

meaning of the Financial Administration Act (Canada), a Crown Corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.

2. For the purposes of paragraphs 2 and 3 of Article 1306 “state enterprise”, with respect to Colombia, means an enterprise that is owned, or controlled through ownership interests, by a Party, except the “Monopolios Rentísticos” of the level “departamental” referred to in Article 336 of the Colombian Constitution.

Chapter Fourteen – Government Procurement

Article 1401: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1401:

- a. By any contractual means, including purchase and rental or lease, with or without an option to buy;

- b. For which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1401; and
- c. Subject to the terms of Annex 1401.

2. This Chapter does not apply to:

- a. Non-contractual agreements or any form of assistance that a Party, including a state enterprise, provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;
- b. Government provision of goods or services to persons or to sub-national governments;
- c. Purchases for the direct purpose of providing foreign assistance;
- d. Purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;
- e. The procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities. For greater certainty, this

Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

- i. The incurring of public indebtedness; or*
- ii. Public debt management;*
- f. Hiring of government employees and related employment measures; or*
- g. Procurements made by an entity or state enterprise from another entity or state enterprise of that Party.*

3. 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.

4. Where a procuring entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

Valuation

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

- a. *Neither divide a procurement into separate procurements nor 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. *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:*
 - i. *Premiums, fees, commissions, and interest; and*
 - ii. *Where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and*
- c. *Where 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, base its calculation of the total maximum value of the procurement over its entire duration.*

Article 1402: Security and General Exceptions

1. *Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers*

necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent 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 persons with disabilities, philanthropic institutions, or prison labour.*

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

Article 1403: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party of such goods or services, treatment no less favourable than the most favourable treatment the Party accords to domestic goods, services and suppliers.

2. With respect to any 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 goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Conduct of Procurement

3. 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

4. A procuring entity shall use open tendering except where subparagraphs 6 through 9 of Article 1406 or Article 1409 apply.

Rules of Origin

5. With regard to the procurement of goods covered by this Chapter, each Party shall apply the rules of origin that it applies in the normal course of trade to those goods.

Offsets

6. 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

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing procurement covered by this Chapter.

Article 1404: Publication of Procurement Information

Each Party shall:

- a. *Promptly publish any law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and*
- b. *Provide an explanation thereof to the other Party, on request.*

Article 1405: 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 (“notice of intended procurement”), or where appropriate, a notice inviting applications for participation in the procurement. Any such notice shall be published 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 shall include:

- a. A description of the procurement, including the nature, and where known, the quantity of the goods or services 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 all relevant documents relating to the procurement, and 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 goods or services to be procured or the duration of the contract;*
- g. where, pursuant to Article 1406, 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

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 1406: Conditions for Participation;

General Requirements

1. Where a Party, including its procuring entities, requires suppliers to satisfy registration, qualification or any other requirements 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 for the procuring entity to evaluate and make its determination based on such applications.

2. A procuring entity shall limit any 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 capacities and the commercial and technical abilities 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 one or more contracts by a procuring entity of a Party; and
- b. May require relevant prior experience where essential to meet the requirements of the procurement.

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

- a. Shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

- b. Shall 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 Party, including its procuring entities, shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

Multi-use Lists

6. 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.

7. The notice provided for in paragraph 6 shall include:

- a. A description of the goods or services, or categories 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 a supplier's satisfaction of the conditions;

- c. The name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - d. The period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of the list; and
 - e. An indication that the list may be used for procurement covered by this Chapter.
8. 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

9. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:
- a. Publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the

entity to evaluate, and make its determinations based on, such applications; and

- b. 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 the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity Decisions

10. A procuring entity shall promptly inform any 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.

11. Where a procuring entity rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the 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.

12. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- a. Bankruptcy;
- b. False declarations; or
- c. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.

13. Procuring entities of each Party shall not adopt or maintain any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Article 1407: Technical Specifications and Tender Documentation

Technical Specifications

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

2. In prescribing the technical specifications for the goods or services 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 international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.
- c. A procuring entity shall not prescribe technical specifications that require or refer 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 requirements and provided that, in such cases, the 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 any technical specification for a specific procurement covered by this Chapter from a person that may have a commercial interest in the procurement.

5. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical

specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

6. 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, such documentation shall include a complete description of:

- a. The procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;*
- b. Any conditions for participation of suppliers, 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, except where price is the sole criterion, the relative importance of such criteria;*

- 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.
- f. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the 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

8. Where a procuring entity, prior to the award of a contract, 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 all such modifications, 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 such 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 such suppliers to modify and submit amended tenders, as appropriate.

Article 1408: 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

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders shall not be 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 entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

3. A procuring entity may reduce by five 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.

4. 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 and is in no case less than 10 days before the final date for the submission of tenders, where:

- a. The procuring entity published a separate notice containing the information specified in paragraph 3 of Article 1405 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, where applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

- b. *In the case of the second or subsequent publications of notices for procurement of a recurring nature;*
- c. *The procuring entity procures commercial goods or services; or*
- d. *A state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2, or where applicable, paragraph 3.*

Article 1409: 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 or suppliers of its choice and may choose not to apply Articles 1405, 1406, 1407, 1408 and 1410 in any of the following circumstances:

- a. *Where 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. *Where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:*
 - i. *The requirement is for a work of art,*
 - ii. *The protection of patents, copyrights or other exclusive rights, or*
 - iii. *Due to an absence of competition for technical reasons;*
- c. *For additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods and services:*
 - i. *Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, and*
 - ii. *Would cause significant inconvenience or substantial duplication of costs to the procuring entity;*
- 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. 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 it is strictly necessary for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time using an open or selective tendering procedure;
- g. Where a contract is awarded to a winner of a design contest provided that:
 - i. The contest has been organized in a manner that is consistent with the principles of this 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. Where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and
- i. For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers.

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 goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 1410: 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. Where 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 entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. 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.
5. 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 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.

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

7. 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 1411, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 72 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes, at a minimum, the following information about the contract:

- a. The name and address of the procuring entity;
- b. A description of the goods or services procured;
- c. The date of award;
- d. The name and address of the successful supplier;

- e. The contract value; and
- f. The procurement method used and, in cases where a procedure has been used pursuant to paragraph 1 of Article 1409, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in paragraph 2 of Article 1409, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 1411: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall provide promptly any 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 any supplier, except after consultation with, and consent of, the Party that provided the information.

Non-Disclosure of Information

2. 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.

3. A Party, including its procuring entities, authorities, and review bodies, are not required under this Chapter to release confidential information where 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 1412: Domestic Review Procedures

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.

2. 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 by suppliers (“challenge”) arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.

3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be 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 shall:
 - i. Have the right to be heard prior to a decision of the review body being made on the challenge,

- ii. Have the right to be represented and accompanied,
- iii. Have access to all challenge proceedings,
- iv. Have the right to request that the proceedings take place in public and that witnesses may be presented;
- v. Decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 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 2 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in 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. Where 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 1413: Modifications and Rectifications to Coverage

1. Where a Party modifies its coverage of procurement under 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.

2. Notwithstanding subparagraph 1(b), a Party need not provide compensatory adjustments where:

- a. The modification in question is a minor amendment 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.

3. If the other Party does not agree that:

- a. An adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;
- b. The proposed modification is a minor amendment or a rectification under subparagraph 2(a); or
- c. The proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),
- d. It must object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Chapter Twenty-One (Dispute Settlement).

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, they shall give effect to the agreement by modifying forthwith the relevant Annex.

Article 1414: 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.

Article 1415: Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that contains different procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party, the Parties shall enter into negotiations with a view to harmonising this Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided under this Chapter, including with respect to provincial, territorial or local government procurement, on the request of either Party, the Parties may agree to enter into negotiations with a view to achieving an equivalent level of market access under this Chapter as is contained in the other international agreement.

Article 1416: Information technology

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

Article 1417: Definitions

For purposes of this Chapter:

***Commercial goods or services** means goods or services 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 any registration, qualification or other pre-requisites for participation in a procurement;*

***Construction services** means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary 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. 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, a tender, or both;

Offsets means any 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 and 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 goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

Procuring entity means an entity listed in Annex 1401-1 or 1401-2;

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

Services includes construction services, unless otherwise specified;

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

Supplier means a person or group of persons that provides or could provide goods or services to a procuring entity; and

Technical specification means a tendering requirement that:

- a. *Lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision, or*
- b. *Addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.*

Annex 1401

Annex 1401-1 Central Level Entities

Schedule of Canada

Thresholds \$ Cdn 76,500 - **Goods** covered in Annex 1401-3

\$ Cdn 76,500 - **Services** covered in Annex 1401-4

5,000,000 SDRs - **Construction Services** covered in Annex 1401-5

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 Board
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

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 Department of Fisheries and Oceans
25. Department of Foreign Affairs and International Trade
26. Department of Health
27. Department of Human Resources and Skills Development
28. Department of Indian Affairs and Northern Development
29. Department of Industry
30. Department of Justice
31. Department of National Defence
32. Department of Natural Resources
33. Department of Public Safety and Emergency Preparedness
34. Department of Public Works and Government Services (on its own account)
35. Department of the Environment
36. Department of Transport
37. Department of Veterans Affairs
38. Department of Western Economic Diversification
39. Director of Soldier Settlement
40. Director, The Veterans' Land Act
41. Economic Development Agency of Canada for the Regions of Quebec
42. Hazardous Materials Information Review Commission
43. Immigration and Refugee Board
44. Library and Archives Canada
45. Municipal Development and Loan Board
46. National Battlefields Commission
47. National Energy Board
48. National Farm Products Council
49. National Parole Board
50. National Research Council of Canada
51. Natural Sciences and Engineering Research Council of Canada
52. Northern Pipeline Agency
53. Office of the Auditor General
54. Office of the Chief Electoral Officer
55. Office of the Commissioner for Federal Judicial Affairs
56. Office of the Commissioner of Official Languages
57. Office of the Coordinator, Status of Women
58. Office of the Governor General's Secretary
59. Office of the Superintendent of Financial Institutions
60. Offices of the Information and Privacy Commissioners of Canada
61. Parks Canada Agency
62. Patented Medicine Prices Review Board

63. Privy Council Office
64. Public Health Agency of Canada
65. Public Service Commission
66. Public Service Human Resources Management Agency of Canada
67. Public Service Labour Relations Board
68. Registry of the Competition Tribunal
69. Royal Canadian Mounted Police
70. Royal Canadian Mounted Police External Review Committee
71. Royal Canadian Mounted Police Public Complaints Commission
72. Social Sciences and Humanities Research Council
73. Statistics Canada
74. Statute Revision Commission
75. Supreme Court of Canada
76. Transportation Appeal Tribunal of Canada
77. Treasury Board Secretariat

Note to Annex 1401-1

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

Thresholds US\$67,826 - **Goods** covered in Annex 1401-3

US\$67,826- **Services** covered in Annex 1401-4

5,000,000 SDRs - **Construction Services** covered in Annex 1401-5

Executive Branch

- Departamento Administrativo de la Presidencia de la República
- Ministerio del Interior y de Justicia
- Ministerio de Relaciones Exteriores
- Ministerio de Hacienda y Crédito Público
- Ministerio de Defensa Nacional (Note 2)
- Ministerio de Agricultura y Desarrollo Rural (Note 3)
- Ministerio de Protección Social (Note 4)
- Ministerio de Minas y Energía (Note 5)
- Ministerio de Comercio, Industria y Turismo
- Ministerio de Educación Nacional
- Ministerio de Ambiente, Vivienda y Desarrollo Territorial
- Ministerio de Comunicaciones

- Ministerio del Transporte (Note 6)
- Ministerio de Cultura
- Departamento Nacional de Planeación
- Departamento Administrativo de Seguridad
- Departamento Administrativo de la Función Pública
- Departamento Administrativo Nacional de Estadísticas
- Departamento Administrativo Nacional de Economía Solidaria

Legislative Branch

- Senado de la República
- Cámara de Representantes

Judicial Branch

- Consejo Superior de la Judicatura
- Fiscalía General de la Nación

Control Agencies

- Contraloría General de la República
- Auditoría General de la República
- Procuraduría General de la Nación
- Defensoría del Pueblo

Electoral Organization

- Registraduría Nacional del Estado Civil (Note 7)

Notes to Schedule of Colombia

1. Unless otherwise specified herein, this Chapter applies to the superintendencias”, “unidades administrativas especiales, y establecimientos públicos” of the entities listed in Colombia’s Schedule in this Section.

2. Ministerio de Defensa Nacional: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification

1.0 (CPC version 1.0) for the *Comando General de las Fuerzas Armadas, Ejército Nacional, Armada Nacional, Fuerza Aérea Colombiana, y Policía Nacional*.

3. *Ministerio de Agricultura y Desarrollo Rural*: This Chapter does not cover the procurement of food, agricultural raw materials or inputs, and live animals related to agricultural support programs and food assistance.

4. *Ministerio de Protección Social*: This Chapter does not cover the procurement by the *Instituto Colombiano de Bienestar Familiar (ICBF)* of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programs.

5. *Ministerio de Minas y Energía*: This Chapter does not cover the procurement of nuclear materials and technology by the *Instituto Colombiano de Geología y Minería (INGEOMINAS)*.

6. *Ministerio del Transporte*: This Chapter does not cover procurement by the *Unidad Administrativa Especial de Aeronáutica Civil (AEROCIVIL)*.

7. *Registraduría Nacional del Estado Civil*: This Chapter does not cover procurement for the preparation and conduct of elections.

Annex 1401-2 Other Covered Entities

Schedule of Canada

Thresholds \$ Cdn 382,800 - **Goods** covered in Annex 1401-3

\$ Cdn 382,800 - **Services** covered in Annex 1401-4

\$ Cdn 12,200,000 - **Construction Services** covered in Annex 1401-5

- Canada Post Corporation
- Canadian Museum of Civilization
- Canadian Museum of Nature
- Canadian Tourism Commission
- Defence Construction (1951) Ltd.
- National Capital Commission
- National Gallery of Canada
- National Museum of Science and Technology
- Royal Canadian Mint
- Via Rail Canada Inc

Notes to Annex 1401-2

1. For greater certainty, Article 1411 (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.
3. The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

Thresholds US\$ 339,132 - **Goods** covered in Annex 1401-3

US\$ 339,132- **Services** covered in Annex 1401-4

US\$ 10,852,752 - **Construction Services** covered in Annex 1401-5

- 1. Agencia Logística de las Fuerzas Militares (Note 1)
- 2. Fondo Rotatorio de la Policía Nacional (Note 1)
- 3. Fondo Rotatorio del Departamento Administrativo de Seguridad (Note 1)
- 4. Instituto de Casas Fiscales del Ejército
- 5. Dirección de Impuestos y Aduanas Nacionales (DIAN)
- 6. Instituto Colombiano del Deporte (COLDEPORTES)
- 7. Instituto Colombiano Para el Desarrollo de la Ciencia y la Tecnología Francisco José de Caldas (COLCIENCIAS)
- 8. Instituto Colombiano para el Fomento de la Educación Superior (ICFES)
- 9. Instituto Nacional Penitenciario y Carcelario (INPEC)
- 10. Servicio Nacional de Aprendizaje (SENA)

Notes to Schedule of Colombia

Agencia Logística de las Fuerzas Militares, Fondo Rotatorio de la Policía Nacional, and Fondo Rotatorio del Departamento Administrativo de Seguridad: this Chapter does not cover procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the Central Product Classification (CPC version 1.0) by the entities listed for the Comando General de las Fuerzas Armadas, Ejército Nacional, Armada Nacional, Fuerza Aérea Colombiana, and the Policía Nacional.

Annex 1401-3 Goods

Schedule of Canada

Section A – General Provisions

1. All goods are covered subject to 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 paragraph 1 of Article 1402:

Section B – List of Certain Goods

Numbers refer to the Federal Supply Classification document dated May 2005 which can be found at the [Defense Logistics Agency](#) website.

- 22. Railway equipment
- 23. Motor vehicles, trailers and cycles (except buses in 2310 and 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 home-type radios
- 78. Recreational and athletic equipment
- 79. Cleaning equipment and supplies
- 80. Brushes, paints, sealers and adhesives
- 81. Containers, packaging and packing supplies
- 85. Toiletries
- 87. Agricultural supplies
- 88. Live animals
- 91. Fuels, lubricants, oils and waxes
- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products
- 99. Miscellaneous

Note to Annex 1401-3

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter does not apply to procurement of goods required to conduct research and development services.

Annex 1401-4 Services

Schedule of Canada

Section A – General Provisions

1. This Chapter covers procurement of all services that are procured by the entities in Annex 1401-1 and Annex 1401-2, 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 at the [Foreign Trade Information System \(SICE\)](#).
3. Annex 1401-5 applies to contracts for construction services.

Section B – Excluded Coverage

Services Exclusions by Major Service Category

Part I

This Chapter does not cover procurement of the following services by entities listed in Annex 1401-1 and Annex 1401-2:

A. Research and Development

All classes

B. Special Studies and Analysis – not R&D

B002 Animal and Fisheries Studies

B003 Grazing and Range Studies

B400 Aeronautic/Space Studies

B503 Medical and Health Studies

B507 Legal Studies (Except Advisory Services on Foreign Law)

C. Architecture 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:

- Act on the format, content, code, protocol or similar aspects of a customer’s transmitted information;
- Provide a customer with additional, different or restructured information, or
- 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; Code and protocol conversion)

D316 Telecommunications Network Management Services (except enhanced/value added Electronic Data Interchange (EDI) Services)

D317 Automated News Services, 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 and Conservation Services

- F004 Land Treatment Practices Services (plowing/clearing, etc)
- F005 Range Seeding Services (ground equipment)
- F006 Crop Services inc. 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 Services

All classes

H. Quality Control, Testing and Inspection and Technical Representative

Services

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule 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 Equipment

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule 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 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 [Footnote1](#)

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 (inc. sign language)
- R114 Logistics Support Services [Footnote2](#)
- R116 Court Reporting Services
- R117 Paper Shredding Services
- R201 Civilian Personnel Recruitment (inc. Services of Employment Agencies)

S. Utilities

All classes

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

All classes

U. Education 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 or Rental of Equipment

Services for the departments and functions listed in Annex 1401-6 – General Notes, Note 1 (e) to this schedule 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 1401-2 :

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 1401-4:

1. All services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to coverage by this chapter (Annex 1401-3), will be exempt from the disciplines of the Chapter.
2. All services purchased in support of military forces located overseas will be exempt from coverage by this chapter.
3. The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter does not cover the procurement of the following services, as described in the CPC:

1. Research and Development Services

Division 81 Research and development services

Group 835 Scientific and other technical services

Data processing (8596) and trade fair and exhibition organization (8597) required for carrying out scientific and technological activities

2. Engineering and Architectural Services

Class 8321 Architectural services.

Class 8334 Engineering design services

Class 8335 Engineering services during the construction and installation phase

3. Utilities

Division 69 Electricity distribution services; gas and water distribution services through mains

Division 94 Sewer and refuse disposal, sanitation, and other environmental protection services

Basic telecommunication services (not including value-added telecommunication services)

4. Social Services

Division 91 Public administration and other services for the general public; compulsory social security services

Division 92 Education services

Group 931 Human health services

5. Printing Services

6. Production of television programs

Subclass 96121 Motion picture, video and television program production services

Annex 1401-5 Construction Services

Schedule of Canada

Section A - General Provisions

1. This Chapter covers all construction services set out in the Common Classification System, except those listed in Section B that are procured by the entities listed in Annex 1401-1 and Annex 1401-2.
2. The Common Classification System can be found on the [Foreign Trade Information System \(SICE\)](#).

Section B – Excluded Coverage

Services Exclusions 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. For CPC 5115 mining of oil and gas which is classified under CCS F042

Note to Annex 1401-5

The General Notes in Annex 1401-6 apply to this Annex.

Schedule of Colombia

This Chapter applies to all public works and construction services procured by the covered entities.

Notwithstanding any other provision of this Chapter, a procuring entity of Colombia, in a procurement of construction services for the construction, maintenance, or rehabilitation of roads and highways, may apply a condition relating to the hiring of local personnel in rural areas in order to promote employment and improve living conditions in such areas.

Annex 1401-6 General Notes

Schedule of Canada

1. This Chapter does not cover procurements in respect of:

- 1. Shipbuilding and repair;

- 2. Urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
- 3. Contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
- 4. Set-asides for small and minority businesses;
 - a. The Department of Transport;
 - b. The Department of Fisheries and Oceans;
 - c. The Canadian Food Inspection Agency in respect of the administration and enforcement of the *Fish Inspection Act*;
 - d. The Department of Canadian Heritage in respect of those functions that were formerly the responsibility of the Department of Communications;
 - e. 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
 - f. The Department of Public Works and Government Services in respect of the Government Telecommunications Agency;
 - g. Respecting Federal Supply Classification (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
 - h. Agricultural products made in furtherance of agricultural support programs or human feeding programs.

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

3. Pursuant to Article 1402 (Security and General Exceptions), 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.

Schedule of Colombia

This Chapter does not apply to:

- 1. Renting or acquisition of real estate;
- 2. Set-asides of procurements below US\$125,000 on behalf of Micro, Small and Medium-sized Companies (MIPYMES). The set-asides include any form of preference, such as the exclusive right to provide a good or a service and measures conducive to facilitate the transfer of technology and sub-contracting;

- 3. Procurements under programs of reintegration to civil life as a result of peace processes, to aid to persons displaced due to violence, to support those living in conflict zones, and general programs resulting from the resolution of the armed conflict; and
- 4. Procurements by the missions of the foreign service of Colombia exclusively for their operation and management.

Annex 1401-7 Threshold Adjustment Formulas

1. The thresholds shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2010.

2. The thresholds for:

- Goods and services procured by entities listed in Annex 1401-1 (Central Level Entities); and
- Goods, services and construction services procured by entities listed in Annex 1401-2 (Other Covered Entities)

shall 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 (“North American Free Trade Agreement”). Canada shall notify Colombia in writing of the adjusted threshold values, in U.S. dollars, in December of the year before the adjusted thresholds take effect.

3. The threshold for construction services in Annex 1401-1 Central Level Entities for Canada and for Colombia shall be converted into the domestic currencies of the Parties based on an average daily conversion rates of the Canadian dollar for Canada and Pesos for Colombia 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 threshold is to take effect.

4. Each Party shall notify the other in writing of its adjusted thresholds in their domestic currencies by January 15 of the year in which the adjusted threshold takes effect.

5. Where a major change in a national currency of either Party during a year creates a significant problem with regard to the application of this Chapter, the Parties shall consult as to whether an interim adjustment is appropriate.

6. In the event that:

- Canada withdraws from the *North American Free Trade Agreement* pursuant to Article 2205 of that agreement;
- The *North American Free Trade Agreement* is terminated; or

- A threshold adjustment formula referenced in paragraphs 1, 2 and 3 is altered, the Committee on Procurement shall agree on a suitable alternate threshold adjustment formula.

Annex 1401-8 Colombian Authorities for the Purpose of Article 1412

In the case of Colombia, the *Tribunal Contencioso Administrativo* and *Consejo de Estado* are impartial authorities for the purposes of paragraph 2 of Article 1412. As these impartial authorities do not have authority to provide the interim measures referred to in Paragraph 5 of Article 1412, the remedies available to the *Procuraduría General de la Nación* shall be deemed to satisfy the requirements of that paragraph. The *Procuraduría General de la Nación* is an independent agency that has the authority to suspend tendering procedures and the awarding of a contract in the course of any disciplinary proceedings brought against the government agents responsible for a procurement.

Annex 1401-9 Extended Transparency Commitments

The provisions of Article 1402, Article 1404; Article 1405; paragraphs 1, 10, 11 and subparagraph 4(b) of Article 1406; paragraphs 6 and 8 of Article 1407; paragraph 1 of Article 1408; paragraphs 4 and 5 of Article 1410; and Article 1411 apply where:

- (a) the procuring entity uses an open tendering process; and
- (b) the procurement is for goods, services and construction services in excess of CDN \$150,000 for Canada and COP \$300,000,000 for Colombia for entities listed in Annex 1401-1 and is otherwise excluded by Annexes 1401-3 (Goods), 1401-4 (Services), and 1401-5 (Construction Services).

Annex 1401-10 Non - Covered Entities

Pursuant to its *Law 1150* of 2007, Colombia shall ensure that each of the following listed Colombian entities conducts its procurements in a transparent manner, in accordance with commercial considerations, and treats Canadian suppliers at least as favorably as it treats domestic and other foreign suppliers with respect to all aspects of its procurement including the conditions, requirements, procedures and awarding rules for a procurement.

Schedule of Colombia

- Comisión de Regulación de Energía y Gas (CREG)
- Unidad de Planeación Minero Energética (UPME)

- Caja de Previsión Social de Comunicaciones (CAPRECOM)
- Caja Nacional de Previsión Social (CAJANAL)
- Empresa Territorial para la Salud (ETESA)
- Imprenta Nacional de Colombia
- Industria Militar (INDUMIL)
- Instituto de Seguros Sociales (ISS)
- Radio Televisión Nacional de Colombia (RTVC)
- Servicio Aéreo a Territorios Nacionales (SATENA)
- Empresa Colombiana de Petroleos, S.A. (ECOPETROL)
- Interconexion Electrica S.A. (ISA)
- ISAGEN

Footnotes

Footnote 1

with reference to transportation systems

Footnote 2

with respect to transportation and defence

Report a problem on this page

Chapter Fifteen – Electronic Commerce

Article 1501: Scope and Coverage

1. The Parties confirm that this Agreement, including Chapter Nine (Cross-Border Trade in Services), Chapter Two (National Treatment and Market Access for Goods), Chapter Eight (Investment), Chapter Fourteen (Government Procurement), Chapter Eleven (Financial Services), Chapter Ten (Telecommunications), and Chapter Twenty-Two (Exceptions) applies to trade conducted by electronic means.[Footnote 1](#) In particular, the Parties recognize the importance of