

Chapter Nine

Government Procurement

Article 9.1: Scope and Coverage

1. This Chapter applies to any measure, including any act or guideline, of a Party regarding covered procurement.
2. For purposes of this Chapter, **covered procurement** means a procurement of goods, services, or both:
 - (a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;
 - (b) subject to the conditions specified in Annex 9.1;
 - (c) that is conducted by a procuring entity; and
 - (d) that is not excluded from coverage.
3. For greater certainty relating to the procurement of digital products as defined in Article 14.6 (Definitions):
 - (a) covered procurement includes the procurement of digital products; and
 - (b) no provision of Chapter Fourteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.
4. This Chapter does not apply to:
 - (a) non-contractual agreements or any form of assistance that a Party or a state enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to state, regional, or local governments, and purchases for the direct purpose of providing foreign assistance;
 - (b) purchases funded by loans or grants made to a Party, including an entity of a Party by a person, international entities, associations, or the other Party or a non-Party, to the extent that the conditions of such assistance are inconsistent with this Chapter;

- (c) acquisition of fiscal agency or depository services, liquidation, and management services for regulated financial institutions, and sale and distribution services for government debt;
 - (d) hiring of government employees and related employment measures;
 - (e) any good or service component of any contract that a procuring entity that is not listed in Sections A through C of Annex 9.1 awards; and
 - (f) purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by companies that normally are not suppliers, or disposals of assets of businesses in liquidation or receivership.
5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting any covered procurement.
6. Where a procuring entity awards a contract in a procurement that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.
7. No procuring entity may prepare, design, or otherwise structure or divide any procurement in order to avoid the obligations of this Chapter.
8. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

Article 9.2: General Principles

1. With respect to any measure covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party offering such goods and services, treatment no less favorable than the most favorable treatment the Party or procuring entity accords to its own goods, services, and suppliers.
2. With respect to any measure 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 on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.
3. Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

4. With respect to covered procurement, a procuring entity shall not seek, take account of, or impose offsets in any stage of a procurement.

5. Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges, other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing covered procurement.

Article 9.3: Publication of Procurement Measures

Each Party shall promptly:

- (a) publish any law or regulation, and any modification thereof, relating to procurement;
- (b) make publicly available any procedure, judicial decision, or administrative ruling of general application, relating to procurement; and
- (c) on request of the other Party, provide to that Party a copy of a procedure, judicial decision, or administrative ruling of general application, relating to procurement.

Article 9.4: Publication of Notice of Intended Procurement

1. Subject to Article 9.9.2, a procuring entity shall publish in advance a notice inviting interested suppliers to submit tenders for each covered procurement.

2. The information in each such notice shall include, at a minimum, an indication that the procurement is covered by this Chapter, a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, if applicable, any sum payable for the tender documentation, the time limits and address for submission of tenders, and the time for delivery of the goods or services being procured.

3. Each Party shall encourage its procuring entities to publish information regarding their future procurement plans as early as possible in each Party's fiscal year.

Article 9.5: Time Limits for the Tendering Process

1. A procuring entity shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. In no case shall a procuring entity provide less than 40 days from the date of publication of a notice of intended procurement to the final date for submission of tenders.

2. Notwithstanding paragraph 1, a procuring entity may establish a period for tendering that is less than 40 days, but in no case less than ten days, in the following circumstances:

- (a) where the procuring entity published a separate notice containing a description of the procurement, the approximate time limits for the submission of tenders or, where appropriate, conditions for participation in a procurement, and the address from which documents relating to the procurement may be obtained, at least 40 days and not more than 12 months before the final date for the submission of tenders;
- (b) where an entity procures commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or
- (c) where an unforeseen state of urgency that is duly substantiated by the procuring entity renders impracticable the time provided in paragraph 1.

Article 9.6: Tender Documentation

1. A procuring entity shall provide to interested suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the procuring entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.

2. A procuring entity may satisfy paragraph 1 by publishing the documentation by electronic means accessible to all interested suppliers. Where a procuring entity does not publish tender documentation by electronic means accessible to all interested suppliers, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

3. Where a procuring entity, in the course of a procurement, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:

- (a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in cases where the identities of suppliers participating are not known, in the same manner as the original information was transmitted; and
- (b) in adequate time to allow the suppliers to modify and re-submit their tenders, as appropriate.

Article 9.7: Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. A procuring entity shall prescribe any technical specifications, where appropriate:
 - (a) in terms of performance requirements rather than design or descriptive characteristics; and
 - (b) based on international standards, where applicable, otherwise on recognized national standards.
3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included 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 any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.
5. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:
 - (a) to promote the conservation of natural resources; or
 - (b) to require a supplier to comply with generally applicable laws regarding
 - (i) fundamental principles and rights at work; and
 - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the territory in which the good is produced or the service is performed.

Article 9.8: Requirements and Conditions for Participating in Procurement

1. Where a procuring entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation (“conditions for participation”) in order to participate in a procurement, the procuring entity shall publish a notice inviting suppliers to apply for registration or qualification, or to satisfy any other conditions for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.
2. Each procuring entity shall:

- (a) limit any conditions for participation in a procurement to those that are essential to ensure that the supplier has the legal, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;
- (b) recognize as qualified all suppliers of the other Party that have met the requisite conditions for participation; and
- (c) base qualification determinations solely on the conditions for participation that have been specified in advance in notices or tender documentation.

3. Procuring entities may establish publicly available lists of suppliers qualified to participate in procurements. Where a procuring entity requires suppliers to qualify for such a list as a condition for participation in a procurement, and a supplier that has not yet qualified applies for inclusion in the list, the procuring entity shall promptly start the qualification procedures and shall allow the supplier to submit a tender, if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation within the time period established for tendering.

4. No procuring entity may make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity of the Party of the procuring entity or that the supplier has prior work experience in the territory of a Party. A procuring entity shall evaluate the financial and technical abilities of a supplier on the basis of that supplier's business activity outside the territory of the Party of the procuring entity, as well as activity, if any, in the territory of the Party of the procuring entity.

5. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide a written explanation of the reasons for its action.

6. Nothing in this Article shall preclude a procuring entity from prohibiting a supplier from participating in a procurement on grounds such as bankruptcy or false declarations.

Article 9.9: Tendering Procedures

1. Subject to paragraph 2, a procuring entity shall award contracts by means of open tendering procedures.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by means other than an open tendering procedure in the following circumstances:

- (a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior notice of intended procurement or invitation to participate, including any conditions for participation, provided that the

requirements of the initial notice or invitation are not substantially modified;

- (b) where, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where 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) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (d) for goods purchased on a commodity market;
- (e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to this Chapter;
- (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or
- (g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party.

3. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 2, in a manner consistent with Article 9.11.3.

Article 9.10: Awarding of Contracts

1. A procuring entity shall require that, in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted, conform to the essential requirements of the tender documentation that the procuring entity provided in advance to all participating suppliers, and be from a supplier that has complied with any conditions for

participation that the procuring entity has communicated in advance to all participating suppliers.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to a supplier that the procuring entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

3. No procuring entity may cancel a procurement, or terminate or modify a contract it has awarded, in order to avoid the obligations of this Chapter.

Article 9.11: Information on Contract Awards

1. A procuring entity shall promptly inform participating suppliers of decisions on contract awards. A procuring entity shall, on request, provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender selected.

2. Promptly after awarding a contract in a covered procurement, a procuring entity shall publish a notice that includes at least the following information about the contract award:

- (a) the name of the entity;
- (b) a description of the goods or services included in the contract;
- (c) the name of the supplier awarded the contract;
- (d) the value of the contract award; and
- (e) where the entity did not use an open tendering procedure, an indication of the circumstances justifying the procedure used.

3. A procuring entity shall maintain records and reports relating to tendering procedures and contract awards in covered procurement, including the records and reports provided for in Article 9.9.3, for at least three years after the date a contract is awarded.

Article 9.12: Non-Disclosure of Information

1. A Party, its procuring entities, and its review authorities shall not disclose confidential information the disclosure of which would prejudice 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 the Party.

2. Nothing in this Chapter shall prevent a Party or its procuring entities from withholding the release of information where release might:

- (a) impede law enforcement;
- (b) prejudice fair competition between suppliers;
- (c) prejudice the legitimate commercial interests of particular suppliers or entities, including the protection of intellectual property; or
- (d) otherwise be contrary to the public interest.

Article 9.13: Ensuring Integrity in Procurement Practices

Further to Article 18.8 (Anti-Corruption Measures), each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On request of the other Party, a Party shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.14: Exceptions

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a 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.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 9.15: Domestic Review of Supplier Challenges

1. Each Party shall establish or designate at least one impartial administrative or judicial authority, which shall be independent from its procuring entities, to receive and review challenges that suppliers submit relating to the obligations of the Party and its entities under this Chapter and to make appropriate findings and recommendations. In the event that a body other than such an impartial authority initially reviews a supplier's challenge, the Party shall ensure

that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent from the procuring entity that is the subject of the challenge.

2. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded.

3. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

4. Each Party shall ensure that all documents related to a challenge to a procurement are available to any impartial authority established or designated under paragraph 1.

5. A procuring entity shall respond in writing to a supplier's complaint.

6. Each Party shall ensure that an impartial authority it establishes or designates under paragraph 1 provides to suppliers the following:

- (a) a sufficient period to prepare and submit written challenges, which in no case shall be less than ten days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- (b) an opportunity to review relevant documents and to be heard by the authority in a timely manner;
- (c) an opportunity to reply to the procuring entity's response to the supplier's complaint; and
- (d) prompt delivery in writing of its findings and recommendations relating to the challenge, with an explanation of the grounds for each decision.

7. Each Party shall ensure that a supplier's submission of a challenge does not prejudice the supplier's participation in ongoing or future procurements.

Article 9.16: Modifications and Rectifications to Coverage

1. A Party may make technical rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Section A through C of Annex 9.1, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments to the other Party.

2. A Party may modify its coverage under this Chapter provided that it:

- (a) notifies the other Party in writing and the other Party does not object in writing within 30 days after the notification; and
- (b) except as provided in paragraph 3, offers within 30 days after notifying the other Party acceptable compensatory adjustments to that Party to maintain a level of coverage comparable to that existing before the modification.

3. A Party need not provide compensatory adjustments in those circumstances where the proposed modification covers one or more procuring entities on which the Parties agree that government control or influence has been effectively eliminated. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Commission shall modify the relevant section of Annex 9.1 to reflect any agreed modification, technical rectification, or minor amendment.

Article 9.17: Definitions

For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangements, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contract, a procuring entity grants to the supplier, for a specified period, temporary ownership, if the Party permits such ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information;

offsets means conditions or undertakings imposed or considered by a procuring entity that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

open tendering procedure means any type of procurement method of a Party, except direct purchasing methods as specified in Article 9.9.2, provided these methods are consistent with this Chapter;

procuring entity means an entity listed in Annex 9.1;

publish means to disseminate information in an electronic or paper medium that is distributed

widely and is readily accessible to the general public;

services includes construction services, unless otherwise specified;

supplier means a person that has provided, provides, or could provide goods or services to a procuring entity; and

technical specification means a specification that sets out the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to be procured or their related operating methods, including the applicable administrative provisions, and requirements relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, or marking or labeling requirements, as they apply to a good, process, service, or production or operating method.

Annex 9.1

Government Procurement

Section A: Central Level of Government Entities

1. This Chapter applies to the entities of the central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section I, to equal or exceed:

- (a) for procurement of goods and services: US\$193,000; and
- (b) for procurement of construction services: US\$7,407,000.

The monetary thresholds set out in this paragraph shall be adjusted in accordance with Section I of this Annex.

2. Unless otherwise specified herein, this Chapter covers all agencies subordinate to the entities listed in each Party's Schedule in this Section.

Schedule of Panama

- 1. *Asamblea Legislativa*
- 2. *Contraloría General de la República*
- 3. *Ministerio de Comercio e Industrias*
- 4. *Ministerio de Desarrollo Agropecuario* (Note 1)
- 5. *Ministerio de Economía y Finanzas*
- 6. *Ministerio de Educación* (Note 2)
- 7. *Ministerio de Gobierno y Justicia* (Note 3)
- 8. *Ministerio de Desarrollo Social*
- 9. *Ministerio de Obras Públicas*
- 10. *Ministerio de la Presidencia* (Notes 3 and 4)
- 11. *Ministerio de Relaciones Exteriores*
- 12. *Ministerio de Salud* (Note 5)
- 13. *Ministerio de Trabajo y Desarrollo Laboral*
- 14. *Ministerio de Vivienda*
- 15. *Ministerio Público* (Note 6)
- 16. *Órgano Judicial*

Notes to the Schedule of Panama

1. *Ministerio de Desarrollo Agropecuario*: This Chapter does not cover the procurement of agricultural products linked to agricultural development and support and food aid programs.

2. Ministerio de Educación: This Chapter does not cover the procurement of goods classified under Divisions of the United Nations Central Product Classification 1.0 (CPC version 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.

3. Ministerio de Gobierno y Justicia and Ministerio de la Presidencia: This Chapter does not cover the procurement of goods and services, listed below, by or on behalf of the *Policía Nacional, Servicio Aéreo Nacional, Servicio Marítimo Nacional, Dirección Institucional en Asuntos de Seguridad Pública, and Departamento Nacional de Corrección* of the *Ministerio de Gobierno y Justicia*, or the *Servicio de Protección Institucional* of the *Ministerio de la Presidencia*:

(a) goods classified under the following Divisions and Groups of the CPC version 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, trailers and semi-trailers; parts and accessories thereof
- 496 Aircraft and spacecraft, and parts thereof;

(b) the procurement of food serving services (hot meals).

4. Ministerio de la Presidencia: This Chapter does not cover the procurement of goods and services by, or on behalf of the *Secretaría del Consejo de Seguridad Pública, the Defensa Nacional, or the Fondo de Inversión Social*.

5. Ministerio de Salud: This Chapter does not cover the following:

- (a) procurement made in furtherance of public health protection programs, including treatment of HIV/AIDS, tuberculosis, malaria, meningitis, Chagas disease, Leishmaniasis, or other epidemics; or
- (b) 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, hepatitis B, Haemophilus influenza type b, and yellow fever that are purchased through or from a not-for-profit international organization such as WHO and UNICEF, pursuant to an agreement or arrangement.

6. *Ministerio Público*: This Chapter does not cover the procurement of goods and services listed below by or on behalf of the *Policía Técnica Judicial*:

- (a) goods classified under the following Divisions and Groups of the CPC version 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, trailers and semi-trailers; parts and accessories thereof; and
- (b) the procurement of food serving services (hot meals).

7. This Chapter does not cover procurement for the issuance of currency, coinage, tax or postage stamps.

Schedule of the United States

- 1. Advisory Commission on Intergovernmental Relations
- 2. African Development Foundation
- 3. Alaska Natural Gas Transportation System
- 4. American Battle Monuments Commission
- 5. Appalachian Regional Commission
- 6. Broadcasting Board of Governors
- 7. Commission on Civil Rights
- 8. Commission of Fine Arts
- 9. Commodity Futures Trading Commission
- 10. Consumer Product Safety Commission
- 11. Corporation for National and Community Service
- 12. Delaware River Basin Commission

13. Department of Agriculture (*Note 1*)
14. Department of Commerce (*Note 2*)
15. Department of Defense (*Note 3*)
16. Department of Education
17. Department of Energy (*Note 4*)
18. Department of Health and Human Services
19. Department of Homeland Security (*Note 5*)
20. Department of Housing and Urban Development
21. Department of the Interior, including the Bureau of Reclamation
22. Department of Justice
23. Department of Labor
24. Department of State
25. Department of Transportation (*Note 6*)
26. Department of the Treasury
27. Department of Veterans Affairs
28. Environmental Protection Agency
29. Equal Employment Opportunity Commission
30. Executive Office of the President
31. Export-Import Bank of the United States
32. Farm Credit Administration
33. Federal Communications Commission
34. Federal Crop Insurance Corporation
35. Federal Deposit Insurance Corporation
36. Federal Election Commission
37. Federal Home Loan Mortgage Corporation
38. Federal Housing Finance Board
39. Federal Maritime Commission
40. Federal Mediation and Conciliation Service
41. Federal Mine Safety and Health Review Commission
42. Federal Prison Industries, Inc.
43. Federal Reserve System
44. Federal Retirement Thrift Investment Board
45. Federal Trade Commission
46. General Services Administration (*Note 7*)
47. Government National Mortgage Association
48. Holocaust Memorial Council
49. Inter-American Foundation
50. Merit Systems Protection Board
51. National Aeronautics and Space Administration (NASA)
52. National Archives and Records Administration
53. National Capital Planning Commission
54. National Commission on Libraries and Information Science
55. National Council on Disability
56. National Credit Union Administration

57. National Foundation on the Arts and Humanities
58. National Labor Relations Board
59. National Mediation Board
60. National Science Foundation
61. National Transportation Safety Board
62. Nuclear Regulatory Commission
63. Occupational Safety and Health Review Commission
64. Office of Government Ethics
65. Office of the Nuclear Waste Negotiator
66. Office of Personnel Management
67. Office of Special Counsel
68. Office of Thrift Supervision
69. Overseas Private Investment Corporation
70. Peace Corps
71. Railroad Retirement Board
72. Securities and Exchange Commission
73. Selective Service System
74. Small Business Administration
75. Smithsonian Institution
76. Susquehanna River Basin Commission
77. United States Agency for International Development (*Note 8*)
78. United States International Trade Commission

Notes to the Schedule of the United States

1. Department of Agriculture: The Chapter does not cover the procurement of agricultural goods made in furtherance of agricultural support programs or human feeding programs.
2. Department of Commerce: This Chapter does not cover shipbuilding activities of the U.S. National Oceanic and Atmospheric Administration (NOAA).
3. Department of Defense:
 - (a) This Chapter does not cover the procurement of the goods listed below (*for complete listing of U.S. Federal Supply Classification, see <http://www.fedbizopps.gov/classCodes1.html>*):
 - (i) FSC 11 Nuclear Ordnance
 - FSC 18 Space Vehicles
 - FSC 19 Ships, Small Craft, Pontoons, and Floating Docks (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)

FSC 20	Ship and Marine Equipment (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 2310	Passenger Motor Vehicles (only Buses)
FSC 2350	Combat, Assault & Tactical Vehicles, Tracked
FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 60	Fiber Optics Materials, Components, Assemblies, and Accessories
FSC 8140	Ammunition & Nuclear Ordnance Boxes, Packages & Special Containers
FSC 83	Textiles, Leather, Furs, Apparel, Shoes, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstuffs, flagpoles and flagstaff trucks)
FSC 84	Clothing, Individual Equipment, and Insignia (all elements other than sub-class 8460 - luggage)
FSC 89	Subsistence (all elements other than sub-class 8975-tobacco products)

- (ii) “Specialty 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 the Department of Defense: (1) manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, 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; and

- (b) The goods in the following FSC categories are not generally covered by this Chapter due to application of Article 21.2 (Essential Security):

FSC 10	Weapons
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aircraft and Airframe Structural Components
FSC 16	Aircraft Components and Accessories
FSC 17	Aircraft Launching, Landing, and Ground Handling Equipment
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks
FSC 20	Ship and Marine Equipment

FSC 28	Engines, Turbines, and Components
FSC 31	Bearings
FSC 58	Communications, Detection, and Coherent Radiation
FSC 59	Electrical and Electronic Equipment Components
FSC 95	Metal Bars, Sheets, and Shapes

4. Department of Energy: This Chapter does not cover national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the *Atomic Energy Act*, or oil purchases related to the Strategic Petroleum Reserve.

5. Department of Homeland Security:

- (a) This Chapter does not cover procurement by the Transportation Security Administration.
- (b) The national security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard.

6. Department of Transportation: This Chapter does not cover procurement by the Federal Aviation Administration.

7. General Services Administration: This Chapter does not cover procurement of the goods in the following FSC categories:

FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 7340	Cutlery and Flatware

Section B: Sub-Central Level of Government Entities

1. This Chapter applies to the entities of the sub-central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section I, to equal or exceed:

- (a) for procurement of goods and services: US \$526,000; and
- (b) for procurement of construction services: US \$7,407,000.

The monetary thresholds set out in this paragraph shall be adjusted in accordance with Section I of this Annex.

2. Within two years after the entry into force of this Agreement, the Parties shall consider and, if appropriate, address any issues that have arisen with regard to the implementation of the denial of benefits provisions in each Party's Schedule to this Section.
3. For a period of one year following the entry into force of this Agreement, the Parties shall continue to consult with their respective sub-central entities with a view to obtaining commitments from such entities, on a voluntary and reciprocal basis, to cover their procurement under this Chapter.
4. For purposes of this Section:
 - (a) **participating state** means a state listed in the Schedule of the United States;
 - (b) **participating unit** means a sub-central government unit listed in the Schedule of Panama; and
 - (c) **principal place of business** means the headquarters or main office of an enterprise, or any other place where the enterprise's business is managed, conducted, or operated.

Schedule of Panama

Province	District
Bocas del Toro	Bocas del Toro Chiriquí Grande Changuinola
Coclé	Aguadulce Antón La Pintada Natá Olá Penonomé
Colón	Colón Chagres Donoso Portobelo Santa Isabel
Chiriquí	Alanje Barú Boquerón

	Boquete Bugaba David Dolega Gualaca Remedios Renacimiento San Lorenzo Tolé San Félix
Darién	Chepigana Pinogana
Herrera	Chitré Las Minas Los Pozos Ocú Parita Pesé Santa María
Los Santos	Guararé Las Tablas Los Santos Macaracas Pedasí Pocrí Tonosí
Panamá	Arraiján Balboa Capira Chame Chepo Chimán La Chorrera Panamá San Carlos San Miguelito Taboga
Veraguas	Atalaya Calobre

	Cañazas
	La Mesa
	Las Palmas
	Montijo
	Río De Jesús
	San Francisco
	Santa Fé
	Santiago
	Soná
	Mariato
Comarca Emberá	Cémaco
	Sambú
Comarca Ngobe	Nurum
Bugle	Kankintú
	Besiko
	Mirono
	Kusapin
	Muna
	Nole Duima

Notes to the Schedule of Panama

1. A participating unit may deny the benefits of this Section to a supplier of the United States unless the supplier meets one or more of the conditions set out in subparagraphs (a) through (c).

(a) Procurement of Goods:

- (i) The supplier is offering to supply a good of the United States, as determined under Article 9.2.3, and has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or
- (ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating states. A good shall be considered to be substantially produced or assembled in a participating state or states if the production or assembly in the participating state or states accounts for 51 percent or more of the value of the good.

(b) Procurement of Services Other Than Construction Services:

- (i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or
- (ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating state or states. A service, other than a construction service, shall be considered to be substantially performed in a participating state or states if the performance of the service in the participating state or states accounts for 51 percent or more of the value of the service.

(c) Procurement of Construction Services:

The supplier is offering to supply construction services, the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state.

2. A participating unit shall allow a supplier to self-certify that it meets the conditions set out in paragraph 1. If the participating unit considers the certification to be erroneous or unsubstantiated, it shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.15.

Schedule of the United States

Arkansas

Executive branch agencies, including universities

This Chapter does not cover procurement by the Office of Fish and Game or construction services.

Colorado

Executive branch agencies

Florida*

Executive branch agencies

Illinois*

Department of Central Management Services

Mississippi

Department of Finance and Administration

For the entity listed for Mississippi, this Chapter does not cover the procurement of services.

New York*

State agencies

State university system

Public authorities and public benefit corporations

1. For the entities listed for New York, this Chapter does not cover public authorities and public benefit corporations with multi-state mandates.
2. For the entities listed for New York, this Chapter does not cover the procurement of transit cars, buses, or related equipment.

Puerto Rico

Department of State

Department of Justice

Department of the Treasury

Department of Economic Development and Commerce

Department of Labor and Human Resources

Department of Natural and Environmental Resources

Department of Consumer Affairs

Department of Sports and Recreation

For the entities listed for Puerto Rico, this Chapter does not cover the procurement of construction services.

Texas

Texas Building and Procurement Commission

For the entity listed for Texas, this Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; or (3) rubberized asphalt paving made from scrap tires by a Texas facility.

Utah

Executive branch agencies

Notes to the Schedule of the United States

1. For the states marked by an asterisk (*), indicating pre-existing restrictions, this Chapter does not cover the procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.
2. This Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.
3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.

4. This Chapter does not cover any procurement made by a covered entity on behalf of non-covered entities at a different level of government.

5. This Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.

6. This Chapter does not apply to the procurement of printing services.

7. A procuring entity of a participating state may deny the benefits of this Section to a supplier of Panama unless the supplier meets one or more of the conditions set out in subparagraphs (a) through (c).

(a) Procurement of Goods:

- (i) The supplier is offering to supply a good of Panama, as determined under Article 9.2.3, and has a principal place of business in a participating unit or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating unit; or
- (ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating units. A good shall be considered to be substantially produced or assembled in a participating unit or units if the production or assembly in the participating unit or units accounts for 51 percent or more of the value of the good.

(b) Procurement of Services Other Than Construction Services:

- (i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating unit or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating unit; or
- (ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating unit or units. A service, other than a construction service, shall be considered to be substantially performed in a participating unit or units if the performance of the service in the participating unit or units accounts for 51 percent or more of the value of the service.

(c) Procurement of Construction Services:

The supplier is offering to supply construction services, and the supplier has a principal place of business in a participating unit or is directly or indirectly owned

or controlled by an enterprise with a principal place of business in a participating unit.

8. A procuring entity of a participating state shall allow a supplier to self-certify that it meets the conditions set out in paragraph 7. If the procuring entity of a participating state considers the certification to be erroneous or unsubstantiated, the procuring entity shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.15.

Section C: Other Government Entities

1. This Chapter applies to the other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section I, to equal or exceed:

- (a) for procurement of goods and services:
 - (i) by List A entities: US\$250,000; or
 - (ii) by List B entities: US\$593,000; and
- (b) for procurement of construction services for List A and List B entities: US\$7,407,000.

The monetary thresholds set out in subparagraphs (a)(ii) and (b) shall be adjusted in accordance with Section I of this Annex.

2. Unless otherwise specified, this Chapter covers all agencies subordinate to the entities listed in each Party's Schedule.

Schedule of Panama

List A:

1. *Autoridad de Aeronáutica Civil*
2. *Autoridad de la Micro Pequeña y Mediana Empresa*
3. *Autoridad del Tránsito y Transporte Terrestre (Note 1)*
4. *Autoridad Marítima de Panamá*
5. *Autoridad Nacional del Ambiente*
6. *Banco de Desarrollo Agropecuario*
7. *Bingos Nacionales*
8. *Autoridad de Protección al Consumidor y Defensa de la Competencia*
9. *Comisión Nacional de Valores*
10. *Defensoría del Pueblo*

11. *Autoridad Nacional de los Servicios Públicos*
12. *Instituto de Investigación Agropecuaria*
13. *Instituto de Mercadeo Agropecuario*
14. *Instituto de Seguro Agropecuario*
15. *Instituto Nacional de Cultura*
16. *Instituto Nacional de Deportes*
17. *Instituto Nacional de Formación Profesional y Capacitación para el Desarrollo Humano*
18. *Instituto Panameño Autónomo Cooperativo*
19. *Instituto Panameño de Rehabilitación Especial*
20. *Instituto Panameño de Turismo*
21. *Instituto para la Formación y Aprovechamiento de Recursos Humanos*
22. *Registro Público de Panamá*
23. *Sistema de Ahorro y Capitalización de Pensiones (SIACAP)*
24. *Superintendencia de Bancos*
25. *Universidad Autónoma de Chiriquí*
26. *Universidad Especializada de las Américas*
27. *Universidad Tecnológica de Panamá*
28. *Zona Libre de Colón*
29. *Empresa de Transmisión Eléctrica*
30. *Instituto de Acueductos y Alcantarillados Nacionales*

Notes to the Schedule of Panama

1. *Autoridad del Tránsito y Transporte Terrestre*: This Chapter does not cover: the procurement of license plates or registration stickers for motor vehicles and bicycles.

Schedule of the United States

List A:

1. Tennessee Valley Authority
2. Bonneville Power Administration
3. Western Area Power Administration
4. Southeastern Power Administration
5. Southwestern Power Administration
6. St. Lawrence Seaway Development Corporation

List B:

Rural Utilities Service (Note 1)

Notes to the Schedule of the United States

1. The Rural Utilities Service shall waive federal buy national requirements imposed as conditions of funding for all power generation projects.

For greater certainty, this Chapter does not apply to any other aspect of procurement by the Rural Utilities Service, including any restrictions the Rural Utilities Service places on financing for telecommunications projects.

2. With respect to procurement by entities listed in this Section, this Chapter does not apply to restrictions attached to Federal funds for airport projects.

Section D: *Autoridad del Canal de Panamá*

This Chapter applies to procurements by the *Autoridad del Canal de Panamá* where the value of the procurement is estimated, in accordance with Section I of this Annex, to equal or exceed:

- (a) for procurement of goods and services: US\$593,000; and
- (b) for procurement of construction services: US\$12,000,000 for 12 years after the entry into force of this Agreement, and US\$10,300,000 thereafter.

The monetary thresholds set out in this paragraph shall be adjusted in accordance with Section I of this Annex.

Unless otherwise specified in this Section, this Chapter covers all agencies subordinate to this entity.

Notes to this Section

1. This Chapter does not apply to procurement measures of the *Autoridad del Canal de Panamá* designed to promote micro, small, and medium enterprises (as defined in Section H of this Annex), in accordance with the following:

- (a) The *Autoridad del Canal de Panamá* may award Panamanian micro, small, and medium enterprises a price preference that shall not exceed ten percent;
- (b) Further to Article 9.3, Panama shall notify the United States of the establishment of any price preference program established in accordance with subparagraph (a); and
- (c) 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.

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 *Autoridad del Canal de Panamá* 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 each such fiscal year:

- (a) the total value of the *Autoridad del Canal de Panamá*'s procurement exceeds US\$200 million;
- (b) the total value of the procurement contracts that are set aside does not exceed ten percent of the total value of the *Autoridad del Canal de Panamá*'s procurement contracts for goods, services, and construction services awarded in that fiscal year that are:
 - (i) otherwise covered by the Chapter; and
 - (ii) in excess of the US\$200 million 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 percent 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 *Autoridad del Canal de Panamá* 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 *Autoridad del Canal de Panamá* exceeds the level permitted under paragraph 2, the Parties, in conjunction with the *Autoridad del Canal de Panamá*, shall consult with a view to agreeing on an adjustment in the form of a reduction of the set asides permitted during the following fiscal year.

5. If the *Autoridad del Canal de Panamá* proposes to extend the period during which set asides may be applied beyond the 12-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 *Autoridad del Canal de Panamá*, shall consult regarding the proposal. If the Parties agree to extend the period, the *Autoridad del Canal de Panamá* 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 that provides sufficient detail to establish that set asides have been applied in accordance with paragraph 2.

7. The minimum 40-day time period set out in Article 9.5.1 shall not apply to the *Autoridad del Canal de Panamá*. The *Autoridad del Canal de Panamá* shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of

the procurement. However, the *Autoridad del Canal de Panamá* shall in no case provide for less than five business days from the date on which the notice of intended procurement is published on the Internet to the final date for the submission of tenders.

8. Article 9.15.2 shall not apply to the *Autoridad del Canal de Panamá*.

9. Notwithstanding Article 9.15.6(a), the *Autoridad del Canal de Panamá* shall provide no less than five 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 *Autoridad del Canal de Panamá* shall be excluded from the application of Annex 20.2 (Nullification or Impairment).

Section E: Goods

This Chapter applies to all goods procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections and the General Notes.

Section F: Services

This Chapter applies to all services procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section, except for the services excluded in the Schedules of each Party. All services covered by this Section are subject to the existing measures listed in each Party's Schedule to Annex I.

Schedule of Panama

This Chapter does not cover the procurement of the following services, as elaborated in the CPC version 1.0 and the Common Classification System.

Code	CPC version 1.0./Common Classification System 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

Notes to the Schedule of Panama

Exceptions to coverage set forth in Section G of this Annex apply to this Section.

Schedule of the United States

This Chapter does not cover the procurement of the following services, as elaborated in the Common Classification System (*for complete listing of Common Classification System, see <http://www.sice.oas.org/trade/nafta/chap-105.asp>*):

A. Research and Development

All classes

D. Information Processing and Related Telecommunications 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 services.

D305 ADP 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

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

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

J998 Non-nuclear Ship Repair

M. Operation of Government-Owned Facilities: All facilities operated by the Department of Defense, Department of Energy and the National Aeronautics and Space Administration; and for all entities:

M180 Research and Development facilities

S. Utilities: All Classes

V. Transportation, Travel and Relocation Services: All Classes except V503 Travel Agent Services

Notes to the Schedule of the United States

This Chapter does not cover the procurement of any service in support of military forces overseas.

Section G: Construction Services

This Chapter applies to all construction services procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections and the General Notes. All services covered by this Section are subject to the existing measures listed in each Party's Schedule to Annex I.

Schedule of Panama

This Chapter does not cover the procurement of dredging services.

Schedule of the United States

This Chapter does not cover the procurement of dredging services.

Section H: General Notes

Unless otherwise specified herein, the General Notes in each Party's Schedule to this Section apply without exception to this Chapter, including to all sections of this Annex.

Schedule of Panama

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) For a period of up to five years after the entry into force of this Agreement, Panama may award its micro, small, and medium enterprises a price preference that shall not exceed ten percent;
 - (ii) Further to Article 9.3, Panama shall notify the United States of any price preference program established in accordance with subparagraph (b);
 - (iii) 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;
 - (iv) If, before the end of the five-year period established in subparagraph (a), Panama requests an extension of the period, the Parties shall consult to determine whether there is a need to extend the period during which price

preferences may be applied, and if they agree that there is such a need, to determine the terms and conditions of the extension; and

- (v) If, following the entry into force of this Agreement, Panama proposes to implement any procurement measure 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 the United States and enter into consultations with the United States regarding the need, and any terms and conditions, for such a measure. Panama may implement the measure subject to such terms and conditions as the Parties may agree.
- (c) Procurements of agricultural products linked to agricultural development and support and food aid programs.
- (d) Procurements by one Panamanian entity of a good or service from another Panamanian entity.
- (e) Procurement of transportation services that form a part of, or are incidental to, a procurement contract.

2. The term **micro, small, and medium enterprise** means a business that has 100 or fewer employees and total annual sales of no more than US\$2,500,000.

Schedule of the United States

1. This Chapter does not apply to set asides on behalf of small or minority businesses. Set-asides include any form of preference, such as the exclusive right to provide a good or service and price preferences.

2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

Section I: Threshold Adjustment Formula

1. In calculating the value of a contract for the purpose of ascertaining whether a procurement is covered by this Chapter, a procuring entity shall include the maximum total estimated value of the procurement over its entire duration, taking into account all options, premiums, fees, commissions, interest, and other revenue streams, or other forms of remuneration provided for in such contracts.

2. The thresholds in Sections A through D shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2008.

3. The thresholds for goods and services for Sections A, B, and D entities, List B entities in Section C, and construction services for Sections A through C are conversions into U.S. dollars of the thresholds listed in the U.S. Appendix 1 to the World Trade Organization Agreement on Government Procurement, which are set out in Special Drawing Rights (SDRs) and listed below. Every two years, the United States shall calculate the adjustment of these thresholds, based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs published by the IMF in its monthly “International Financial Statistics,” for the two-year period preceding October 1 or November 1 of the year before the adjusted thresholds are to take effect:

- (a) 130,000 SDRs for goods and services for Section A entities;
- (b) 355,000 SDRs for goods and services for Section B entities;
- (c) 400,000 SDRs for goods and services for Section C, List B entities and the Section D entity; and
- (d) 5 million SDRs for construction services.

4. With regard to the US\$10,300,000 threshold for construction services in Section D, the United States shall calculate the U.S. dollar value for the threshold every two years, based on the U.S. inflation rate measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics, using the two-year period that ends on October 31 in the year prior to the adjustment taking effect, and using the following formula:

$$T_0 \times (1 + \pi_i) = T_1$$

T_0 = threshold value at base period;

π_i = accumulated U.S. inflation rate for the i^{th} two year-period; and

T_1 = new threshold value.

The US\$12,000,000 threshold for construction services in Section D shall not be adjusted.

5. The United States shall notify Panama of the adjusted threshold values by December 15 of the year before the adjusted thresholds take effect.

Section J: Transition Mechanisms

Panama shall make best efforts to comply with the obligations listed in its Schedule to this Section during the two years following the date of entry into force of this Agreement. The Notes to Panama’s Schedule shall apply during this two-year period. Thereafter, Panama shall fully comply with the obligations listed in its Schedule to this Section.

Schedule of Panama

1. Article 9.5.1 (40-day time limit for the tendering process) (Note 1)
2. Article 9.13 (establishment and maintenance of procedures that declare a supplier ineligible for participation) (Note 2)

Notes

1. Article 9.5.1: For the tendering process set out in Article 9.5.1, Panama shall provide at least 30 days for suppliers to submit tenders following the publication of the notice of intended procurement.
2. Article 9.13: Panama shall not adopt any measure that weakens its current practice with respect to Article 9.13.