, Dental, and Veterinary Equipment and Supplies
- 66. Instruments and laboratory equipment
- 67. Photographic equipment
- 68. Chemicals and chemical products
- 69. Training aids and devices
- 70. General purpose ADPE, software, supplies and support equipment
- 71. Furniture
- 72. Household and commercial furnishings and appliances
- 73. Food preparation and serving equipment
- 74. Office machines, text processing system and visible record equipment
- 75. Office supplies and devices
- 76. Books, maps and other publications (except 7650: Drawings and specifications)
- 77. Musical instruments, phonographs and home-type radios
- 78. Recreational and athletic equipment

- 79. Cleaning equipment and supplies
- 80. Brushes, paints, sealers and adhesives
- 81. Containers, packaging and packing supplies
- 85. Toiletries
- 87. Agricultural supplies
- 88. Live animals
- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products (except 9620: minerals, natural and synthetic)
- 99. Miscellaneous

Notes:

- 1. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.
- 2. The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.1

Schedule of the United States

- 1. Department of Agriculture (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.) Federal buy national requirements imposed as conditions of funding by the Rural Electrification Administration will not apply to products and services of Mexico and Canada.
- 2. Department of Commerce
- 3. Department of Education
- 4. Department of Health and Human Services
- 5. Department of Housing and Urban Development
- 6. Department of the Interior, including the Bureau of Reclamation (For suppliers of goods and services of Canada, the obligations of this Chapter will apply to procurements by the Bureau of Reclamation of the Department of Interior only at such time as the obligations of this Chapter take effect for procurements by Canadian Provincial Hydro utilities.)
- 7. Department of Justice
- 8. Department of Labor
- 9. Department of State
- 10. United States Agency for International Development
- 11. Department of the Treasury
- 12. Department of Transportation (Pursuant to Article 1018, the national security considerations applicable to the Department of Defense are equally applicable to the Coast Guard, a military unit of the United States.)
- 13. Department of Energy (This Chapter does not apply, pursuant

to Article 1018, to national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act; and to oil purchases related to the Strategic Petroleum Reserve.)

14. General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340)

15. National Aeronautics and Space Administration

16. The Department of Veterans Affairs

17. Environmental Protection Agency

18. United States Information Agency

19. National Science Foundation

20. Panama Canal Commission

21. Executive Office of the President

22. Farm Credit Administration

23. National Credit Union Administration

24. Merit Systems Protection Board

25. ACTION

26. United States Arms Control and Disarmament Agency

27. The Office of Thrift Supervision

28. The Federal Housing Finance Board

29. National Labor Relations Board

30. National Mediation Board

31. Railroad Retirement Board

32. American Battle Monuments Commission

33. Federal Communications Commission

34. Federal Trade Commission

35. Inter-State Commerce Commission

36. Securities and Exchange Commission

37. Office of Personnel Management

38. United States International Trade Commission

39. Export-Import Bank of the United States

40. Federal Mediation and Conciliation Service

41. Selective Service System

42. Smithsonian Institution

43. Federal Deposit Insurance Corporation

44. Consumer Product Safety Commission

45. Equal Employment Opportunity Commission

46. Federal Maritime Commission

47. National Transportation Safety Board

48. Nuclear Regulatory Commission

49. Overseas Private Investment Corporation

50. Administrative Conference of the United States

51. Board for International Broadcasting

52. Commission on Civil Rights

53. Commodity Futures Trading Commission

54. The Peace Corps

55. National Archives and Records Administration

56. Department of Defense, including the Army Corps of Engineers

This Chapter will not apply to the following purchases of the

DOD:

- (a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstaffs, flagpoles, and flagstaff trucks;
- (b) FSC 84 - all elements other than sub-class 8460 (luggage);
- (c) FSC 89 - all elements other than sub-class 8975 (tobacco products);
- (d) FSC 2310 - (buses only);
- (e) speciality metals, defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminium, chromium, cobalt, columbium, niobium, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys;
- (f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;
- (g) FSC 51; and
- (h) the following FSC categories are not generally covered due to application of Article 1018(1) (Exceptions): 10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59 and 95.

This Chapter will generally apply to DOD purchases of the following FSC categories subject to United States Government determinations under the provisions of Article 1018(1) (Exceptions):

- 22. Railway Equipment
- 23. Motor Vehicles, Trailers, and Cycles (except buses in 2310)
- 24. Tractors
- 25. Vehicular Equipment Components
- 26. Tires and Tubes
- 29. Engine Accessories
- 30. Mechanical Power Transmission Equipment
- 32. Woodworking Machinery and Equipment
- 34. Metalworking Machinery
- 35. Service and Trade Equipment
- 36. Special Industry Machinery
- 37. Agricultural Machinery and Equipment
- 38. Construction, Mining, Excavating, and Highway



## Maintenance

### Equipment

39. Materials Handling Equipment
40. Rope, Cable, Chain and Fittings
41. Refrigeration and Air Conditioning Equipment
42. Fire Fighting, Rescue and Safety Equipment
43. Pumps and Compressors
44. Furnace, Steam Plant, Drying Equipment and Nuclear

### Reactors

45. Plumbing, Heating and Sanitation Equipment
46. Water Purification and Sewage Treatment Equipment
47. Pipe, Tubing, Hose and Fittings
48. Valves
49. Maintenance and Repair Shop Equipment
52. Measuring Tools
53. Hardware and Abrasives
54. Prefabricated Structures and Scaffolding
55. Lumber, Millwork, Plywood and Veneer
56. Construction and Building Materials
61. Electric Wire, and Power and Distribution Equipment
62. Lighting Fixtures and Lamps
63. Alarm and Signal Systems
65. Medical, Dental, and Veterinary Equipment and Supplies
66. Instruments and Laboratory Equipment
67. Photographic Equipment
68. Chemicals and Chemical Products
69. Training Aids and Devices
70. General Purpose ADPE, Software, Supplies and Support

### Equipment

71. Furniture
72. Household and Commercial Furnishings and Appliances
73. Food Preparation and Serving Equipment
74. Office machines, text processing system and visible  
record equipment
75. Office Supplies and Devices
76. Books, Maps and Other Publications
77. Musical Instruments, Phonographs, and Home Type Radios
78. Recreational and Athletic Equipment
79. Cleaning Equipment and Supplies
80. Brushes, Paints, Sealers and Adhesives
81. Containers, Packaging and Packing Supplies
85. Toiletries
87. Agricultural Supplies
88. Live Animals
91. Fuels, Lubricants, Oils and Waxes
93. Non-metallic Fabricated Materials
94. Non-metallic Crude Materials
96. Ores, Minerals and their Primary Products
99. Miscellaneous

## Note:

The General Notes for the United States as set out in Annex  
1002.7

apply to this Annex.

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ANNEX 1002.2

State and Provincial Government Entities

Coverage under this Annex will be addressed following consultations with state and provincial governments under the terms and conditions set out in Article 1024 (Further Negotiations).

Note:

The General Notes as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.3

Government Enterprises

Schedule of Canada

1. Canada Post Corporation
2. National Capital Commission
3. St. Lawrence Seaway Authority
4. Royal Canadian Mint
5. Canadian National Railways
6. Via Rail
7. Canadian Museum of Civilization
8. Canadian Museum of Nature
9. National Gallery of Canada
10. National Museum of Science and Technology
11. Defence Construction (1951) Ltd.

Notes:

1. With respect to procurements by Canadian National Railways, St. Lawrence Seaway Authority and Via Rail, coverage is subject to Article 1019(5) (Provision of Information), respecting the protection of the commercial confidentiality of information provided.

2. The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

Printing and Editorial

1. Talleres Gráficos de la Nación
2. Productora e Importadora de Papel S.A de C.V., Pipsa

Communications and Transportation

3. Aeropuertos y Servicios Auxiliares, ASA
4. Caminos y Puentes Federales de Ingreso y Servicios Conexos, Capufe
5. Puertos Mexicanos
6. Servicio Postal Mexicano
7. Ferrocarriles Nacionales de México, Ferronales
8. Telecomunicaciones de México, Telecom

Industry

9. Petróleos Mexicanos, Pemex (This Chapter does not apply to procurement of fuels and gas.)
10. Comisión Federal de Electricidad, CFE
11. Consejo de Recursos Minerales
12. Comisión de Fomento Minero

Commerce

13. Compañía Nacional de Subsistencias Populares, Conasupo  
(This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.)
14. Bodegas Rurales Conasupo, S.A. de C.V.
15. Distribuidora e Impulsora de Comercio, Diconsa
16. Leche Industrializada Conasupo, S.A. de C.V., Liconsa (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.)
17. Procuraduría Federal del Consumidor
18. Instituto Nacional del Consumidor
19. Laboratorios Nacionales de Fomento Industrial
20. Servicio Nacional de Información de Mercados

Social Security

21. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, ISSSTE
22. Instituto Mexicano del Seguro Social, IMSS
23. Sistema Nacional para el Desarrollo Integral de la Familia, DIF (This Chapter does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.)
24. Servicios Asistenciales de la Secretaría de Marina
25. Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas
26. Instituto Nacional Indigenista, INI
27. Instituto Nacional Para la Educación de los Adultos
28. Centros de Integración Juvenil
29. Instituto Nacional de la Senectud

- Others
30. Comité Administrador del Programa Federal de Construcción de Escuelas, Capfce
  31. Comisión Nacional del Agua, CNA
  32. Comisión Para la Regularización de la Tenencia de la Tierra
  33. Consejo Nacional de Ciencia y Tecnología, Conacyt
  34. Notimex, S.A . de C.V.
  35. Instituto Mexicano de Cinematografía
  36. Lotería Nacional para la Asistencia Pública
  37. Pronósticos Deportivos

Notes:

1. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.
2. The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

Schedule of the United States

1. Tennessee Valley Authority
2. Power Marketing Administrations of the Department of Energy
  - Bonneville Power Administration
  - Western Area Power Administration
  - Southeastern Power Administration
  - Southwestern Power Administration
  - Alaska Power Administration
3. St. Lawrence Seaway Development Corporation

Notes:

1. For suppliers of goods and services of Canada, the obligations of this Chapter will apply to procurements by the Tennessee Valley Authority and the Power Marketing Administrations of the Department of Energy only at such time as the obligations of this Chapter take effect for procurements by Canadian Provincial Hydro utilities.
2. The General Notes for the United States as set out in Annex 1002.7 apply to this Annex.

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ANNEX 1002.4

I. General Provisions

1. Except for the services listed in Part II of this Annex, all services procured by the entities listed in Annex 1002.1 (Federal Government Entities) and Annex 1002.3 (Government Enterprises) are subject to this Chapter.
2. Contracts for construction services are subject to this Chapter as specified in Annex 1002.5 (Construction Services).
3. The Parties shall adopt a universal list of services for reporting purposes, which is indicative of the services procured by the entities of the Parties, and is contained in the Appendix to this Annex.
4. The Parties shall update, as appropriate, the list of universal services included in the Appendix to this Annex at such time as they mutually agree.
5. Notwithstanding paragraph 1, for Mexico only the services included in the Temporary Schedule of Mexico will be subject to this Chapter, until such time as Mexico has completed its schedule under Part II pursuant to paragraph 6.
6. Mexico will develop and, after consultations with the other Parties, complete its list of services set out under the Schedule of Mexico in Part II of this Annex no later than July 1, 1995.

Temporary Schedule of Mexico: Services Included

(Based on the United Nations Central Product Classification, CPC)

Professional Services

- 863 Taxation services (excluding legal services)
- 8671 Architectural services
  - 86711 Advisory and pre-design architectural services
  - 87612 Architectural design services
  - 87713 Contract administration services
  - 86714 Combined architectural design and contract administration services
  - 86719 Other architectural services
- 8672 Engineering services

- 86721 Advisory and consultative engineering services
- 86722 Engineering design services for foundations and building structures
- 86723 Engineering design services for mechanical and electrical installations for buildings
- 86724 Engineering design services for civil engineering construction
- 86725 Engineering design for industrial processes and production
- 86726 Engineering design services n.e.c.
- 86727 Other engineering services during the construction and installation phase
- 86729 Other engineering services
- 8673 Integrated engineering services
- 86731 Integrated engineering services for transportation, infrastructure turnkey projects
- 86732 Integrated engineering and project management services for water supply and sanitation works turnkey projects
- 86733 Integrated engineering services for the construction of manufacturing turnkey projects
- 86739 Integrated engineering services for other turnkey projects
- 8674 Urban planning and landscape architectural services

#### Computer and Related Services

- 841 Consultancy services related to the installation of computer hardware
- 842 Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services
- 843 Data processing services, including processing, tabulation and facilities management services
- 844 Data base services
- 845 Maintenance and repair services of office machinery and equipment including computers
- 849 Other computer services

#### Real Estate Services

- 821 Real estate services involving own or leased property
- 822 Real estate services on a fee or contract basis

#### Rental/Leasing Services without Operators

- 831 Leasing or rental services concerning machinery and equipment without operator, including computers
- 832 Leasing or rental services concerning personal and household goods (excluding in 83201, the rental of prerecorded records, sound cassettes, CD's and excluding 83202, rental services concerning video tapes)

#### Other Business Services

- 865 Management consulting services
- 86501 General management consulting services

- 86503 Marketing management consulting services
- 86504 Human resources management consulting services
- 86505 Production management consulting services
- 86509 Other management consulting services, including  
agrology, agronomy, farm management and related  
consulting services
- 8676 Technical testing and analysis services including  
quality  
control and inspection
- 8814 Services incidental to forestry and logging, including  
forest management
- 883 Services incidental to mining, including, drilling and  
field services
- 5115 Site preparation for mining
- 8675 Related scientific and technical consulting services
- 86751 Geological, geophysical and other scientific  
prospecting services, including those related to  
mining
- 86752 Subsurface surveying services
- 86753 Surface surveying services
- 86754 Map making services
- 663 Repair services of personal and household goods
- 8861 Repair services incidental to metal products, to  
machinery and equipment including computers,  
8866 and communications equipment
- 874 Building-cleaning
- 876 Packaging services

#### Environmental Services

- 940 Sewage and refuse disposal, sanitation and other  
environmental protection services, including sewage  
services, nature and landscape protection services and  
other environmental protection services n.e.c.

#### Hotels and restaurants(including catering)

- 641 Hotel and other lodging services
- 642/3 Food and beverage serving services

#### Travel agency and tour operators services

- 7471 Travel agency and tour operator services

#### II. Services Excluded from Coverage

[Subject to review]

The following services contracts are excluded in their entirety  
by  
the Parties:

#### Schedule of Canada

(Based on the United Nations Central Product Classification,  
CPC)

CPC

1. Transport, storage and communication services  
- Land Transport services
- 71 - Water Transport services
- 72 - Air Transport Services
- 73 - Supporting and Auxiliary Transport services (except  
7471: Travel Agencies and Tour Operator services)
- 74 - Post and Telecommunication services (except 7512:  
Courier services and 7523: Data Transmission  
services)
- 75 Note: All transportation services, including related  
repair and overhaul and launching services and  
transportation services, where incidental to procurement  
contracts, are not subject to this Chapter.
2. Business services; agricultural, mining and manufacturing  
services  
- Financial, Intermediation services and Auxiliary  
services therefor
- 81 - Leasing or rental services concerning televisions,  
radios, video cassette recorders and related  
equipment and accessories
- 83201 - Leasing or rental services concerning video tapes
- 83202 - Research and Development services
- 85 - Legal services (except: Advisory services on  
Foreign Law)
- 861 - Legal services incidental to Taxation Services
- 863 - Market Research and Public Opinion Polling  
services
- 864 - Financial Management consulting services (except  
corporate tax)
- 86502 - Public relations services
- 86506 - Services related to management consulting
- 866 - Related scientific and technical consulting  
services
- 8675 - Business Services, n.e.c. (except 8740: Building  
cleaning services and 8760: Packaging services)



87 - Services incidental to agriculture, hunting and forestry (except 8814: services incidental to forestry and logging; and 8830: services incidental to mining)

881 - Services incidental to fishing

882 - Services incidental to manufacturing, except to the manufacture of metal products, machinery and equipment

884 - Services incidental to the manufacture of metal products, machinery and equipment (except 8852: Manufacture of fabricated metal products, except machinery and equipment on a fee or contract basis)

885 - Repair services, n.e.c. of motor vehicles, trailers and semi-trailers, on a fee or contract basis

8867 - Repair services of other transport equipment, on a fee or contract basis

8868 - Services incidental to energy distribution

887 - Intangible assets

89

3. Community, Social and Professional Services

92 - Education services

93 - Health and Social Services

95 - Services of Membership Organizations

96 - Recreation, cultural and sporting services

97 - Other services

99 - Services provided by extraterritorial organizations and bodies

4. Contracts of the departments of Transport Canada, Communications Canada and Fisheries and Oceans respecting FSCs

70 (automatic data processing equipment, software supplies and support equipment), 74 (office machines, text processing systems and visible record equipment), 36 (special industry machinery).

5. Research and development services.

6. Dredging.
7. All services purchased in support of military forces located overseas.
8. Management and operation contracts awarded to federally-funded research and development centers or related to carrying out government sponsored research programs.
9. Public utilities services.
10. Printing and publishing.

Note:

The General Notes for Canada as set out in Annex 1002.7 apply to this Annex.

#### Schedule of Mexico

(Based on the United Nations Central Product Classification, CPC)

CPC

1. All transportation services, including transportation services incidental to procurement contracts:
  - Land transportation
  - Water transport
  - Air transport
  - Supporting and auxiliary transport
  - Post and telecommunication
  - Repair services of other transport equipment, on a fee or contract basis
2. All risk-sharing contracts by Pemex.
3. Public utilities services (including telecommunications, transmission, water or energy services).
4. Management and operation contracts awarded to federally-funded research and development centers or related to carrying out

government sponsored research programs.

5. Financial services
6. Research and development services
7. Confidential consulting services (provided that they are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination among suppliers of the other Parties or protection to Mexican suppliers).

Note:

The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

#### Schedule of the United States

(Based on the Procurement Data System Services Codes)

FSC

1. Transportation and related services (except V231: Lodging and Hotel/Motel; and V302: travel agent)
  - Transportation

V

- Maintenance, Repair and Rebuilding of Ships

J019

- Non-nuclear Ship Repair

J998 and J999

- Modification of Ships

K019

In addition, transportation services, where incidental to procurement contracts, are not subject to this Chapter.

2. Dredging

Y216

3. All services purchased in support of military forces overseas.

4. Management and operation contracts awarded to
  - federally-funded research and development centers (FFRDCs) or related to carrying out government-sponsored research programs (classification to be clarified)

M181-184

- by DOD, DOE, and NASA

M

5. Public utilities and telecommunications services:
  - Utilities

S1 - ADP Telecommunications and Transmission Services  
D304 - ADP Teleprocessing and Timesharing Services  
D305 - Telecommunications Network Management Services  
D316 - Automated News Services, Data Services, or other  
information  
D317 - Other ADP and Telecommunications services  
D399

6. Research and Development services  
A

Note: The General Notes for the United States as set out in  
Annex  
1002.7 apply to this Annex.

#### Appendix to ANNEX 1002.4 Universal List of Services

#### ANNEX 1002.5

#### Construction Services

#### I. General Provisions

1. Except for the construction services listed in Part II of  
this  
Annex, all construction services as specified in the Appendix to  
this Annex, which are procured by the entities listed in Annex  
1002.1 (Federal Government Entities) and Annex 1002.3  
(Government  
Enterprises) are subject to this Chapter.

2. The Parties will update, as appropriate, the list of  
construction services included in the Appendix at such time as  
they  
mutually agree.

#### III. Construction Services Excluded from Coverage

The following services contracts are excluded in their entirety  
by  
the Parties:

#### Schedule of Canada

1. Dredging.

2. Construction contracts tendered by or on behalf of  
Department  
of Transport.

Note: The General Notes for Canada as set out in Annex  
1002.7  
apply to this Annex.

#### Schedule of Mexico

All risk-sharing contracts by Pemex.

Notes:  
  
The General Notes for Mexico as set out in Annex 1002.7  
apply  
to this Annex.

#### Schedule of the United States

Dredging.

Notes:  
  
1. In accordance with the obligations of this Chapter, buy  
national requirements on articles, supplies, and materials  
acquired  
for use in construction contracts subject to the obligations of  
this Chapter will not apply to products of Canada or Mexico.  
  
2. The General Notes for the United States as set out in Annex  
1002.7 apply to this Annex.

#### Appendix to ANNEX 1002.5

##### List of Construction Services

List of contracts for construction services which are subject to  
the obligations of this Chapter, except as otherwise provided:

(Based on the United Nations Central Product Classification,  
CPC)

Division 51 Construction work

511 Pre-erection work at construction sites  
5111 Site investigation work  
5112 Demolition work  
5113 Site formation and clearance work

- 5114 Excavating and earthmoving work
- 5115 Site preparation work for mining
- 5116 Scaffolding work
- 512 Construction works for buildings
  - 5121 For one and two dwelling buildings
  - 5122 For multi-dwelling buildings
  - 5123 For warehouses and industrial buildings
  - 5124 For commercial buildings
  - 5125 For public entertainment buildings
  - 5126 For hotel, restaurant and similar buildings
  - 5127 For educational buildings
  - 5128 For health buildings
  - 5129 For other buildings
- 513 Construction work for civil engineering
  - 5131 For highways (except elevated highways), streets, roads, railways and airfield runways
  - 5132 For bridges, elevated highways, tunnels and subways
  - 5133 For waterways, harbours, dams and other water works
  - 5134 For long distance pipelines, communication and power lines (cables)
  - 5135 For local pipelines and cables; ancillary works
  - 5136 For constructions for mining and manufacturing
  - 5137 For constructions for sport and recreation
  - 5139 For engineering works n.e.c.
- 514 5140 Assembly and erection of prefabricated constructions
- 515 Special trade construction work
  - 5151 Foundation work, including pile driving
  - 5152 Water well drilling
  - 5153 Roofing and water proofing
  - 5154 Concrete work
  - 5155 Steel bending and erection, including welding)
  - 5156 Masonry work
  - 5159 Other special trade construction work
- 516 Installation work
  - 5161 Heating, ventilation and air conditioning work
  - 5162 Water plumbing and drain laying work
  - 5163 Gas fitting construction work
  - 5164 Electrical work
  - 5165 Insulation work (electrical wiring, water, heat, sound)
  - 5166 Fencing and railing construction work
  - 5169 Other installation work
- 517 Building completion and finishing work
  - 5171 Glazing work and window glass installation work
  - 5172 Plastering work
  - 5173 Painting work
  - 5174 Floor and wall tiling work

5175 Other floor laying, wall covering and wall papering  
work  
5176 Wood and metal joinery and carpentry work  
5177 Interior fitting decoration work  
5178 Ornamentation fitting work  
5179 Other building completion and finishing work

518 5180 Renting services related to equipment for construction  
or  
demolition of buildings or civil engineering works, with  
operator

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## ANNEX 1002.6

### Transition Provisions for Mexico

Notwithstanding any other provision of this Chapter, Annexes  
1002.1  
through 1002.5 are subject to the following:

Pemex, CFE and Non-Energy Construction

1. The obligations of this Chapter shall not apply to:

(a) 50 percent of the total annual procurement above  
thresholds of goods, services and construction services  
by Pemex;

(b) 50 percent of the total annual procurement above  
thresholds of goods, services and construction services  
by CFE; and

(c) 50 percent of the total annual procurement above  
thresholds of construction services, excluding  
construction services procured by Pemex and CFE.

2. Loans from regional and multilateral financial institutions  
will not be included for purposes of calculating the  
reservations  
specified in paragraph 1 or subject to other restrictions.

3. As of January 1st, 1994, the reservation specified in  
paragraph 1 will decrease according to the following schedule:

1994	1995	1996	1997	1998
			50%	45% 45% 40% 40%

1999	2000	2001	2002	2003	and thereafter
35%	35%	30%	30%	0%	

4. For Pemex and CFE, no more than 10 percent of their

respective reserved procurement under paragraphs 1 and 3 shall be applied within a single Federal Supply Classification (FSC) class (or other classification system as agreed by all Parties) in a single year.

5. After December 31, 1998, Pemex and CFE each will make all reasonable efforts to assure that their respective total reservation in each FSC class (or other classification system as agreed by all Parties) shall not exceed 50 percent in a single year.

#### Pharmaceuticals

6. The provisions of this Chapter shall not apply to drugs whose patents have expired or are not currently patented (FSC class 6505) procured by the Secretaría de Salud, IMSS, ISSSTE, Secretaría de Defensa and the Secretaría de Marina. This exception shall be eliminated after 8 years from the date of entry into force of this Agreement. Procurement of biologicals and patented drugs shall not be exempted under any other provision of the Annexes of this Chapter. Nothing in this Chapter shall be interpreted in a way which will impair the protection provided by Chapter 17 (Intellectual Property) of this Agreement.

#### Time Limits for Tendering and Delivery

7. Upon the date of entry into force of this Agreement in January 1, 1994, Mexico will make best efforts to comply with the provisions of Article 1012 (Time Limits for Tendering and Delivery) with respect to the 40 day time limits. However, Mexico will fully comply with such obligations as from January 1, 1995.

#### Provision of Information

8. The Parties recognize that Mexico may be required to undertake extensive retraining of personnel, introduce new data maintenance and reporting systems and make major adjustments to the procurement systems of certain entities in order to comply with the obligations of this Chapter. The Parties also recognize that Mexico may encounter difficulties in making the transition to procurement



systems that facilitate full compliance with the obligations of this Chapter.

9. The Parties shall, therefore, consult on an annual basis for the first five years that the Agreement is in effect to review transitional problems and to develop mutually agreed solutions. Such solutions may include, when appropriate, temporary adjustment to the obligations of Mexico under this Chapter, such as those related to reporting requirements.

10. In addition, the United States and Canada shall cooperate with Mexico to provide technical assistance, as appropriate and mutually agreed pursuant to Article 1020 (Technical Cooperation) of this Chapter, to aid Mexico's transition.

11. Notwithstanding any other provision of this Annex, each Party shall assume all of its obligations specified in this Chapter upon the date of entry into force of this Agreement.

Note: The General Notes for Mexico as set out in Annex 1002.7 apply to this Annex.

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#### ANNEX 1002.7

#### General Notes

#### Schedule of Canada

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to procurements in respect of:

(a) shipbuilding and repair;

(b) urban rail and urban transportation equipment, systems, components and materials incorporated there in as well as all project related materials of iron or steel;

(c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);

(d) set-asides for small and minority businesses;

(e) pursuant to Article 1018 national security exemptions include oil purchases related to any strategic reserve

requirements; and

(f) national security exceptions include procurements made in support of safeguarding nuclear materials or technology.

2. Procurement in terms of Canadian coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services, given to individuals, firms, private institutions, and sub-central governments.

#### Schedule of Mexico

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to procurements made:

- (a) with a view to commercial resale by government-owned retail stores;
- (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); and
- (c) between entities.

2. Notwithstanding any other provision in this Chapter, Mexico may allocate a non-specific sector set-aside as follows:

(a) upon the date of entry into force of this Agreement, up to the equivalent in real terms of \$1.0 billion USD of 1994 shall annually be available to all procurements of entities subject to this Chapter, except Pemex and CFE and construction services procured by other entities subject to this Chapter as well as those procurements of goods in FSC class 6505;

(b) after December 31, 2002, up to the equivalent in real terms of \$1.2 billion USD of 1994 shall annually be available to all procurement of entities subject to this Chapter, except Pemex and CFE and construction services procured by other entities subject to this Chapter as well as those procurements of goods of FSC class 6505;

(c) after December 31, 2002, up to the equivalent in real terms of \$300 million USD of 1994 shall annually be available to Pemex and CFE combined; and

(d) for purposes of this paragraph

(i) no more than 10 percent of the total procurement reserved shall be applied within a single FSC category (or other classification system as agreed by all Parties) in a single year, and

(ii) no more than 20 percent may be used by a single entity.

These values shall remain constant in real terms.

3. Notwithstanding any other provision of this Chapter, the entities subject to this Chapter may impose a local content requirement of no more than:

(a) 40 percent, for labor intensive turnkey or major integrated projects; and

(b) 25 percent, for capital intensive turnkey or major integrated projects.

For purposes of these provisions, a turnkey or major integrated project means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity subject to this Chapter with respect to which:

(c) the prime contractor is vested with the authority to select the general contractors or subcontractors;

(d) Mexico does not fund the project itself;

(e) the person bears the risk of performance; and

(f) the facility will be operated by an entity subject to this Chapter or through a procurement contract of that entity.

4. Regardless of the thresholds, Pemex shall apply the disciplines of Article 1004 regarding national treatment and non-discrimination to:

(a) procurements of oil and gas field supplies and equipment, when such supplies and equipment are procured at the location where works pursued by Pemex are being performed; and

(b) the selection of suppliers, when such suppliers are established at the location where works pursued by Pemex are being performed.

5. If the obligations of the procurements covered by this

Chapter  
are not met, the Parties may seek compensation in the form of  
more  
market opportunities during the following year, or through  
reliance  
of Chapter 20 (Institutional Arrangements and Dispute Settlement  
Procedures).

6. Procurement in terms of the Mexican coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including, but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provisions of goods and services, given to individuals, firms, private institutions and state governments.

#### Schedule of the United States

1. Notwithstanding any other provision of this Chapter, this Chapter does not apply to set asides on behalf of small and minority businesses.

2. Procurement in terms of U.S. coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. It does not include non-contractual agreements or any form of government assistance, including, but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services, given to individuals, firms, private institutions, and subcentral governments.

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#### ANNEX 1002.8

#### Indexation and Conversion of Thresholds

1. The calculations described in Article 1002(4) (Scope and Coverage) shall be made in accordance with the following:

(a) the United States inflation rate shall be measured by the  
the Producer Price Index for Finished Goods published by  
the United States Department of Commerce; and

(b) the inflationary adjustment shall be estimated  
according  
to the following formula

$$T0 \times (1 + pi) = T1$$

T0= threshold value at base period  
pi= accumulated U.S. inflation rate for the ith two  
year-period  
T1= new threshold value.

2. Mexico and Canada shall calculate and convert the value of the thresholds specified in paragraph 3 into their national currencies using the conversion formulas set out in paragraph 3 or 4, as appropriate. Mexico and Canada shall notify each other and the United States of the value, in their respective currencies, of the newly calculated thresholds not less than one month before the respective thresholds take effect.

3. Canada shall base the calculation on the official conversion rates of the Bank of Canada. From January 1, 1994 through December 31, 1995, the conversion rate shall be the average of the weekly values of the Canadian dollars in terms of the U.S. dollars over the period October 1, 1992 through September 30, 1993. For each subsequent two-year period, beginning January 1, 1996, the conversion rate shall be the average of the weekly values of the Canadian dollar in terms of the U.S. dollar over the two-year period ending September 30 of the year preceding the beginning of each two-year period.

4. Mexico shall use the conversion rate of the Banco de México. The conversion rate shall be the existing value of the Mexican peso in terms of the US dollar as of December 1 and June 1 of each year, or the 1st working day after. The conversion rate as of December 1 shall apply from January 1 to June 30 of the following year, and as of June 1 shall apply from July 1 to December 31 of that year.

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ANNEX 1002-A

Country-Specific Thresholds

As between Canada and the United States,

a) for covered federal entities, thresholds on procurement between Canada and the United States are as follows:

i) goods and services: goods -- US\$25,000; services -- US\$50,000. Canada and the United States shall consult regarding these threshold values, and

ii) Construction: US\$6,500,000; and

b) for covered government enterprises, thresholds on procurement

between Canada and the United States are as follows

i) goods and services: US\$250,000, and

ii) construction: US\$8,000,000.

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#### ANNEX 1010.1

#### Publications

#### I. Publications for Notices of Procurement in Accordance with Article 1010 (Invitation to Participate)

##### Schedule of Canada

1. Government Business Opportunities (GBO).
2. Open Bidding Service, ISM Publishing.

##### Schedule of Mexico

1. Major daily newspapers of national circulation.
2. Mexico will endeavor to establish a specialized publication for purposes of notices of procurement. When such publication is ready, it will substitute those referred to in paragraph 1.

##### Schedule of United States

Commerce Business Daily (CBD).

#### II. Publications for Measures in Accordance with Article 1019 (Provision of Information)

##### Schedule of Canada

1. Precedential judicial decisions regarding government procurement:
  - (a) Dominion Law Reports;

- (b) Supreme Court Reports;
- (c) Federal Court Reports;
- (d) National Reporter.

2. Administrative rulings and procedures regarding government procurement:

- (a) Government Business Opportunities; and
- (b) Canada Gazette.

3. Laws and regulations:

- (a) Revised Statutes of Canada;
- (b) Canada Gazette.

#### Schedule of Mexico

1. Diario Oficial de la Federación.

2. Semanario Judicial de la Federación (for precedential judicial decisions only).

3. Mexico will endeavor to establish a specialized publication for administrative rulings of general application and any procedure, including standard contract clauses.

#### Schedule of United States

1. All United States laws, regulations, judicial decisions, administrative rulings and procedures regarding government procurement covered by this Chapter are codified in the Defense Federal Acquisition Regulation Supplement (DFARS) and the Federal Acquisition Regulation (FAR), both of which are published as a part of the United States Code of Federal Regulations (CFR). The DFARS and the FAR are published in title 48 of CFR. Copies may be purchased from the Government Printing Office. These regulations are also published in loose-leaf versions that are available by subscription from the Government Printing Office. Changes are provided to subscribers as they are issued.

2. For those who wish to consult original sources, the following published sources are provided:

Material Publication Name

United States Laws      U.S. Statutes at Large

Decisions:

- United States Supreme Court U.S. Reports
- Circuit Court of Appeals Federal Reporter - 2nd Series
- District Courts Federal Supplement Reporter
- Court of Claims Court of Claims Reports

Decisions:

- Boards of Contract Appeals Unofficial publication by Commerce Clearing House

Decisions:

- Comptroller General of the United States Those not officially published as decisions of the Comptroller General are published unofficially by Federal Publications, Inc.