

In the event of an inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter prevails.

Text of the Canada–Panama Free trade agreement – Chapter sixteen: Government procurement

Article 16.01: Definitions

For the purposes of this Chapter:

commercial good or service means a good or service of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

conditions for participation means a registration, qualification or other prerequisites for participation in a procurement;

construction service means a contractual arrangement for the realization by any means of civil or building works paid for:

- 1. directly by the Party; or*
- 2. for a specified period of time, through any grant to the supplier of temporary ownership or a right to control and operate, and*

demand payment for the use of those works, for the duration of the contract;

in writing or written means a worded or numbered expression that can be read, reproduced and later communicated; it may include electronically transmitted and stored information;

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

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation or a tender;

offsets means a condition or undertaking that encourages local development or improves a Party's balance -of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade or similar actions or requirements;

open tendering means a procurement method where all interested suppliers may submit a tender;

procurement means the process by which a government obtains the use of or acquires a good or service for governmental purposes and not

with a view to commercial sale or resale, or use in the production or supply of a good or service for commercial sale or resale;

procuring entity means an entity listed in Annexes 1 and 2 of Canada and Panama's schedules to this Chapter;

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;

service includes a construction service, unless otherwise specified;

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

supplier means a person that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that:

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

Article 16.02: Scope and Coverage

Application of Chapter

1. This Chapter applies to a measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1 to Canada or Panama Schedule to this Chapter:
 - by a contractual means, including purchase and rental or lease, with or without an option to buy;
 - for which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1 to Canada or Panama Schedule to this Chapter; and
 - subject to the terms of Annex 1 to Canada or Panama Schedule to this Chapter.
2. This Chapter does not apply to:

- the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- a non-contractual agreement or form of assistance that a Party, including a state enterprise, provides, including a grant, loan, equity infusion, fiscal incentive, subsidy, guarantee or cooperative agreement;
- government provision of a good or service to a person or to a sub-national government;
- a purchase for the direct purpose of providing foreign assistance;
- a purchase funded by an international grant, loan or other assistance if the provision of that assistance is subject to conditions inconsistent with this Chapter;
- the procurement or acquisition of a fiscal agency or depository service, liquidation and management service for regulated financial institutions, or a service related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities; this Chapter does not apply to procurement of a banking, financial or specialized service related to:
 - the incurring of public indebtedness, or

- public debt management;
 - the hiring of a government employee or related employment measure;
 - a procurement made by an entity or state enterprise from another entity or state enterprise of that Party; or
 - a purchase made under exceptionally advantageous conditions that only arise in the very short term in the case of an unusual disposal such as one arising from liquidation, receivership or bankruptcy, but not for a routine purchase from a regular supplier.
3. Nothing in this Chapter prevents a Party from developing new procurement policies, procedures or contractual means, provided they are not inconsistent with this Chapter.
4. If a procuring entity awards a contract that is not covered by this Chapter, this Chapter does not cover a good or service component of that contract.

Valuation

1. In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by this Chapter, a procuring entity:

a. shall not divide a procurement into separate procurements or select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

b. shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

- premiums, fees, commissions and interest, and
- the estimated maximum total value of the procurement, inclusive of optional purchases, if the procurement provides for the possibility of option clauses; and

c. shall base its calculation of the total maximum value of the procurement over its entire duration, if the procurement is to be conducted in multiple parts, with contracts to be

awarded at the same time or over a given period to one or more suppliers.

Article 16.03: Security and General Exceptions

1. Nothing in this Chapter prevents a Party from taking action or not disclosing information that it considers necessary for the protection of its essential security interests relating to procurement:
 - a. of arms, ammunition or war materials;
 - b. indispensable for national security; or
 - c. for national defence purposes.
2. Provided that a measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties if the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter prevents a Party from adopting or maintaining a measure:
 - a. necessary to protect public morals, order or safety;
 - b. necessary to protect human, animal or plant life or health;

- c. necessary to protect intellectual property; or
 - d. relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.
- 3. The Parties understand that paragraph 2(b) includes an environmental measure necessary to protect human, animal or plant life or health.

Article 16.04: General Principles

National Treatment and Non-Discrimination

1. With respect to a measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to a good or service of the other Party, and to a supplier of the other Party of such good or service, treatment no less favourable than the most favourable treatment the Party accords to a domestic good, service or supplier.
2. With respect to a measure relating to procurement covered by this Chapter, a Party shall not:
 - a. treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

- b. *discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.*

Conduct of Procurement

1. *A procuring entity shall conduct procurement covered by this Chapter in a transparent and impartial manner that:*
 - a. *is consistent with this Chapter;*
 - b. *avoids conflicts of interest; and*
 - c. *prevents corrupt practices.*

Tendering Procedures

1. *A procuring entity shall use open tendering except where Articles 16.07(6) through 16.07(9) or Article 16.10 apply.*

Rules of Origin

1. *With regard to the procurement of a good covered by this Chapter, each Party shall apply the rules of origin that it applies to that good in the normal course of trade.*

Offsets

1. A Party, including its procuring entities, shall not seek, take account of, impose or enforce offsets at any stage of a procurement covered by this Chapter.

Measures Not Specific to Procurement

1. Paragraphs 1 and 2 do not apply to:
 - a customs duty or other charge referred to in paragraphs (a) through (d) of the definition of “customs duty” in Article 1.01, or the method of levying that duty or charge;
 - another import regulation or formality; or
 - a measure affecting trade in a service, other than a measure governing procurement covered by this Chapter.

Article 16.05: Publication of Procurement Information

1. Each Party shall:
 - a. promptly publish a law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and a modification of those measures, in an

officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

b. on request of the other Party, provide it with an explanation of a measure that must be published under paragraph (a).

2. Article 20.02 (Transparency – Publication) does not apply to a measure that must be published under paragraph (a).

Article 16.06: Publication of Notices

Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice inviting suppliers to submit tenders, or a notice inviting applications to participate in the procurement. The procuring entity shall publish that notice in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities for procurements covered by this Chapter.

2. Each notice of intended procurement must include:

- a. a description of the procurement, including the nature and, if known, the quantity of the good or service to be procured;
- b. the procurement method that will be used and whether it will involve negotiation or electronic auction;
- c. a list of conditions for participation of suppliers;
- d. the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain relevant documents relating to the procurement as well as their cost and terms of payment, if applicable;
- e. the address and time limits for the submission of tenders or applications for participation;
- f. the time frame for delivery of the good or service to be procured or the duration of the contract;
- g. if, under Article 16.07, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and,

where applicable, any limitation on the number of suppliers that will be permitted to tender; and

- h. an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

1. The Parties shall encourage procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. These notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 16.07: Conditions for Participation

General Requirements

1. Where a procuring entity requires a supplier to satisfy a registration, qualification or other requirement or conditions for participation in a separate process in order to participate in a procurement covered by this Chapter, the procuring entity shall publish a notice inviting suppliers to apply for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers time to prepare and

submit applications and to provide the procuring entity with sufficient time to evaluate and make its determination based on those applications.

2. A procuring entity shall limit conditions for participation in a procurement covered by this Chapter to those that are essential to ensure that a supplier has the legal and financial capacity and the commercial and technical ability to undertake the relevant procurement.

3. In establishing the conditions for participation, a procuring entity:

a. shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded a contract by a procuring entity of a Party; and

b. may require relevant prior experience if essential to meet the requirements of the procurement.

4. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

a. evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that

supplier's business activities inside and outside the territory of the Party of the procuring entity; and

- b. base its evaluation on the conditions that the procuring entity has specified in advance in its notices or tender documentation.

- 5. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

Multi-use Lists

- 1. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
 - a. published annually; and
 - b. where published by electronic means, made available continuously.
- 2. The notice referred to in paragraph 6 must include:
 - a. a description of the good or service, or category thereof, for which the list may be used;

- b. the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify that a supplier satisfies those conditions;
 - c. the name and address of the procuring entity and other information necessary to contact the procuring entity and to obtain relevant documents relating to the list;
 - d. the period of validity of the list, the means for its renewal or termination, or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination of the list; and
 - e. an indication that the list may be used for procurement covered by this Chapter.
3. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

Selective Tendering

1. If a procuring entity intends to use selective tendering, the procuring entity shall:

- publish a notice inviting suppliers to apply for participation in the procurement giving sufficient time for interested suppliers to prepare and submit applications and for the procuring entity to evaluate and make its determinations based on those applications; and
- allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless in the notice of intended procurement or, if publicly available, in the tender documentation, the procuring entity has stated a limitation on the number of suppliers that will be permitted to tender and the criteria for this limitation.

Information on Procuring Entity Decisions

1. A procuring entity shall promptly inform a supplier that submits an application for participation in a procurement or for inclusion on a multi-use list of the procuring entity's decision with respect to the application.
2. If a procuring entity:

- a. rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list,
- b. ceases to recognize a supplier as qualified, or
- c. removes a supplier from a multi-use list,

the procuring entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

1. If there is supporting evidence, a procuring entity may exclude a supplier on grounds such as:
 - a. bankruptcy;
 - b. false declarations; or
 - c. significant or persistent deficiencies in performance of a substantive requirement or of an obligation under a prior contract.
2. A procuring entity of a Party shall not adopt or maintain a registration system or qualification procedure with the purpose or the effect of creating an unnecessary obstacle to the participation of a supplier of the other Party in its procurement.

Article 16.08: Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply a technical specification or prescribe a conformity assessment procedure with the purpose or the effect of creating an unnecessary obstacle to international trade between the Parties.
2. In prescribing the technical specifications for a good or service being procured, a procuring entity shall, where appropriate:
 - a. specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - b. base the technical specification on an international standard, if it exists; otherwise, on a national technical regulation, recognized national standard or building code.
3. A procuring entity shall not prescribe a technical specification requiring or referring to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirement

provided that, in those cases, the procuring entity includes words such as “or equivalent” in the tender documentation.

- 4. A procuring entity shall 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 a technical specification for a specific procurement covered by this Chapter from a person that may have a commercial interest in the procurement.*
- 5. A procuring entity may, in accordance with this Article, prepare, adopt or apply a technical specification to promote the conservation of natural resources or protect the environment.*

Tender Documentation

- 1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, that documentation shall include a complete description of:*
 - a. the procurement, including the nature and the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements*

to be fulfilled, including any technical specification, conformity assessment certification, plan, drawing or instructional material;

b. any condition for participation of a supplier, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

c. all evaluation criteria to be considered in the awarding of the contract, and the relative importance of that criteria, except where price is the sole criterion;

d. where there will be a public opening of tenders, the date, time and place for the opening of tenders; and

e. any other terms or conditions relevant to the evaluation of tenders.

2. A procuring entity shall promptly reply to a reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the procuring entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Modifications

1. If, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing that modified, amended or re -issued notice or tender documentation:
 - a. to all suppliers that are participating in the procurement at the time of the modification, amendment or re -issuance, where those suppliers are known to the procuring entity, and, in all other cases, in the same manner as the original information was made available; and
 - b. in adequate time to allow those suppliers to modify and submit amended tenders, as appropriate.

Article 16.09: Time Limits for the Submission of Tenders

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement covered by

this Chapter and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

Deadlines

1. *Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders is not less than 40 days from the date on which:*
 - a. *in the case of open tendering, the notice of intended procurement is published; or*
 - b. *in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.*
2. *A procuring entity may reduce by 5 days the time limit established under paragraph 2 for the submission of tenders, for each one of the following circumstances:*
 - a. *the notice of intended procurement is published by electronic means;*
 - b. *all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and*

c. the procuring entity accepts tenders by electronic means.

3. A procuring entity may establish a time limit of less than 40 days for the submission of tenders provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders, but not less than 10 days before the final date for the submission of tenders, if:

a. the procuring entity published a separate notice containing the information specified in Article 16.06(3) at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders, or, if applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

b. there is a second or subsequent publication of notices for procurement of a recurring nature;

c. the procuring entity procures a commercial good or service; or

d. a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2 or, if applicable, paragraph 3.

Article 16.10: Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the procuring entity may contact a supplier of its choice and may choose not to apply Articles 16.06, 16.07, 16.08, 16.09 and 16.11 only under the following circumstances, if:

a. the requirements of the tender documentation are not substantially modified and:

i. no tenders were submitted or no suppliers applied to participate in a procurement covered by this Chapter,

ii. no tenders that conform to the essential requirements of the tender documentation were submitted,

iii. no suppliers satisfied the conditions for participation, or

iv. the tenders submitted have been collusive;

- b. *the procurement can be carried out only by a particular supplier and a reasonable alternative or substitute does not exist because:*
 - i. *the requirement is for a work of art,*
 - ii. *a good or service being procured is protected by a patent, copyright or another exclusive right, or*
 - iii. *of the absence of competition for technical reasons;*
- c. *for additional deliveries by the original supplier of a good or service that was not included in the initial procurement, a change of supplier for that additional good or service:*
 - i. *cannot be made for economic or technical reasons, such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, and*
 - ii. *would cause significant inconvenience or substantial duplication of costs to the procuring entity;*
- d. *the good is purchased on a commodity market;*

- e. *a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development; original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production, or supply to establish commercial viability, or to recover research and development costs;*
- f. *insofar as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time using open tendering or selective tendering;*
- g. *a contract is awarded to a winner of a design contest provided that:*
 - i. *the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement, and*

- ii. the participants are judged by an independent jury with a view to a design contract being awarded to a winner;
 - h. a procuring entity needs to procure a consulting service regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and
 - i. an additional construction service that was not included in the initial contract but that is within the objectives of the original tender documentation has become necessary, due to unforeseeable circumstances, to complete the construction service described in the original tender documentation; however the total value of all contracts awarded for additional services may not exceed 50% of the total amount of the initial contract.
2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of good or service procured, and a statement indicating the circumstances

and conditions described in paragraph 1 that justified the use of limited tendering.

Article 16.11: Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

- 1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.*
- 2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders.*
- 3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.*

Awarding of Contracts

- 1. To be considered for award, a tender must be submitted in writing by a supplier that satisfies the conditions for participation and must, at the time of opening, comply with the*

essential requirements of the notices and tender documentation.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

- a. the most advantageous tender; or
- b. where price is the sole criterion, the lowest price.

3. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations in this Chapter.

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers participating in the procurement of the entity's contract award decisions and, on request, shall do so in writing. Subject to Article 16.12, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the

procuring entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

1. *Within 72 days of an award, a procuring entity shall publish in electronic or paper form in an officially designated publication, a notice including the following information about the contract:*

- the name and address of the procuring entity;*
- a description of the goods or services procured;*
- the date of award;*
- the name and address of the successful supplier;*
- the contract value; and*
- the procurement method used and, when a procedure has been used pursuant to Article 16.10(1), a description of the circumstances justifying the use of that procedure.*

Maintenance of Records

1. *A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in Article 16.10(2),*

and shall retain such reports and records for a period of at least 3 years after the award of a contract.

Article 16.12: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall promptly provide information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to a supplier without the consent of the Party that provided the information.

Non-Disclosure of Information

1. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

2. A Party, including its procuring entities, administrative authorities and judicial authorities, is not required under this Chapter to release confidential information if the release:
 - a. would impede law enforcement;
 - b. might prejudice fair competition between suppliers;
 - c. would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
 - d. would otherwise be contrary to the public interest.

Article 16.13: Domestic Review Procedures

1. For the purposes of this Article, “challenge” means a challenge by a supplier arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.
2. Each Party shall ensure that its procuring entities give impartial and timely consideration to a complaint from a supplier regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest. Each Party shall encourage suppliers to seek clarification from its

procuring entities through discussions with a view to facilitating the resolution of a complaint.

3. *Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge.*

4. *Each Party shall ensure that an authority it establishes or designates under paragraph 3 has written procedures that are generally available. Each Party shall ensure that those procedures are timely, effective, transparent, non-discriminatory and provide that:*

a. *the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;*

b. *the participants in the challenge have:*

i. *the right to be heard prior to the review body making a decision on the challenge,*

ii. *the right to be represented and accompanied,*

iii. *access to all challenge proceedings, and*

iv. *the right to request that the proceedings take place in public and that witnesses may be presented;*

- c. a decision or recommendation relating to a challenge be provided in a timely manner, in writing and with an explanation of the basis for the decision or recommendation; and
 - d. each supplier be allowed a sufficient period of time to prepare and submit a challenge, which must be at least 10 days from the time when the basis of the challenge became known to the supplier or reasonably should have become known to the supplier.
- 5. Each Party shall provide that an authority it establishes or designates under paragraph 3 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Those interim measures may result in a suspension of the procurement process. The procedures for taking interim measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied.
- 6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.

7. If a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

Article 16.14: Modifications and Rectifications to Coverage

1. A Party may modify an Annex to this Chapter.
2. When a Party modifies an Annex to this Chapter, the Party shall:
 - a. notify the other Party in writing; and
 - b. include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding paragraph 2(b), a Party need not provide compensatory adjustments if:

- a. the modification in question is a minor adjustment or rectification of a purely formal nature; or
 - b. the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.
4. If the other Party disputes that:
- a. an adjustment proposed under paragraph 2(b) is adequate to maintain a comparable level of mutually decided coverage,
 - b. the proposed modification is a minor adjustment or a rectification under paragraph 3(a), or
 - c. the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under paragraph 3(b),

it shall object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have accepted the adjustment or proposed modification, including for the purposes of Chapter Twenty -Two (Dispute Settlement).

Article 16.15: Committee on Procurement

The Parties hereby establish a Committee on Procurement to address matters related to the implementation of this Chapter with a view to maximizing access to government procurement, including with respect to facilitating participation by small and medium enterprises in the government procurement market of the other Party.

Article 16.16: Further Negotiations

- 1. If, after the entry into force of the provisions of this Chapter, a Party enters into another international agreement containing different procurement procedures and practices, including the introduction of shorter bid periods, a Party shall, if the other Party so requests, enter into negotiations to harmonize this Chapter with that international agreement.*
- 2. If, after the entry into force of the provisions of this Chapter, a Party enters into another international agreement providing greater access to its procurement market than is provided under this Chapter, including with respect to sub -national government procurement, on the request of either Party, the Parties may decide to enter into negotiations with a view to achieving a level of market access under this Chapter equivalent to that of the other international agreement.*

Article 16.17: Information Technology

The Parties, to the extent possible, shall endeavour to use electronic means of communication to efficiently disseminate information on government procurement, particularly regarding tender opportunities offered by procuring entities, while respecting the principles of transparency and non-discrimination.

Text of the Canada–Panama Free trade agreement – Chapter sixteen: Government procurement – Schedule of Canada

Annex 1: Central Level Entities

Thresholds

CAD 76,600 - **Goods** covered in Annex 4

CAD 76,600 - **Services** covered in Annex 5

CAD 8,500,000 - **Construction Services** covered in Annex 6

1. Atlantic Canada Opportunities Agency
2. Canada Border Services Agency
3. Canada Employment Insurance Commission
4. Canada Industrial Relations Board
5. Canada Revenue Agency
6. Canada School of Public Service
7. Canadian Centre for Occupational Health and Safety
8. Canadian Food Inspection Agency
9. Canadian Human Rights Commission
10. Canadian Institutes of Health Research
11. Canadian Intergovernmental Conference Secretariat
12. Canadian International Development Agency (on its own account)
13. Canadian International Trade Tribunal
14. Canadian Nuclear Safety Commission

15. Canadian Radio-television and Telecommunications Commission
16. Canadian Transportation Accident Investigation and Safety Board
17. Canadian Transportation Agency
18. Copyright Board of Canada
19. Correctional Service of Canada
20. Courts Administration Service
21. Department of Agriculture and Agri-Food
22. Department of Canadian Heritage
23. Department of Citizenship and Immigration
24. Department of Finance
25. Department of Fisheries and Oceans
26. Department of Foreign Affairs and International Trade
27. Department of Health
28. Department of Human Resources and Skills Development
29. Department of Indian Affairs and Northern Development
30. Department of Industry
31. Department of Justice
32. Department of National Defence
33. Department of Natural Resources
34. Department of Public Safety
35. Department of Public Works and Government Services (on its own account)
36. Department of the Environment
37. Department of Transport
38. Department of Veterans Affairs
39. Department of Western Economic Diversification
40. Director of Soldier Settlement
41. Director, The Veterans' Land Act
42. Economic Development Agency of Canada for the Regions of Quebec
43. Farm Products Council of Canada
44. Hazardous Materials Information Review Commission
45. Immigration and Refugee Board
46. Library and Archives Canada
47. Municipal Development and Loan Board
48. National Battlefields Commission
49. National Energy Board
50. National Parole Board

51. National Research Council of Canada
52. Natural Sciences and Engineering Research Council of Canada
53. Northern Pipeline Agency
54. Office of the Auditor General
55. Office of the Chief Electoral Officer of Canada
56. Office of the Commissioner for Federal Judicial Affairs
57. Office of the Commissioner of Official Languages
58. Office of the Coordinator, Status of Women
59. Office of the Governor General's Secretary
60. Office of the Superintendent of Financial Institutions
61. Offices of the Information and Privacy Commissioners of Canada
62. Parks Canada Agency
63. Patented Medicine Prices Review Board
64. Privy Council Office
65. Public Health Agency of Canada
66. Public Service Commission
67. Public Service Human Resources Management Agency of Canada
68. Public Service Labour Relations Board
69. Registry of the Competition Tribunal
70. Royal Canadian Mounted Police
71. Royal Canadian Mounted Police External Review Committee
72. Royal Canadian Mounted Police Public Complaints Commission
73. Social Sciences and Humanities Research Council
74. Statistics Canada
75. Statute Revision Commission
76. Supreme Court of Canada
77. Transportation Appeal Tribunal of Canada
78. Treasury Board Secretariat

Annex 2: Other Covered Entities

Thresholds

CAD 383,300 - **Goods** covered in Annex 4

CAD 383,300 - **Services** covered in Annex 5

CAD 12,200,000 - **Construction Services** covered in Annex 6

1. Canada Post Corporation

2. Canada Science and Technology Museum
3. Canadian Museum of Civilization
4. Canadian Museum of Nature
5. Canadian Tourism Commission
6. Defence Construction (1951) Ltd.
7. National Capital Commission
8. National Gallery of Canada
9. Royal Canadian Mint
10. VIA Rail Canada Inc.

Notes to Annex 2

1. Article 16.12 (Disclosure of Information) applies to procurements by VIA Rail Canada Inc. and the Royal Canadian Mint, respecting the protection of the commercial confidentiality of information provided.
2. This Chapter does not cover procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender.

Annex 3: Panama Canal Authority

Not applicable for Canada.

Annex 4: Goods

Section A – General Provisions

1. This Chapter covers all goods procured by the procuring entities listed in Annexes 1 and 2, subject to the Notes to the respective annex, the General Notes, and paragraph 2.
2. For procurement by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard, this Chapter covers only the goods listed in Section B, subject to Article 16.03(1).

Section B – List of Certain Goods

(The numbers refer to the Federal Supply Classification (FSC) document dated May 2005, which can be found on the [Federal Supply Class Reference Guide site](#).)

22. Railway equipment

23. Motor vehicles, trailers and cycles (except buses in 2310; and, except military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350 and wheeled combat, assault and tactical vehicles in 2355 formerly classified in 2320)

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 (except 4220: Marine lifesaving and diving equipment; and 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; and 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: Automatic Data Processing Equipment (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 hometype 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. Nonmetallic fabricated materials
- 94. Nonmetallic crude materials
- 96. Ores, minerals and their primary products
- 99. Miscellaneous

Annex 5: Services

Section A – General Provisions

1. This Chapter covers all services procured by the procuring entities in Annex 1 and Annex 2, subject to paragraph 3 and Section B of this Annex.
2. Services are identified in accordance with the Common Classification System, which may be found on the [SICE North American Free Trade Agreement](#) web site.
3. Annex 6 applies to contracts for construction services.

Section B – Excluded Coverage by Major Service Category

Part I

This Chapter does not cover procurement of the following services by entities listed in Annex 1 and Annex 2:

A. Research and Development

All classes

B. Studies and Analysis - not R&D

B002 Animal and Fisheries Studies

B003 Grazing/Range Studies

B400 Aeronautic/Space Studies

B503 Medical and Health Studies

B507 Legal Studies (except advisory services on foreign law)

C. Architect and Engineering Services

C112 Airfield, Communication and Missile Facilities

C216 Marine Architect and Engineering Services

D. Information Processing and Related Telecommunications Services

D304 ADP Telecommunications and Transmission Services, except those classified as "enhanced or value-added services." Enhanced or value-added services means those telecommunications services employing computer processing applications that:

1. act on the format, content, code, protocol or similar aspects of a customer's transmitted information;
2. provide a customer with additional, different or restructured information; or
3. involve customer interaction with stored information.

For purposes of this provision, the procurement of "ADP Telecommunications and Transmission Services" does not include the ownership or furnishing of facilities for the transmission of voice or data services. This provision only extends to providers of enhanced or value-added services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

D305 ADP Teleprocessing and Timesharing Services

D309 Information and Data Broadcasting or Data Distribution Services (except enhanced/value-added facsimile services, including store and forward, store and retrieve, and Code and protocol conversion)

D316 Telecommunications Network Management Services (except Electronic Data Interchange (EDI) Services)

D317 Automated News Service, Data Services, or Other Information Services. Buying data, the electronic equivalent of books, periodicals, newspapers, etc. (except enhanced/value-added electronic mail services; telecommunications - voice messaging; information retrieval services, database and automated news services)

D399 Other ADP and Telecommunications Services (except enhanced/value-added CD-ROM services and micrographic services)

F. Natural Resources Services

F004 Land Treatment Practices Services (plowing/clearing, etc.).

F005 Range Seeding Services (ground equipment)

F006 Crop Services (including Seed Collection/Production Services)

F011 Pesticides/Insecticides Support Services (except forestry and logging)

F021 Veterinary/Animal Care Services (inc. livestock services)

F029 Other Animal Care/Control Services

F030 Fisheries Resources Management Services

F031 Fish Hatchery Services

F050 Recreation Site Maintenance Services (non-construction)

F059 Other Natural Resource and Conservation Services

G. Health and Social Service

All classes

H. Quality Control, Testing, Inspection and Technical Representative Services

Services for the departments and functions listed in Annex 7(1)(e) respecting FSC 36 (Special Industry Machinery), FSC 70 (Automatic Data Processing Equipment, Software Supplies and Support Equipment) and FSC 74 (Office Machines, Text Processing Systems and Visible Record Equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

J. Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment

Services for the departments and functions listed in Annex 7(1)(e) respecting FSC 36 (Special Industry Machinery), FSC 70 (Automatic Data Processing Equipment, Software Supplies and Support Equipment) and FSC 74 (Office Machines, Text Processing Systems and Visible Record Equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

J019 Maintenance, Repair, Modification, Rebuilding and Installation of Equipment Related to Ships

J998 Non-nuclear Ship Repair

K. Custodial Operations and Related Services

K0 Personal Care Services

K105 Guard Services

K109 Surveillance Services

K115 Preparation and Disposal of Excess and Surplus Property

L. Financial and Related Services

All classes

M. Operation of Government-Owned Facilities

All facilities operated by:

- The Department of National Defence
- The Department of Transport
- The Department of Natural Resources and
- for all other departments: M180 and M140

R. Professional, Administrative and Management Support Services

R003 Legal Services (except advisory services on foreign law)

R004 Certifications and accreditations for Products and Institutions Other Than Educational Institutions

R007 Systems Engineering Services (with reference to transportation systems)

R012 Patent and Trade Mark Services

R101 Expert Witness

R102 Weather Reporting/Observation Services

R104 Transcription Services

R106 Post Office Services

R109 Translation and Interpreting Services (including sign language)

R114 Logistics Support Services (with respect to transportation and defence)

R116 Court Reporting Services

R117 Paper Shredding Services

R201 Civilian Personnel Recruitment (including services of employment agencies)

S. Utilities

All classes

T. Communications, Photographic, Mapping, Printing and Publication Services

All classes

U. Educational and Training Services

U010 Certifications and Accreditations for Educational Institutions

V. Transportation, Travel and Relocation Services

All classes (except V503 Travel Agent Services (not including tour guides))

W. Lease and Rental of Equipment

Services for the departments and functions listed in Annex 7(1)(e) respecting FSC 36 (Special Industry Machinery), FSC 70 (Automatic Data Processing Equipment, Software Supplies and Support Equipment) and FSC 74 (Office Machines, Text Processing Systems and Visible Record Equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)
Services with reference to transportation equipment

Part II

This Chapter does not cover procurement of the following services by entities listed in Annex 2:

D. Information Processing and Related Telecommunications Services

D309 Information and Data Broadcasting or Data Distribution Services

D316 Telecommunications Network Management Services

D317 Automated News Service, Data Services, or Other Information Services.
Buying data, the electronic equivalent of books, periodicals, newspapers, etc.

D399 Other ADP and Telecommunications Services

F. Natural Resources and Conservation Services

F007 Seedling Production/Transplanting Services

F010 Other Range/Forest Improvements Services

R. Professional, Administrative and Management Support Services

R113 Data Collection Services

Notes to Annex 5

1. Services with reference to the goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard that are not identified as subject to the coverage of this Chapter (Annex 4) are exempt from the disciplines of this Chapter.
2. Services purchased in support of military forces located overseas are exempt from coverage of this Chapter.

Annex 6: Construction Services

Section A – General Provisions

1. This Chapter covers all construction services set out in the Common Classification System (CCS), except those listed in Section B, that are procured by the procuring entities listed in Annex 1 and Annex 2.
2. The Common Classification System can be found on the: [SICE North American Free Trade Agreement](#).

Section B – Excluded Coverage by Major Service Category

The following services contracts are excluded:

1. Dredging.
2. Construction contracts tendered by or on behalf of the Department of Transport.
3. CPC 5115 mining of oil and gas which is classified under CCS F042.

Annex 7: General Notes

1. This Chapter does not cover procurements in respect of:
 - a. shipbuilding and repair;
 - b. urban rail and urban transportation equipment, systems, components and materials incorporated therein 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. the Department of Transport,
 - i. the Department of Fisheries and Oceans,
 - ii. the Canadian Food Inspection Agency in respect of the administration and enforcement of the *Fish Inspection Act*,
 - iii. the Department of Canadian Heritage in respect of those functions that were formerly the responsibility of the Department of Communications,
 - iv. the Department of Industry in respect of telecommunications, except in relation to (a) the planning and coordination of telecommunication services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting, and
 - v. the Department of Public Works and Government Services in respect of the Government Telecommunications and Informatics Services,respecting FSC 70 (Automatic Data Processing Equipment, Software Supplies and Support Equipment), FSC 74 (Office Machines, Text Processing Systems and Visible Record Equipment) and FSC 36 (Special Industry Machinery); and
 - f. agricultural products made in furtherance of agricultural support programs or human feeding programs.
2. This Chapter does not cover the procurement of transportation services forming a part of or incidental to a procurement contract.
3. Pursuant to Article 16.03, national security exceptions include oil purchases related to any strategic reserve requirements.
4. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

5. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award.
6. The Notes in this Annex apply to this Chapter and all of the Annexes to the Canadian Schedule.

Annex 8: Threshold Adjustment Formulas

1. The thresholds will be adjusted at two-year intervals, with each adjustment taking effect on January 1, beginning on January 1, 2012.

2. The thresholds for:

- a. construction services procured by entities listed in Annex 1, and
- b. goods and services procured by the entity listed in Annex 3,

will be adjusted in accordance with the *WTO Agreement on Government Procurement* GPA/1, Annex 3. Canada shall notify Panama in writing of the adjusted threshold values in the applicable currencies in December of the year before the adjusted thresholds take effect.

3. The thresholds for:

- a. a. goods and services procured by entities listed in Annex 1, and
- b. b. goods, services and construction services procured by entities listed in Annex 2,

will be adjusted in accordance with Annex 1001.1c of the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, done at Mexico, Ottawa and Washington on 17 December 1992 ("NAFTA"). Canada shall notify Panama in writing of the adjusted threshold values in the applicable currencies in December of the year before the adjusted thresholds take effect.

4. The thresholds for:

- a. construction services procured by the entity listed in Annex 3 that are applicable the thirteenth year following the entry into force of this Agreement will:
 - i. if the TPA enters into force, be set at the thresholds established under Annex 9.1 (Government Procurement), Section D (Panama Canal Authority) of the TPA, and be adjusted under Section I (Threshold Adjustment Formula) of the TPA, or
 - ii. if the TPA has not entered into force, be adjusted in accordance with paragraph 3 of this Annex;
- b. construction services in Annex 3, applicable for 12 years following the entry into force of this Agreement (USD 12,000,000), will not be adjusted.

5. If a major change in a currency used by a Party during a year creates a significant problem with regard to the application of the Chapter, the Joint Commission shall determine whether an interim adjustment is appropriate.

6. In the event that:

- a. Canada withdraws from the *WTO Agreement on Government Procurement* pursuant to Article XXIV of that Agreement, or the NAFTA pursuant to Article 2205 of that Agreement,
- b. the *WTO Agreement on Government Procurement* or the NAFTA is terminated, or
- c. a threshold adjustment formula referenced in paragraphs 1, 2, 3 or 4 is altered,

the Committee on Procurement shall determine a suitable alternative threshold adjustment formula.

Annex 9: Transitional Thresholds for Goods and Services Procured by Central Level Entities of Panama

Transitional Thresholds

1. For a transitional period of 3 years from the date of entry into force of this Agreement, Panama shall apply a threshold of SDR 95,000 for goods and services procured by entities listed in Annex 1.

Domestic Currency Adjustment

1. Panama shall adjust the transitional threshold value of this Annex based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs, published by the International Monetary Fund in its monthly "International Financial Statistics", for the two-year period ending September 30 of the year before the adjusted transitional thresholds take effect.

Adoption of Permanent Thresholds

1. At the end of the transitional period, Panama may adopt the thresholds in Annex 1 for goods and services.
2. If Panama is not able to adopt the thresholds in Annex 1 for goods and services procured by entities listed in Annex 1:
 - a. Panama shall notify Canada a minimum of 3 months before the end of the transitional period; and
 - b. the Parties shall adopt the threshold listed in paragraph 1 of this Annex.
3. The new thresholds adopted under paragraphs 3 or 4 will replace the thresholds for goods and services for Canada and Panama procured by entities in Annex 1, and the new adopted threshold values will be adjusted for Canada and Panama in accordance with Annex 8, paragraph 2 or 3 as appropriate.

Text of the Canada–Panama Free trade agreement – Chapter sixteen: Government procurement – Schedule of Panama

Annex 1: Central Level Entities

Thresholds

USD 70,079 - **Goods** covered in Annex 4

USD 70,079 - **Services** covered in Annex 5

USD 7,804,000 - **Construction Services** covered in Annex 6

1. National Assembly
2. Comptroller General of the Republic
3. Ministry of Trade and Industry
4. Ministry of Agricultural Development
5. Ministry of Economy and Finance
6. Ministry of Education (Note 1)
7. Ministry of de Governance and Justice (Note 2)
8. Ministry of Social Development
9. Ministry of Public Works
10. Ministry of the Presidency (Note 3)
11. Ministry of Foreign Relations
12. Ministry of Health (Note 4)
13. Ministry of Labour and Workforce Development
14. Ministry of Housing and Territorial Planning
15. Ministry of Public Administration (Note 5)
16. Judicial Authority

Notes to the Schedule of Panama

1. Ministry of Education

This Chapter does not cover the procurement of goods classified under Divisions of the United Nations Central Product Classification (CPC) Ver. 1.0, listed below:

21 Meat, fish, fruit, vegetables, oils and fats;

22 Dairy products;

23 Grain mill products, starches and starch products; other food products;
24 Beverages;
26 Yarn and thread; woven and tufted textile fabrics;
27 Textile articles other than apparel;
28 Knitted or crocheted fabrics; wearing apparel;
29 Leather and leather products; footwear.

2. Ministry of Governance and Justice

This Chapter does not cover the procurement of goods and services listed below by or on behalf of: National Police; National Naval Aviation Service; National Maritime Service, Public Security Institutions Office; and Directorate General of Correctional Services:

- classified under Divisions of the CPC Ver. 1.0:
 - 21 Meat, fish, fruit, vegetables, oils and fats;
 - 22 Dairy products;
 - 23 Grain mill products, starches and starch products; other food products;
 - 24 Beverages;
 - 26 Yarn and thread; woven and tufted textile fabrics;
 - 27 Textile articles other than apparel;
 - 28 Knitted or crocheted fabrics; wearing apparel;
 - 29 Leather and leather products; footwear;
 - 431 Engines and turbines and parts thereof;
 - 447 Weapons and ammunition and parts thereof;
 - 491 Motor vehicles, parts and accessories thereof;
 - 496 Aircraft and spacecraft, and parts thereof;
- the procurement of food serving services (hot meals).

3. Ministry of the Presidency

This Chapter does not cover the procurement of goods and services listed below by or on behalf of Institutional Protection Service:

- classified under Divisions of the CPC Ver. 1.0:
 - 21 Meat, fish, fruit, vegetables, oils and fats;
 - 22 Dairy products;
 - 23 Grain mill products, starches and starch products; other food products;
 - 24 Beverages;
 - 26 Yarn and thread; woven and tufted textile fabrics;
 - 27 Textile articles other than apparel;
 - 28 Knitted or crocheted fabrics; wearing apparel;
 - 29 Leather and leather products; footwear;
 - 431 Engines and turbines and parts thereof;

- 447 Weapons and ammunition and parts thereof;
- 491 Motor vehicles, parts and accessories thereof;
- 496 Aircraft and spacecraft, and parts thereof;
- the procurement of food serving services (hot meals); and

this Chapter does not cover the procurement of goods and services by, or on behalf of Public Security and National Defence Council Secretariat and the Social Investment Fund.

4. Ministry of Health

This Chapter does not cover the following:

- procurement made in furtherance of public health protection programs, including treatment of HIV/AIDS, Cancer, Tuberculosis, Malaria, Meningitis, Disease of Chagas, Leishmaniasis or other epidemics;
- procurement of vaccines for the prevention of Tuberculosis, Polio, Diphtheria, Whooping Cough, Tetanus, Measles, Mumps, Rubella, Meningitis (Meningococcica), Pneumococcus, Human Rabies, Chickenpox, Influenza, Hepatitis A, Disease for H. Influenza, Hepatitis B, Disease for H. Influenza Type B, and Yellow Fever that are purchased pursuant to an agreement with a not-for-profit international organization such as WHO and UNICEF; or
- procurement of pharmaceutical products under compulsory licensing pursuant to the General Council Decisions of 30 August 2003 on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and of 6 December 2005 on the Amendment of the TRIPS Agreement of the World Trade Organization.

5. Ministry of Public Administration / Office of the Attorney General

This Chapter does not cover the procurement of goods and services listed below by or on behalf of the Judicial Technical Police:

- classified under Divisions of the CPC Ver. 1.0:
 - 21 Meat, fish, fruit, vegetables, oils and fats;
 - 22 Dairy products;
 - 23 Grain mill products, starches and starch products; other food products;
 - 24 Beverages;
 - 447 Weapons and ammunition and parts thereof;
 - 491 Motor vehicles, parts and accessories thereof; and
- the procurement of food serving services (hot meals).

6. This Chapter does not cover procurement for issuing currency, coinage, tax or postage stamps.

Annex 2: Other Covered Entities

Thresholds

USD 350,396 - **Goods** covered in Annex 4

USD 350,396 - **Services** covered in Annex 5

USD 11,213,223 - **Construction Services** covered in Annex 6

1. Civil Aeronautics Agency
2. National Customs Agency
3. Panamanian Food Safety Agency
4. Micro, Small and Medium-size Business Agency
5. Land Transit and Transportation Agency (Note 1)
6. Consumer Protection and Competition Defence Agency
7. Panamanian Maritime Agency
8. National Public Services Agency
9. Panamanian Water Resources Agency
10. Public Procurements Office
11. National Environment Agency
12. Agricultural Development Bank
13. National Bingos
14. National Securities Commission
15. Public Ombudsman
16. Agricultural Research Institute
17. Agricultural Marketing Institute
18. Agricultural Safety Institute
19. National Cultural Institute
20. National Sports Institute
21. National Institute for Professional Training and Human Resources Development
22. Panamanian Independent Cooperatives Institute
23. Panamanian Special Training Institute
24. Panamanian Tourism Institute
25. Human Resources Training and Development Institute
26. Public Register of Panama
27. Pension Savings and Capitalization System (SIACAP)
28. Superintendency of Banks
29. Chiriquí Autonomous University
30. Specialized University of the Americas
31. Technological University of Panama

32. Colón Free Trade Zone
33. Electric Transmission Company
34. National Water and Sewers Institute

Notes to Annex 2

1. Land Transit and Transportation Agency

This Chapter does not cover the procurement of license plates or identification stickers for motor vehicles and bicycles.

Annex 3: Panama Canal Authority

1. This Chapter covers procurement by the Panama Canal Authority where the value of the procurement is estimated to equal or exceeds:
 - a. USD 624,000 for procurement of goods and services; and
 - b. for procurement of construction services: USD 12,000,000 for 12 years following the entry into force of this Agreement and USD 11,376,255 thereafter.
2. The monetary thresholds set out in paragraph 1 shall be adjusted in accordance with Annex 8.
3. Unless otherwise specified in this Annex, this Chapter covers all agencies subordinate to the Panama Canal Authority.

Notes to Annex 3

1. This Chapter does not cover procurement measures of the Panama Canal Authority designed to promote micro, small and medium enterprises (as defined in Annex 7), in accordance with the following:
 - a. the Panama Canal Authority may award Panamanian micro, small and medium enterprises a price preference that shall not exceed 10%;
 - b. further to Article 16.05, Panama shall notify Canada in writing of the establishment of a price preference program established in accordance with subparagraph (a); and
 - c. a price preference shall be clearly described in the notice of intended procurement or notice inviting suppliers to participate in the procurement and relevant tender documentation.
2. Notwithstanding any other provision of this Chapter, for each of the 12 full fiscal years following the entry into force of this Agreement, the Panama Canal Authority may at its discretion set aside from the obligations of this Chapter procurement contracts for goods, services, and construction services for Panamanian nationals or suppliers owned and controlled by Panamanian nationals, provided that in these fiscal years:
 - a. the total value of the Panama Canal Authority's procurement exceeds USD 200,000,000;

- b. the total value of the procurement contracts that are set aside does not exceed 10% of the total value of the Panama Canal Authority's procurement contracts for goods, services and construction services awarded in that fiscal year that:
 - i. are covered by the Chapter, and
 - ii. exceed the USD 200,000,000 base for the fiscal year; and
 - c. the total value of procurement contracts under any single CPC version 1.0 section that is set aside does not exceed 20% of the total value of the procurement contracts that may be set aside for that year.
 - 3. Where a procurement contract will be set aside pursuant to paragraph 2, the Panama Canal Authority shall clearly state that information in the notice of intended procurement or notice inviting suppliers to participate in the procurement and relevant tender documentation.
 - 4. If in any given fiscal year the total value of procurement contracts set aside by the Panama Canal Authority exceeds the level permitted under paragraph 2, the Parties in conjunction with the Panama Canal Authority shall consult with a view to agreeing on an adjustment in the form of a reduction of the set asides permitted for the following fiscal year.
 - 5. If the Panama Canal Authority proposes to extend the period during which set asides may be applied beyond the twelve-fiscal-year period established in paragraph 2, it shall inform the Parties during the ninth full fiscal year after the entry into force of this Agreement. The Parties, in conjunction with the Panama Canal Authority, shall consult regarding the proposal. If the Parties agree to extend the period, the Panama Canal Authority may continue to apply set asides in accordance with paragraph 2 for the additional period that the Parties agree.
 - 6. Panama shall prepare an annual report providing sufficient detail to establish that set asides have been applied in accordance with paragraph 2.
 - 7. The minimum forty-day time limit set out in Article 16.09(2) shall not apply to the Panama Canal Authority. The Panama Canal Authority shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. However, the Panama Canal Authority shall in no case provide for less than 5 business days from the date on which the notice of intended procurement is published on the Internet for the submission of tenders.
 - 8. Article 16.13(5) does not apply to the Panama Canal Authority.
 - 9. Notwithstanding Article 16.13(4), the Panama Canal Authority shall provide no less than 5 business days for suppliers to prepare and submit written challenges, with the understanding that the period shall commence on the first business day that follows the publication of the announcement of the contract award on the Internet.
 - 10. The procurements of the Panama Canal Authority are excluded from the application of Annex 22.03 (Dispute Settlement - Nullification or Impairment).

Annex 4: Goods

This Chapter applies to goods procured by the entities listed in Annex 1 through 3, subject to the Notes to the respective Annex and the General Notes.

Annex 5: Services

This Chapter does not cover the procurement of the following services, as elaborated in the United Nations Central Product Classification (CPC) ver. 1.0.

Code CPC version 1.0. Description

64 Land transport services

66 Air transport services

6751 Bus station services

6781 Travel agency and tour operator services

68111 Postal services related to letters

68112 Postal services related to parcels

68113 Post office counter services

68119 Other postal services

6911 Electricity transmission and distribution services

692 Water distribution services through mains

81 Research and development services

91 Public Administration and other Services to the Community as a whole;
Compulsory Social Security Services

92 Education Services

93 Health and Social services

9692 Gambling and Betting Services

D304 ADP Telecommunications and Transmission Services, except for those services classified as "enhanced or value-added services". For the purposes of this provision, the procurement of "ADP Telecommunications and Transmission Services" does not include the ownership or furnishing of facilities for the transmission of voice or data

D305 Teleprocessing and Timesharing Services

D316 Telecommunications Network Management Services

D317 Automated News Services, Data Services or Other Information Services

D399 Other ADP and Telecommunications Services

M Operation of Government-Owned Facilities

Annex 6: Construction Services

This Chapter covers all construction services except dredging services.

Annex 7: General Notes

1. This Chapter does not apply to:

- a. procurements made under the system of concessions granted by the State, other than public works concession contracts;
 - b. procurement measures designed to promote micro, small and medium enterprises, in accordance with the following:
 - i. a "micro, small and medium enterprise" is defined, for purposes of this Annex, as a business that has total annual sales of no more than USD 2,500,000,
 - ii. for a period of up to 5 years after the entry into force of this Agreement, or a longer period that the Joint Commission determines, the Republic of Panama may award its micro, small and medium enterprises a price preference that shall not exceed 10% in tenders covered by this Chapter,
 - iii. further to Article 16.05, Panama shall notify Canada of any price preference measure established in accordance with paragraph (ii),
 - iv. if, before the end of the five-year period established in subparagraph (ii), Panama requests an extension of the period, the Joint Commission shall discuss whether there is a need to extend the period during which price preferences may be applied, and, if it determines that there is such a need, to establish the terms and conditions of the extension,
 - v. if the *Trade Promotion Agreement between the United States and Panama* (TPA) enters into force at a later date than this Agreement, the five-year period established under subparagraph (ii) is extended so that it ends on the same date as the five-year period established under paragraph 1(b)(i) of Panama's Schedule to Section H of Annex 9.1 (Government Procurement) of the TPA,
 - vi. any price preference shall be clearly described in the notice of intended procurement or notice inviting suppliers to participate in the procurement and relevant tender documentation, and
 - vii. If following the entry into force of this Agreement, the Republic of Panama proposes to implement a procurement measure that is intended to provide an exclusive right for its micro, small and medium enterprises to provide a good or service covered by this Chapter, Panama shall notify such proposal to Canada and enter into consultations with Canada regarding the need, and any terms and conditions, for such a measure. The Republic of Panama may implement the measure subject to such terms and conditions as the Joint Commission may determine;
 - c. procurement of agricultural products linked to agricultural development and support and food aid programs;
 - d. procurement made by a Panamanian entity to another Panamanian entity; and
 - e. procurement of transportation services that form a part of, or are incidental to, a procurement contract.
2. The Notes in this Annex apply to this Chapter and all of the Annexes to the Panamanian Schedule.

Annex 8: Threshold Adjustment Formulas

1. The thresholds will be adjusted at two-year intervals, with each adjustment taking effect on January 1, beginning on January 1, 2012.
2. The thresholds for:
 - a. construction services procured by entities listed in Annex 1, and
 - b. goods and services procured by the entity listed in Annex 3,will be adjusted in accordance with the *WTO Agreement on Government Procurement* GPA/1, Annex 3. Canada shall notify Panama in writing of the adjusted threshold values in the applicable currencies in December of the year before the adjusted thresholds take effect.
3. The thresholds for:
 - a. goods and services procured by entities listed in Annex 1, and
 - b. goods, services and construction services procured by entities listed in Annex 2,will be adjusted in accordance with Annex 1001.1c of the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, done at Mexico, Ottawa and Washington on 17 December 1992 ("NAFTA"). Canada shall notify Panama in writing of the adjusted threshold values in the applicable currencies in December of the year before the adjusted thresholds take effect.
4. The thresholds for:
 - a. construction services procured by the entity listed in Annex 3 that are applicable the thirteenth year following the entry into force of this Agreement will:
 - i. if the TPA enters into force, be set at the thresholds established under Annex 9.1 (Government Procurement), Section D (Panama Canal Authority) of the TPA, and be adjusted under Section I (Threshold Adjustment Formula) of the TPA, or
 - ii. if the TPA has not entered into force, be adjusted in accordance with paragraph 3 of this Annex;
 - b. construction services in Annex 3, applicable for 12 years following the entry into force of this Agreement (USD 12,000,000), will not be adjusted.
5. If a major change in a currency used by a Party during a year creates a significant problem with regard to the application of the Chapter, the Joint Commission shall determine whether an interim adjustment is appropriate.
6. In the event that:
 - a. Canada withdraws from the *WTO Agreement on Government Procurement* pursuant to Article XXIV of that Agreement, or the NAFTA pursuant to Article 2205 of that Agreement,
 - b. the *WTO Agreement on Government Procurement* or the NAFTA is terminated, or
 - c. a threshold adjustment formula referenced in paragraphs 1, 2, 3 or 4 is altered,

the Committee on Procurement shall determine a suitable alternative threshold adjustment formula.

Annex 9 : Transitional Thresholds for Goods and Services Procured by Central Level Entities of Panama

Transitional Thresholds

1. For a transitional period of 3 years from the date of entry into force of this Agreement, Panama shall apply a threshold of SDR 95,000 for goods and services procured by entities listed in Annex 1.

Domestic Currency Adjustment

1. Panama shall adjust the transitional threshold value of this Annex based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs, published by the International Monetary Fund in its monthly "International Financial Statistics", for the two-year period ending September 30 of the year before the adjusted transitional thresholds take effect.

Adoption of Permanent Thresholds

1. At the end of the transitional period, Panama may adopt the thresholds in Annex 1 for goods and services.
2. If Panama is not able to adopt the thresholds in Annex 1 for goods and services procured by entities listed in Annex 1:
 - a. Panama shall notify Canada a minimum of 3 months before the end of the transitional period; and
 - b. the Parties shall adopt the threshold listed in paragraph 1 of this Annex.
3. The new thresholds adopted under paragraphs 3 or 4 will replace the thresholds for goods and services for Canada and Panama procured by entities in Annex 1, and the new adopted threshold values will be adjusted for Canada and Panama in accordance with Annex 8, paragraph 2 or 3 as appropriate.

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