

# **PART FOUR GOVERNMENT PROCUREMENT**

## **Chapter Ten**

### **Government Procurement**

#### **Section A - Scope and Coverage and National Treatment**

##### **Article 1001: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement:
  - (a) by a federal government entity set out in Annex 1001.1a-1, a government enterprise set out in Annex 1001.1a-2, or a state or provincial government entity set out in Annex 1001.1a-3 in accordance with Article 1024;
  - (b) of goods in accordance with Annex 1001.1b-1, services in accordance with Annex 1001.1b-2, or construction services in accordance with Annex 1001.1b-3; and
  - (c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold, calculated and adjusted according to the U.S. inflation rate as set out in Annex 1001.1c, of
    - (i) for federal government entities, US\$50,000 for contracts for goods, services or any combination thereof, and US\$6.5 million for contracts for construction services,
    - (ii) for government enterprises, US\$250,000 for contracts for goods, services or any combination thereof, and US\$8.0 million for contracts for construction services, and
    - (iii) for state and provincial government entities, the applicable threshold, as set out in Annex 1001.1a-3 in accordance with Article 1024.
2. Paragraph 1 is subject to:
  - (a) the transitional provisions set out in Annex 1001.2a;
  - (b) the General Notes set out in Annex 1001.2b; and

- (c) Annex 1001.2c, for the Parties specified therein.
- 3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.
- 4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.
- 5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy. Procurement does not include:
  - (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or state, provincial and regional governments; and
  - (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

**Article 1002: Valuation of Contracts**

- 1. Each Party shall ensure that its entities, in determining whether a contract is covered by this Chapter, apply paragraphs 2 through 7 in calculating the value of that contract.
- 2. The value of a contract shall be estimated as at the time of publication of a notice in accordance with Article 1010.
- 3. In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions and interest.
- 4. Further to Article 1001(4), an entity may not select a valuation method, or divide procurement requirements into separate contracts, to avoid the obligations of this Chapter.
- 5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
  - (a) the actual value of similar recurring contracts concluded over the prior fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
  - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

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

- (a) in the case of a fixed-term contract, where the term is 12 months or less, the total contract value, for its duration or, where the term exceeds 12 months, the total contract value, including the estimated residual value; or
- (b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

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

7. Where tender documentation requires option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, including all possible optional purchases.

### **Article 1003: National Treatment and Non-Discrimination**

1. With respect to measures covered by this Chapter, each Party shall accord to goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to:

- (a) its own goods and suppliers; and
- (b) goods and suppliers of another Party.

2. With respect to measures 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 the particular procurement are goods or services of another Party.

3. Paragraph 1 does 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 or other import regulations, including restrictions and formalities.

#### **Article 1004: Rules of Origin**

No Party may apply rules of origin to goods imported from another Party for purposes of government procurement covered by this Chapter that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which may be the Marking Rules established under Annex 311 if they become the rules of origin applied by that Party in the normal course of its trade.

#### **Article 1005: Denial of Benefits**

1. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.
2. A Party may deny to an enterprise of another Party the benefits of this Chapter if nationals of a non-Party own or control the enterprise and:
  - (a) the circumstance set out in Article 1113(1)(a) (Denial of Benefits) is met; or
  - (b) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

#### **Article 1006: Prohibition of Offsets**

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

#### **Article 1007: Technical Specifications**

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.
2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:

- (a) specified in terms of performance criteria rather than design or descriptive characteristics; and
- (b) based on international standards, national technical regulations, recognized national standards, or building codes.

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

4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

## **Section B - Tendering Procedures**

### **Article 1008: Tendering Procedures**

1. Each Party shall ensure that the tendering procedures of its entities are:
  - (a) applied in a non-discriminatory manner; and
  - (b) consistent with this Article and Articles 1009 through 1016.
2. In this regard, each Party shall ensure that its entities:
  - (a) do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition; and
  - (b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

### **Article 1009: Qualification of Suppliers**

1. Further to Article 1003, no entity of a Party may, in the process of qualifying suppliers in a tendering procedure, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.

2. The qualification procedures followed by an entity shall be consistent with the following:
- (a) conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;
  - (b) conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;
  - (c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity;
  - (d) an entity shall not misuse the process of, including the time required for, qualification in order to exclude suppliers of another Party from a suppliers' list or from being considered for a particular procurement;
  - (e) an entity shall recognize as qualified suppliers those suppliers of another Party that meet the conditions for participation in a particular procurement;
  - (f) an entity shall consider for a particular procurement those suppliers of another Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;
  - (g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;
  - (h) where, after publication of a notice in accordance with Article 1010, a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;
  - (i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and
  - (j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, on request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:
  - (a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, on request of another Party, to demonstrate that need; and
  - (b) endeavor to minimize differences in the qualification procedures of its entities.
4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or false declarations.

**Article 1010: Invitation to Participate**

1. Except as otherwise provided in Article 1016, an entity shall publish an invitation to participate for all procurements in accordance with paragraphs 2, 3 and 5, in the appropriate publication referred to in Annex 1010.1.
2. The invitation to participate shall take the form of a notice of proposed procurement that shall contain the following information:
  - (a) a description of the nature and quantity of the goods or services to be procured, including any options for further procurement and, if possible,
    - (i) an estimate of when such options may be exercised, and
    - (ii) in the case of recurring contracts, an estimate of when the subsequent notices will be issued;
  - (b) a statement as to whether the procedure is open or selective and whether it will involve negotiation;
  - (c) any date for starting or completion of delivery of the goods or services to be procured;
  - (d) the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, the final date for receiving the application and the language or languages in which it may be submitted;
  - (e) the address to which tenders must be submitted, the final date for receiving tenders and the language or languages in which tenders may be submitted;
  - (f) the address of the entity that will award the contract and that will provide any

information necessary for obtaining specifications and other documents;

- (g) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
- (h) the amount and terms of payment of any sum payable for the tender documentation; and
- (i) a statement as to whether the entity is inviting offers for purchase, lease or rental, with or without an option to buy.

3. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice of planned procurement that shall contain as much of the information referred to in paragraph 2 as is available to the entity, but that shall include, at a minimum, the following information:

- (a) a description of the subject matter of the procurement;
- (b) the time limits set for the receipt of tenders or applications to be invited to tender;
- (c) the address to which requests for documents relating to the procurement should be submitted;
- (d) a statement that interested suppliers should express their interest in the procurement to the entity; and
- (e) the identification of a contact point within the entity from which further information may be obtained.

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

5. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice regarding a qualification system. An entity that uses such a notice shall, subject to the considerations referred to Article 1015(8), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally include the information required for notices referred to in paragraph 2. Information provided to any interested supplier shall be provided in a non-discriminatory manner to all other interested suppliers.

6. In the case of selective tendering procedures, an entity that maintains a permanent list of qualified suppliers shall publish annually in the appropriate publication referred to in Annex 1010.1 a notice containing the following information:

- (a) an enumeration of any such lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers in view of their inscription on the lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists and the formalities for their renewal.

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

8. An entity shall indicate in the notices referred to in this Article that the procurement is covered by this Chapter.

#### **Article 1011: Selective Tendering Procedures**

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

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

3. Subject to Article 1009(2)(f), an entity shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

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

#### **Article 1012: Time Limits for Tendering and Delivery**

1. An entity shall:

- (a) in prescribing a time limit, provide adequate time to allow suppliers of another Party to prepare and submit tenders before the closing of the tendering procedures;
- (b) in determining a time limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and
- (c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

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

- (a) in open tendering procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of a notice in accordance with Article 1010;
- (b) in selective tendering procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of a notice in accordance with Article 1010, and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and
- (c) in selective tendering procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender, but where the date of initial issuance of invitations to tender does not coincide with the date of publication of a notice in accordance with Article 1010, there shall not be less than 40 days between those two dates.

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

- (a) where a notice referred to in Article 1010(3) or (5) has been published for a period of no less than 40 days and no more than 12 months, the 40-day limit for receipt of tenders may be reduced to no less than 24 days;
- (b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 1010(2)(a), the 40-day limit for receipt of tenders may be reduced to no less than 24 days;
- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods may be reduced to no less than 10 days from the date of publication of a notice in accordance with Article 1010; or

- (d) where an entity listed in Annex 1001.1a-2 or 1001.1a-3 is using as an invitation to participate a notice referred to in Article 1010(5), the periods may be fixed by mutual agreement between the entity and all selected suppliers but, in the absence of agreement, the entity may fix periods that shall be sufficiently long to allow for responsive bidding and in any event shall be no less than 10 days.

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

### **Article 1013: Tender Documentation**

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice referred to in Article 1010(2), except for the information required under Article 1010(2)(h). The documentation shall also include:

- (a) the address of the entity to which tenders should be submitted;
- (b) the address to which requests for supplementary information should be submitted;
- (c) the language or languages in which tenders and tendering documents may be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which tenders should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
- (f) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
- (g) a complete description of the goods or services to be procured and any other requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transportation, insurance and inspection costs, and in the case of goods or services of another Party, customs duties and other import charges, taxes and the currency of payment;

- (i) the terms of payment; and
  - (j) any other terms or conditions.
2. An entity shall:
- (a) forward tender documentation on the request of a supplier that is participating in open tendering procedures or has requested to participate in selective tendering procedures, and reply promptly to any reasonable request for explanations relating thereto; and
  - (b) reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

**Article 1014: Negotiation Disciplines**

1. An entity may conduct negotiations only:
- (a) in the context of procurement in which the entity has, in a notice published in accordance with Article 1010, indicated its intent to negotiate; or
  - (b) where it appears to the entity from the evaluation of the tenders that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation.
2. An entity shall use negotiations primarily to identify the strengths and weaknesses in the tenders.
3. An entity shall treat all tenders in confidence. In particular, no entity may provide to any person information intended to assist any supplier to bring its tender up to the level of any other tender.
4. No entity may, in the course of negotiations, discriminate between suppliers. In particular, an entity shall:
- (a) carry out any elimination of suppliers in accordance with the criteria set out in the notices and tender documentation;
  - (b) provide in writing all modifications to the criteria or technical requirements to all suppliers remaining in the negotiations;
  - (c) permit all remaining suppliers to submit new or amended tenders on the basis of the

modified criteria or requirements; and

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

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

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

- (a) tenders shall normally be submitted in writing directly or by mail;
- (b) where tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;
- (c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;
- (d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;
- (e) tenders presented by telephone shall not be permitted;
- (f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and
- (g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be administered in a manner that would result in discrimination between suppliers.

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

2. No entity may penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.

3. All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on the opening of tenders. The information shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

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

- (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;
- (b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;
- (c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation;
- (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and
- (e) option clauses shall not be used in a manner that circumvents this Chapter.

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

6. An entity shall:

- (a) on request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and
- (b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.

7. No later than 72 days after the award of a contract, an entity shall publish a notice in the appropriate publication referred to in Annex 1010.1 that shall contain the following information:

- (a) a description of the nature and quantity of goods or services included in the contract;
- (b) the name and address of the entity awarding the contract;
- (c) the date of the award;
- (d) the name and address of each winning supplier;
- (e) the value of the contract, or the highest-priced and lowest-priced tenders considered in the process of awarding the contract; and
- (f) the tendering procedure used.

8. Notwithstanding paragraphs 1 through 7, an entity may withhold certain information on the award of a contract where disclosure of the information:

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the legitimate commercial interest of a particular person; or
- (c) might prejudice fair competition between suppliers.

#### **Article 1016: Limited Tendering Procedures**

1. An entity of a Party may, in the circumstances and subject to the conditions set out in paragraph 2, use limited tendering procedures and thus derogate from Articles 1008 through 1015, provided that such limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.

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

- (a) in the absence of tenders in response to an open or selective call for tenders, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
- (b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, 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) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;
- (e) where an entity procures a prototype or a first good or service that is developed at its request in the course of and for a particular contract for research, experiment, study or original development. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 1008 through 1015. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs;
- (f) for goods purchased on a commodity market;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;
- (h) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is
  - (i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,
  - (ii) organized with a view to awarding the design contract to the winner, and
  - (iii) to be judged by an independent jury; and
- (i) where an 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.

3. An entity shall prepare a report in writing on each contract awarded by it under paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. The entity shall retain each report. They shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

## **Section C - Bid Challenge**

### **Article 1017: Bid Challenge**

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

- (a) each Party shall allow suppliers to submit bid challenges concerning any aspect of the procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through the contract award;
- (b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;
- (c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;
- (d) whether or not a supplier has attempted to resolve its complaint with the entity, or following an unsuccessful attempt at such a resolution, no Party may prevent the supplier from initiating a bid challenge or seeking any other relief;
- (e) a Party may require a supplier to notify the entity on initiation of a bid challenge;
- (f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- (g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;

- (h) on receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge;
- (i) a Party may require its reviewing authority to limit its considerations to the challenge itself;
- (j) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where the delay would be contrary to the public interest;
- (k) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question;
- (l) entities normally shall follow the recommendations of the reviewing authority;
- (m) each Party should authorize its reviewing authority, following the conclusion of a bid challenge procedure, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with this Chapter;
- (n) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and interested persons;
- (o) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and
- (p) each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-working day period described in paragraph 1(f) shall begin no earlier than the date that the notice is published or the tender documentation is made available.

## **Section D - General Provisions**

### **Article 1018: 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 any Party from adopting or maintaining measures:
  - (a) necessary to protect public morals, order or safety;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) necessary to protect intellectual property; or
  - (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

### **Article 1019: Provision of Information**

1. Further to Article 1802(1) (Publication), each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex 1010.1.
2. Each Party shall:
  - (a) on request, explain to another Party its government procurement procedures;
  - (b) ensure that its entities, on request from a supplier, promptly explain their procurement practices and procedures; and
  - (c) designate by January 1, 1994 one or more contact points to
    - (i) facilitate communication between the Parties, and
    - (ii) answer all reasonable inquiries from other Parties to provide relevant information on matters covered by this Chapter.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party except after consultation with and agreement of the Party that provided the information.
4. On request, each Party shall provide to another Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.
5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.
6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.
7. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect statistics and provide to the other Parties an annual report in accordance with the following reporting requirements, unless the Parties otherwise agree:
  - (a) statistics on the estimated value of all contracts awarded, both above and below the applicable threshold values, broken down by entities;
  - (b) statistics on the number and total value of contracts above the applicable threshold values, broken down by entities, by categories of goods and services established in accordance with classification systems developed under this Chapter and by the country of origin of the goods and services procured;
  - (c) statistics on the number and total value of contracts awarded under each use of the procedures referred to in Article 1016, broken down by entities, by categories of goods and services, and by country of origin of the goods and services procured; and
  - (d) statistics on the number and total value of contracts awarded under derogations to this Chapter set out in Annexes 1001.2a and 1001.2b, broken down by entities.
8. Each Party may organize by state or province any portion of a report referred to in paragraph 7 that pertains to entities listed in Annex 1001.1a-3.

## **Article 1020: Technical Cooperation**

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for the suppliers of all Parties.
2. Each Party shall provide to the other Parties and to the suppliers of such Parties, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system, and access on a non-discriminatory basis to any program it conducts.
3. The training and orientation programs referred to in paragraph 2 include:
  - (a) training of government personnel directly involved in government procurement procedures;
  - (b) training of suppliers interested in pursuing government procurement opportunities;
  - (c) an explanation and description of specific elements of each Party's government procurement system, such as its bid challenge mechanism; and
  - (d) information about government procurement market opportunities.
4. Each Party shall establish by January 1, 1994 at least one contact point to provide information on the training and orientation programs referred to in this Article.

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

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business, comprising representatives of the Parties. The Committee shall meet as mutually agreed, but not less than once each year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.
2. The Committee shall work to facilitate the following activities of the Parties:
  - (a) identification of available opportunities for the training of small business personnel in government procurement procedures;
  - (b) identification of small businesses interested in becoming trading partners of small businesses in the territory of another Party;
  - (c) development of data bases of small businesses in the territory of each Party for use by entities of another Party wishing to procure from small businesses;

- (d) consultations regarding the factors that each Party uses in establishing its criteria for eligibility for any small business programs; and
- (e) activities to address any related matter.

**Article 1022: Rectifications or Modifications**

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.
2. Where a Party modifies its coverage under this Chapter, the Party shall:
  - (a) notify the other Parties and its Section of the Secretariat of the modification;
  - (b) reflect the change in the appropriate Annex; and
  - (c) propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Schedules to Annexes 1001.1a-1 through 1001.1b-3 and Annexes 1001.2a and 1001.2b, provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and another Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.
4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In such cases, compensation need not be proposed. No Party may undertake such reorganizations or programs to avoid the obligations of this Chapter.
5. Where a Party considers that:
  - (a) an adjustment proposed under paragraph (2)(c) is not adequate to maintain a comparable level of mutually agreed coverage, or
  - (b) a rectification or a minor amendment under paragraph 3 or a reorganization under paragraph 4 does not meet the applicable requirements of those paragraphs and should require compensation,

the Party may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

### **Article 1023: Divestiture of Entities**

1. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter.
2. If, on the public offering of shares of an entity listed in Annex 1001.1a-2, or through other methods, the entity is no longer subject to federal government control, the Party may delete the entity from its Schedule to that Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Parties and its Section of the Secretariat.
3. Where a Party objects to the withdrawal on the grounds that the entity remains subject to federal government control, that Party may have recourse to dispute settlement procedures under Chapter Twenty.

### **Article 1024: Further Negotiations**

1. The Parties shall commence further negotiations no later than December 31, 1998, with a view to the further liberalization of their respective government procurement markets.
2. In such negotiations, the Parties shall review all aspects of their government procurement practices for purposes of:
  - (a) assessing the functioning of their government procurement systems;
  - (b) seeking to expand the coverage of this Chapter, including by adding
    - (i) other government enterprises, and
    - (ii) procurement otherwise subject to legislated or administrative exceptions; and
  - (c) reviewing thresholds.
3. Prior to such review, the Parties shall endeavor to consult with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises.
4. If the negotiations pursuant to Article IX:6(b) of the *GATT Agreement on Government Procurement* ("the Code") are completed prior to such review, the Parties shall:
  - (a) immediately begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises; and

- (b) increase the obligations and coverage of this Chapter to a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations, to commence no later than one year after the date of entry into force of this Agreement, on the subject of electronic transmission.

## **Article 1025: Definitions**

For purposes of this Chapter:

**construction services contract** means a contract for the realization by any means of civil or building works listed in Appendix 1001.1b-3-A;

**entity** means an entity listed in Annex 1001.1a-1, 1001.1a-2 or 1001.1a-3;

**goods of another Party** means goods originating in the territory of another Party, determined in accordance with Article 1004;

**international standard** means "international standard", as defined in Article 915 (Standards-Related Measures - Definitions);

**limited tendering procedures** means procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 1016;

**locally established supplier** includes a natural person resident in the territory of the Party, an enterprise organized or established under the Party's law, and a branch or representative office located in the Party's territory;

**open tendering procedures** means those procedures under which all interested suppliers may submit a tender;

**selective tendering procedures** means procedures under which, consistent with Article 1011, those suppliers invited to do so by an entity may submit a tender;

**services** includes construction services contracts, unless otherwise specified;

**standard** means "standard", as defined in Article 915;

**supplier** means a person that has provided or could provide goods or services in response to an entity's call for tender;

**technical regulation** means "technical regulation", as defined in Article 915;

**technical specification** means a specification which lays down goods characteristics or their related processes and production methods, or services characteristics or their related operating methods, including the applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; and

**tendering procedures** means open tendering procedures, selective tendering procedures and limited tendering procedures.

**Annex 1001.1a-1**

**Federal Government Entities**

**Schedule of Canada**

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

- to the Department of National Defence are equally applicable to the Canadian Coast Guard.)
44. Treasury Board Secretariat and the Office of the Controller General
  45. Department of Veterans Affairs
  46. Veterans Land Administration
  47. Department of Western Economic Diversification
  48. Atlantic Canada Opportunities Agency
  49. Auditor General of Canada
  50. Federal Office of Regional Development (Quebec)
  51. Canadian Centre for Management Development
  52. Canadian Radio-television and Telecommunications Commission
  53. Canadian Sentencing Commission
  54. Civil Aviation Tribunal
  55. Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario
  56. Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance
  57. Commissioner for Federal Judicial Affairs
  58. Competition Tribunal Registry
  59. Copyright Board
  60. Emergency Preparedness Canada
  61. Federal Court of Canada
  62. Grain Transportation Agency
  63. Hazardous Materials Information Review Commission
  64. Information and Privacy Commissioners
  65. Investment Canada
  66. Department of Multiculturalism and Citizenship
  67. The National Archives of Canada
  68. National Farm Products Marketing Council
  69. The National Library
  70. National Transportation Agency
  71. Northern Pipeline Agency
  72. Patented Medicine Prices Review Board
  73. Petroleum Monitoring Agency
  74. Privy Council Office
  75. Canadian Intergovernmental Conference Secretariat
  76. Commissioner of Official Languages
  77. Economic Council of Canada
  78. Public Service Staff Relations Office
  79. Office of the Secretary to the Governor General
  80. Office of the Chief Electoral Officer
  81. Federal Provincial Relations Office
  82. Procurement Review Board
  83. Royal Commission on Electoral Reform and Party Financing
  84. Royal Commission on National Passenger Transportation
  85. Royal Commission on New Reproductive Technologies
  86. Royal Commission on the Future of the Toronto Waterfront
  87. Statistics Canada
  88. Tax Court of Canada, Registry of the
  89. Agricultural Stabilization Board
  90. Canadian Aviation Safety Board

91. Canadian Centre for Occupational Health and Safety
92. Canadian Transportation Accident Investigation and Safety Board
93. Director of Soldier Settlement
94. Director, The Veterans' Land Act
95. Fisheries Prices Support Board
96. National Battlefields Commission
97. Royal Canadian Mounted Police
98. Royal Canadian Mounted Police External Review Committee
99. Royal Canadian Mounted Police Public Complaints Commission
100. Department of National Defence

### **Schedule of Mexico**

1. Secretaría de Gobernación (Ministry of Government)
  - Centro Nacional de Estudios Municipales (National Center for Municipal Studies)
  - Comisión Calificadora de Publicaciones y Revistas Ilustradas (Illustrated Periodicals and Publications Classification Commission)
  - Consejo Nacional de Población (National Population Council)
  - Archivo General de la Nación (General Archives of the Nation)
  - Instituto Nacional de Estudios Históricos de la Revolución Mexicana (National Institute of Historical Studies on the Mexican Revolution)
  - Patronato de Asistencia para la Reincorporación Social (Social Reintegration Assistance Foundation)
  - Centro Nacional de Prevención de Desastres (National Disaster Prevention Center)
  - Consejo Nacional de Radio y Televisión (National Radio and Television Council)
  - Comisión Mexicana de Ayuda a Refugiados (Mexican Commission on Refugee Assistance)
2. Secretaría de Relaciones Exteriores (Ministry of Foreign Relations)
  - Sección Mexicana de la Comisión Internacional de Límites y Aguas México-EEUU (Mexican Section of the International Boundary and Water Commission, Mexico and the United States)
  - Sección Mexicana de la Comisión Internacional de Límites y Aguas México-Guatemala (Mexican Section of the International Boundary and Water Commission, Mexico and Guatemala)
3. Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Credit)
  - Comisión Nacional Bancaria (National Banking Commission)
  - Comisión Nacional de Valores (National Securities Commission)
  - Comisión Nacional de Seguros y Fianzas (National Insurance and Bonds Commission)
  - Instituto Nacional de Estadística, Geografía e Informática (National Institute of Statistics, Geography, and Informatics)
4. Secretaría de Agricultura y Recursos Hidráulicos (Ministry of Agriculture and Water Resources)
  - Instituto Mexicano de Tecnología del Agua (Mexican Institute of Water Technology)
  - Instituto Nacional de Investigaciones Forestales y Agropecuarias (National Forestry and Agricultural Research Institute)
  - Apoyos a Servicios a la Comercialización Agropecuaria (Aserca) (Support Services for Agricultural Marketing)
5. Secretaría de Comunicaciones y Transportes (including the Instituto Mexicano de Comunicaciones and the Instituto Mexicano de Transporte) (Ministry of Communications and Transport, including the Mexican Institute of Communications and the Mexican Institute of Transportation)
6. Secretaría de Comercio y Fomento Industrial (Ministry of Commerce and Industrial Development)

7. Secretaría de Educación Pública (Ministry of Public Education)
  - Instituto Nacional de Antropología e Historia (National Institute of Anthropology and History)
  - Instituto Nacional de Bellas Artes y Literatura (National Institute of Fine Arts and Literature)
  - Radio Educación (Radio Education)
  - Centro de Ingeniería y Desarrollo Industrial (Engineering and Industrial Development Center)
  - Consejo Nacional para la Cultura y las Artes (National Council for Culture and the Arts)
  - Comisión Nacional del Deporte (National Sports Commission)
8. Secretaría de Salud (Ministry of Health)
  - Administración del Patrimonio de la Beneficencia Pública (Public Charity Fund Administration)
  - Centro Nacional de la Transfusión Sanguínea (National Blood Transfusion Center)
  - Gerencia General de Biológicos y Reactivos (Office of General Management for Biologicals and Reagents)
  - Centro para el Desarrollo de la Infraestructura en Salud (Center for Infrastructural Development in Health)
  - Instituto de la Comunicación Humana Dr. Andrés Bustamante Gurría (Dr. Andrés Bustamante Gurría Institute of Human Communication)
  - Instituto Nacional de Medicina de la Rehabilitación (National Rehabilitative Medicine Institute)
  - Instituto Nacional de Ortopedia (National Orthopedics Institute)
  - Consejo Nacional para la Prevención y Control del Síndrome de la Inmunodeficiencia Adquirida, (Conasida) (National Council for the Prevention and Control of the Acquired Immune Deficiency Syndrome)
9. Secretaría del Trabajo y Previsión Social (Ministry of Labor and Social Welfare)
  - Procuraduría Federal de la Defensa del Trabajo (Office of the Federal Attorney for Labor Defense)
10. Secretaría de la Reforma Agraria (Ministry of Agrarian Reform)
  - Instituto de Capacitación Agraria (Institute of Agricultural Training)
11. Secretaría de Pesca (Ministry of Fisheries)
  - Instituto Nacional de la Pesca (National Institute of Fisheries)
12. Procuraduría General de la República (Office of the Attorney General of the Republic)
13. Secretaría de Energía Minas e Industria Paraestatal (Ministry of Energy, Mines, and Parastatal Industry)
  - Comisión Nacional de Seguridad Nuclear y Salvaguardias (National Commission on Nuclear Safety and Safeguards)
  - Comisión Nacional para el Ahorro de Energía (National Commission for Energy Conservation)
14. Secretaría de Desarrollo Social (Ministry of Social Development)
15. Secretaría de Turismo (Ministry of Tourism)
16. Secretaría de la Contraloría General de La Federación (Ministry of the Comptroller General of the Federation)
17. Comisión Nacional de Zonas Áridas (National Commission on Arid Zones)
18. Comisión Nacional de Libros de Texto Gratuito (National Commission on Free Textbooks)
19. Comisión Nacional de Derechos Humanos (National Commission on Human Rights)
20. Consejo Nacional de Fomento Educativo (National Educational Development Council)
21. Secretaría de la Defensa Nacional (Ministry of National Defense)
22. Secretaría de Marina (Ministry of the Navy)

**Notes:**

1. This Schedule covers the numbered entities and those listed thereunder.
2. Translation provided for purposes of reference only.

### **Schedule of the United States**

1. Department of Agriculture (Not including procurement of agricultural goods made in furtherance of agricultural support programs or human feeding programs. Federal buy national requirements imposed as conditions of funding by the Rural Electrification Administration will not apply to goods of Mexico and Canada, suppliers of such goods, and service suppliers of Mexico and Canada.)
2. Department of Commerce
3. Department of Education
4. Department of Health and Human Services
5. Department of Housing and Urban Development
6. Department of the Interior, including the Bureau of Reclamation (For goods of Canada, suppliers of such goods and service suppliers of Canada, this Chapter will apply to procurements by the Bureau of Reclamation of the Department of Interior only at such time as this Chapter applies to procurements by the Canadian provincial, not including local, hydro utilities.)
7. Department of Justice
8. Department of Labor
9. Department of State
10. United States Agency for International Development
11. Department of the Treasury
12. Department of Transportation (For purposes of Article 1018, the national security considerations applicable to the Department of Defense are equally applicable to the Coast Guard, a military unit of the United States.)
13. Department of Energy (Not including national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act, and oil purchases related to the Strategic Petroleum Reserve.)
14. General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
15. National Aeronautics and Space Administration (NASA)
16. Department of Veterans Affairs
17. Environmental Protection Agency
18. United States Information Agency
19. National Science Foundation
20. Panama Canal Commission
21. Executive Office of the President
22. Farm Credit Administration
23. National Credit Union Administration
24. Merit Systems Protection Board
25. ACTION
26. United States Arms Control and Disarmament Agency
27. Office of Thrift Supervision
28. Federal Housing Finance Board
29. National Labor Relations Board
30. National Mediation Board

31. Railroad Retirement Board
32. American Battle Monuments Commission
33. Federal Communications Commission
34. Federal Trade Commission
35. Interstate Commerce Commission
36. Securities and Exchange Commission
37. Office of Personnel Management
38. United States International Trade Commission
39. Export-Import Bank of the United States
40. Federal Mediation and Conciliation Service
41. Selective Service System
42. Smithsonian Institution
43. Federal Deposit Insurance Corporation
44. Consumer Product Safety Commission
45. Equal Employment Opportunity Commission
46. Federal Maritime Commission
47. National Transportation Safety Board
48. Nuclear Regulatory Commission
49. Overseas Private Investment Corporation
50. Administrative Conference of the United States
51. Board for International Broadcasting
52. Commission on Civil Rights
53. Commodity Futures Trading Commission
54. Peace Corps
55. National Archives and Records Administration
56. Department of Defense, including the Army Corps of Engineers

**Annex 1001.1a-2**

**Government Enterprises**

**Schedule of Canada**

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

**Notes:**

1. For greater certainty, Article 1019(5) applies to procurements by Canadian National Railway Company, St. Lawrence Seaway Authority and Via Rail Canada Inc., respecting the protection of the commercial confidentiality of information provided.
2. This Chapter does not apply to procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender.
3. With respect to the Canadian National Railway Company, this Chapter applies to the procurement of goods, services and construction services for its railway operations, subject to any other exceptions in this Chapter.

**Schedule of Mexico**

**Printing and Editorial**

1. Talleres Gráficos de la Nación (National Printers)
2. Productora e Importadora de Papel, S.A. de C.V. (PIPSA) (Producer and Importer of Paper, S.A. de C.V.)

**Communications and Transportation**

3. Aeropuertos y Servicios Auxiliares (ASA) (Airports and Auxiliary Services)
4. Caminos y Puentes Federales de Ingresos y Servicios Conexos (Capufe) (Federal Toll Roads and Bridges and Related Services)
5. Servicio Postal Mexicano (Mexican Postal Service)
6. Ferrocarriles Nacionales de México (Ferroviales) (National Railways of Mexico)
7. Telecomunicaciones de México (Telecom) (Telecommunications of Mexico)

**Industry**

8. Petróleos Mexicanos (Pemex) (Mexican Petroleum) (Not including procurements of fuels or gas)
9. Comisión Federal de Electricidad (CFE) (Federal Electricity Commission)
10. Consejo de Recursos Minerales (Mineral Resources Council)
11. Consejo de Recursos Mineros (Mining Resources Council)

**Commerce**

12. Compañía Nacional de Subsistencias Populares (Conasupo) (National Company for Basic Commodities) (Not including procurements of agricultural goods made in furtherance of agricultural support programs or human feeding programs.)
13. Bodegas Rurales Conasupo, S.A. de C.V. (Conasupo Rural Storage Facilities, S.A. de C.V.)
14. Distribuidora e Impulsora de Comercio, S.A. de C.V. (Diconsa) (Commercial Distributor and Trade Promotion S.A. de C.V.)
15. Leche Industrializada Conasupo, S.A. de C.V. (Liconsa) (Conasupo Industrialized Milk, S.A. de C.V.) (Not including procurements of agricultural goods made in furtherance of agricultural support programs or human feeding programs.)
16. Procuraduría Federal del Consumidor (Office of the Federal Attorney for Consumers)
17. Instituto Nacional del Consumidor (National Consumer Institute)
18. Laboratorios Nacionales de Fomento Industrial (National Industrial Development Laboratories)
19. Servicio Nacional de Información de Mercados (National Markets Information Service)

**Social Security**

20. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) (Social Security and Services Institute for Government Workers)
21. Instituto Mexicano del Seguro Social (IMSS) (Mexican Social Security Institute)
22. Sistema Nacional para el Desarrollo Integral de la Familia (DIF) (National System for Integrated Family Development) (Not including procurements of agricultural goods made in furtherance of agricultural support programs or human feeding programs.)
23. Servicios Asistenciales de la Secretaría de Marina (Social Security Services of the Department of the Navy)
24. Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas (Social Security Institute for the Mexican Armed Forces)
25. Instituto Nacional Indigenista (INI) (National Institute of Indian Peoples)
26. Instituto Nacional Para la Educación de los Adultos (National Institute for Adult Education)
27. Centros de Integración Juvenil (Youth Integration Centers)
28. Instituto Nacional de la Senectud (National Institute on Old Age)

**Others**

29. Comité Administrador del Programa Federal de Construcción de Escuelas (CAPFCE) (Administrative Committee of the School Construction Federal Program)
30. Comisión Nacional del Agua (CNA) (National Water Commission)
31. Comisión Para la Regularización de la Tenencia de la Tierra (Commission for the Regularization of Land Tenure)
32. Consejo Nacional de Ciencia y Tecnología (Conacyt) (National Science and Technology Council)
33. Notimex, S.A. de C.V.
34. Instituto Mexicano de Cinematografía (Mexican Institute of Cinematography)

- 35. Lotería Nacional para la Asistencia Pública (National Lottery for Public Assistance)
- 36. Pronósticos Deportivos (Sports Lottery)

**Note:** Translation provided for purposes of reference only.

### **Schedule of the United States**

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

**Note:** For goods of Canada, suppliers of such goods and service suppliers of Canada, this Chapter will apply to procurements by the authorities and power administrations listed as items 1 through 6 only at such time as this Chapter applies to the procurements by the Canadian provincial, not including local, hydro utilities.

**Annex 1001.1a-3**

**State and Provincial Government Entities**

Coverage under this Annex will be the subject of consultations with state and provincial governments in accordance with Article 1024.

**Annex 1001.1b-1**

**Goods**

**Section A - General Provisions**

1. This Chapter applies to all goods, except to the extent set out in paragraphs 2 through 5 and Section B.
2. With respect to Canada, the goods listed in Section B purchased by the Department of National Defence and the Royal Canadian Mounted Police are included in the coverage of this Chapter, subject to Article 1018(1).
3. With respect to Mexico, the goods listed in Section B purchased by the Secretaría de la Defensa Nacional and the Secretaría de Marina are included in the coverage of this Chapter, subject to the application of Article 1018(1).
4. With respect to the United States, this Chapter will generally apply to Department of Defense purchases of the FSC categories listed in Section B subject to United States Government determinations under Article 1018(1).
5. This Chapter does not apply to the following purchases of the U.S. Department of Defense:
  - (a) Federal Supply Classification (FSC) 83 - all elements other than pins, needles, sewing kits, flagstuffs, flagpoles and flagstaff trucks;
  - (b) FSC 84 - all elements other than sub-class 8460 (luggage);
  - (c) FSC 89 - all elements other than sub-class 8975 (tobacco products);
  - (d) FSC 2310 - (buses only);
  - (e) 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 DOD: (1) manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.06 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 percent; (3) titanium and titanium alloys; or (4) zirconium base alloys;
  - (f) FSC 19 and 20 - that part defined as naval vessels or major components of the hull or superstructure thereof;
  - (g) FSC 51; and
  - (h) the following FSC categories are not generally covered due to application of Article 1018(1): 10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59 and 95.

**Section B - List of Certain Goods**

**Note:** Numbers refer to the Federal Supply Classification codes.

22. Railway equipment
23. Motor vehicles, trailers and cycles (except buses in 2310; and, for Canada and Mexico, except military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working machinery
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment (for Canada, except 4220: Marine life-saving 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 (for Canada, 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 (for Canada, 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 (for Canada and Mexico, 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 (Canada and United States only)
- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products (for Mexico, except 9620: minerals, natural and synthetic)
- 99. Miscellaneous

**Annex 1001.1b-2**

**Services**

**Section A - General Provisions**

1. This Chapter applies to all services that are procured by the entities listed in Annex 1001.1a-1 and Annex 1001.1a-2, subject to:
  - (a) paragraph 3 and Section B; and
  - (b) Appendix 1001.1b-2-A, for the Parties specified in that Appendix.
2. Appendix 1001.1b-2-B sets out the Common Classification System for the services procured by the entities of the Parties. The Parties shall use this System for reporting purposes and shall update Appendix 1001.1b-2-B at such times as they mutually agree.
3. Annex 1001.1b-3 applies to contracts for construction services.

**Section B - Excluded Coverage**

**Schedule of Canada**

**Services Exclusions  
by Major Service Category**

The following service contracts are excluded:

**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" as defined in Article 1310 and that are expressly excluded from the reservations set out in Annex II, Schedule of Canada, II-C-3 or II-C-5. 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
- 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**

- F004 Land Treatment Practices Services (plowing/clearing, etc).
- F005 Range Seeding Services (ground equipment)
- F006 Crop Services inc. Seed Collection/Production Services
- F007 Seedling Production/Transplanting Services
- F010 Other Range/Forest Improvements Services
- F011 Pesticides/Insecticides Support Services
- 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 of Transport, Communications and Fisheries and Oceans 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 of Transport, Communications and Fisheries and Oceans 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 Defence

The Department of Transport

The Department of Energy, Mines and 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 <sup>1</sup>
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)
R113	Data Collection Services
R114	Logistics Support Services <sup>2</sup>
R116	Court Reporting Services
R117	Paper Shredding Services
R201	Civilian Personnel Recruitment (inc. Services of Employment Agencies)

<sup>1</sup> with reference to transportation systems

<sup>2</sup> with respect to transportation and defence

**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 of Transport, Communications and Fisheries and Oceans 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

**Notes:**

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 1001.1b-1), 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 Schedules of Canada as identified in Annex 1001.2b and Annex 1001.1b-3 will apply.
4. In the absence of agreed definitions for service classes under the proposed NAFTA classification system, and until such time as they are mutually agreed, Canada will continue to apply appropriate CPC definitions to identify classes which it considers exempt.

**Schedule of Mexico**

The following service contracts are excluded:

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

1. All transportation services, including:

<b>CPC Group</b>	<b>CPC Class</b>
71	Land Transportation
72	Water Transport
73	Air Transport
74	Supporting and Auxiliary Transport
75	Post and Telecommunications
8868	Repair Services of other transport equipment, on a fee or contract basis

2. Public Utilities Services (including telecommunications, transmission, water or energy services)
3. Management and operation contracts awarded to federally-funded research and development centers or related to carrying out government sponsored research programs

- 4. Financial Services
- 5. Research and Development Services

## **Schedule of the United States**

### **Service Exclusions by Major Service Category**

**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," as defined in Article 1310 and that are expressly excluded from the reservation set out in Annex II, Schedule of the United States, II-U-3. 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 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:**

1. All services purchased in support of military forces overseas will be excluded from coverage by this Chapter.
2. For service suppliers of Canada, this Chapter will apply to procurements by the authorities and the power administrations listed as items 1 through 6 in the U.S. Schedule in Annex 1001.1a-2 and to procurements by the Bureau of Reclamation of the Department of Interior only at such time as this Chapter applies to the procurements by the Canadian provincial, not including local, hydro utilities.

**Appendix 1001.1b-2-A**

**Temporary Schedule of Services for Mexico**

1. Until Mexico has completed its Schedule to Section B of Annex 1001.1b-2, pursuant to paragraph 2, this Chapter applies only in respect of the services set out in the Temporary Schedule.
2. Mexico shall develop and, after consultations with the other Parties, complete its list of services set out in its Schedule to Section B of Annex 1001.1b-2 no later than July 1, 1995.
3. When Mexico completes its list pursuant to paragraph 2, each Party may, after consultation with the other Parties, review and revise its Schedule to Section B to Annex 1001.1b-2.

**Temporary Schedule**

**Note:** Based on the United Nations Central Product Classification (CPC)

CPC	Professional Services
863	Taxation services (excluding legal services)
	Architectural services
86711	Advisory and pre-design architectural services
86712	Architectural design services
86713	Contract administration services
86714	Combined architectural design and contract administration services
86719	Other architectural services
	Engineering services
86721	Advisory and consultative engineering services
86722	Engineering design services for foundations and building structures
86723	Engineering design services for mechanical and electrical installations for buildings
86724	Engineering design services for civil engineering construction

- 86725 Engineering design for industrial processes and production
- 86726 Engineering design services n.e.c.
- 86727 Other engineering services during the construction and installation phase
- 86729 Other engineering services
- Integrated engineering services
- 86731 Integrated engineering services for transportation, infrastructure turnkey projects
- 86732 Integrated engineering and project management services for water supply and sanitation works turnkey projects
- 86733 Integrated engineering services for the construction of manufacturing turnkey projects
- 86739 Integrated engineering services for other turnkey projects
- 8674 Urban planning and landscape architectural services

Computer and Related Services

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

Real Estate Services

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

Rental/Leasing Services without Operators

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

Other Business Services

- Management consulting services
- 86501 General management consulting services
- 86503 Marketing management consulting services
- 86504 Human resources management consulting services
- 86505 Production management consulting services
- 86509 Other management consulting services, including agrology, agronomy, farm management and related consulting services
- 8676 Technical testing and analysis services including quality control and inspection
- 8814 Services incidental to forestry and logging, including forest management
- 883 Services incidental to mining, including, drilling and field services
- Related scientific and technical consulting services
- 86751 Geological, geophysical and other scientific prospecting services, including those related to mining
- 86752 Subsurface surveying services
- 86753 Surface surveying services
- 86754 Map making services

8861  
through

8866 Repair services incidental to metal products, to machinery and equipment including computers, and communications equipment

874 Building-cleaning

876 Packaging services

Environmental Services

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

Hotels and restaurants (including catering)

641 Hotel and other lodging services

642 Food services

643 Beverage serving services

Travel agency and tour operators services

7471 Travel agency and tour operator services

**Appendix 1001.1b-2-B**

**Common Classification System**

**Services**

**Notes:**

1. It is understood that the Parties will continue to work on the development of definitions related to the categories and other ongoing enhancements to the Classification System.
2. The Parties will continue to review outstanding technical issues that may arise from time to time.
3. This common classification system follows the format described below:

Group = one digit

Sub-group = two digit

Class = four digit

**A - Research and Development**

Definition of research and development contracts:

Procurement of research and development services include the acquisition of specialized expertise for the purposes of increasing knowledge in science; applying increased scientific knowledge or exploiting the potential of scientific discoveries and improvements in technology to advance the state of art; and systematically using increases in scientific knowledge and advances in state of art to design, develop, test, or evaluate new products or services.

R&D Codes:

The R&D code is composed of two alphabetic digits. The first digit is always the letter "A" to identify R&D, the second digit is alphabetic "A to Z" to identify the major sub-group.

<b>Code</b>	<b>Descriptions</b>
AA	Agriculture
AB	Community Services and Development
AC	Defense Systems
AD	Defense - Other
AE	Economic Growth and Productivity
AF	Education
AG	Energy
AH	Environmental Protection
AJ	General Science and Technology
AK	Housing

AL	Income Security
AM	International Affairs and Cooperation
AN	Medical
AP	Natural Resources
AQ	Social Services
AR	Space
AS	Transportation - Modal
AT	Transportation - General
AV	Mining Activities
AZ	Other Research and Development

**B - Special Studies and Analysis - (not R&D)**

Definition of Special Studies and Analysis:

Procurement of special studies and analyses are organized, analytic assessments that provide insights for understanding complex issues or improving policy development or decision making. Output obtained in such acquisitions is a formal, structured document including data or other information that form the basis for conclusions or recommendations.

B0	Natural Sciences
B000	Chemical/Biological Studies and Analyses
B001	Endangered Species Studies - Plant and Animal
B002	Animal and Fisheries Studies
B003	Grazing/Range Studies
B004	Natural Resource Studies
B005	Oceanological Studies
B009	Other Natural Sciences Studies
B1	Environmental Studies
B100	Air Quality Analyses
B101	Environmental Studies Development of Environmental Impact Statements and Assessments
B102	Soil Studies
B103	Water Quality Studies
B104	Wildlife Studies
B109	Other Environmental Studies
B2	Engineering Studies
B200	Geological Studies
B201	Geophysical Studies
B202	Geotechnical Studies
B203	Scientific Data Studies
B204	Seismological Studies
B205	Building Technology Studies

B206 Energy Studies  
B207 Technology Studies  
B208 Housing and Community Development Studies (incl. Urban/Town Planning Studies)  
B219 Other Engineering Studies

B3 Administrative Support Studies

B300 Cost Benefit Analyses  
B301 Data Analyses (other than scientific)  
B302 Feasibility Studies (non-construction)  
B303 Mathematical/Statistical Analyses  
B304 Regulatory Studies  
B305 Intelligence Studies  
B306 Defense Studies  
B307 Security Studies (Physical and Personal)  
B308 Accounting/Financial Management Studies  
B309 Trade Issue Studies  
B310 Foreign Policy/National Security Policy Studies  
B311 Organization/Administrative/Personnel Studies  
B312 Mobilization/Preparedness Studies  
B313 Manpower Studies  
B314 Acquisition Policy/Procedures Studies  
B329 Other Administrative Support Studies

B4 Space Studies

B400 Aeronautic/Space Studies

B5 Social Studies and Humanities

B500 Archeological/Paleontological Studies  
B501 Historical Studies  
B502 Recreation Studies  
B503 Medical and Health Studies  
B504 Educational Studies and Analyses  
B505 Elderly/Handicapped Studies  
B506 Economic Studies  
B507 Legal Studies  
B509 Other Studies and Analyses

**C - Architect and Engineering Services**

C1 - Architect and Engineering Services - Related To Construction

C11 Building and Facility Structures

C111 Administrative and Service Buildings  
C112 Airfield, Communication and Missile Facilities  
C113 Educational Buildings

- C114 Hospital Buildings
- C115 Industrial Buildings
- C116 Residential Buildings
- C117 Warehouse Buildings
- C118 Research and Development Facilities
- C119 Other Buildings

C12 Non-Building Structures

- C121 Conservation and Development
- C122 Highways, Roads, Streets, Bridges and Railways
- C123 Electric Power Generation (EPG)
- C124 Utilities
- C129 Other Non-Building Structures
- C130 Restoration

C2 - Architect and Engineering Services - Not Related to Construction

- C211 Architect - Engineer Services (incl. landscaping, interior layout and designing)
- C212 Engineering Drafting Services
- C213 A&E Inspection Services
- C214 A&E Management Engineering Services
- C215 A&E Production Engineering Services (incl. Design and Control and Building Programming)
- C216 Marine Architect and Engineering Services
- C219 Other Architect and Engineering Services

**D - Information Processing and Related Telecommunications Services**

- D301 ADP Facility Operation and Maintenance Services
- D302 ADP Systems Development Services
- D303 ADP Data Entry Services
- D304 ADP Telecommunications and Transmission Services
- D305 ADP Teleprocessing and Timesharing Services
- D306 ADP Systems Analysis Services
- D307 Automated Information System Design and Integration Services
- D308 Programming Services
- D309 Information and Data Broadcasting or Data Distribution Services
- D310 ADP Backup and Security Services
- D311 ADP Data Conversion Services
- D312 ADP Optical Scanning Services
- D313 Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services
- D314 ADP System Acquisition Support Services (Includes preparation of statement of work, benchmarks, specifications, etc.)
- D315 Digitizing Services (Includes cartographic and geographic information)
- D316 Telecommunications Network Management Services
- D317 Automated News Services, Data Services, or Other Information Services. Buying data (the electronic equivalent of books, periodicals, newspapers, etc.)
- D399 Other ADP and Telecommunications Services (incl. data storage on tapes, Compact Disk (CD), etc.)

**E - Environmental Services**

- E101 Air Quality Support Services
- E102 Industrial Investigation Surveys and Technical Support Related to Air Pollution
- E103 Water Quality Support Services
- E104 Industrial Investigation Surveys and Technical Support Related to Water Pollution
- E106 Toxic Substances Support Services
- E107 Hazardous Substance Analysis
- E108 Hazardous Substance Removal, Cleanup, and Disposal Services and Operational Support
- E109 Leaking Underground Storage Tank Support Services
- E110 Industrial Investigations, Surveys and Technical Support for Multiple Pollutants
- E111 Oil Spill Response including Cleanup, Removal, Disposal and Operational Support
- E199 Other Environmental Services

**F - Natural Resources Services**

- F0 Agriculture and Forestry Services
  - F001 Forest/Range Fire Suppression/Presuppression Services (incl. Water Bombing)
  - F002 Forest/Range Fire Rehabilitation Services (non-construction)
  - F003 Forest Tree Planting Services
  - F004 Land Treatment Practices Services (plowing/clearing, etc.)
  - F005 Range Seeding Services (ground equipment)
  - F006 Crop Services (incl. Seed Collection and Production Services)
  - F007 Seedling Production/Transplanting Services
  - F008 Tree Breeding Services (incl. ornamental shrub)
  - F009 Tree Thinning Services
  - F010 Other Range/Forest Improvements Services (non-construction)
  - F011 Pesticides /Insecticides Support Services
- F02 Animal Care / Control Services
  - F020 Other Wildlife Management Services
  - F021 Veterinary/Animal Care Services (incl. Livestock Services)
  - F029 Other Animal Care/Control Services
- F03 Fisheries and Ocean Services
  - F030 Fisheries Resources Management Services
  - F031 Fish Hatchery Services
- F04 Mining
  - F040 Surface Mining Reclamation Services (non-construction)
  - F041 Well Drilling
  - F042 Other Services Incidental to Mining Except Those Listed in F040 and F041

- F05 Other Natural Resources Services
- F050 Recreation Site Maintenance Services (non-construction)
- F051 Survey Line Clearing Services
- F059 Other Natural Resources and Conservation Services

**G - Health and Social Services**

- G0 Health Services
- G001 Health Care
- G002 Internal Medicine
- G003 Surgery
- G004 Pathology
- G009 Other Health Services
- G 1 Social Services
- G100 Care of Remains and/or Funeral Services
- G101 Chaplain Services
- G102 Recreational Services (incl. Entertainment Services)
- G103 Social Rehabilitation Services
- G104 Geriatric Services
- G199 Other Social Services

**H - Quality Control, Testing, Inspection and Technical Representative Services**

- H0 Technical Representative Services
- H1 Quality Control Services
- H2 Equipment and Materials Testing
- H3 Inspection Services (incl. commercial testing and Laboratory Services, Except Medical/Dental)
- H9 Other Quality Control, Testing, Inspection and Technical Representative Services

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

- J0 Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment; includes as examples:
  - 1. Textile Finishing, Dying and Printing
  - 2. Welding services not related to Construction.  
(see CPC 5155 for Construction Welding)

J998 Non-nuclear Ship Repair (including overhauls and conversions)

**K - Custodial Operations and Related Services**

K0 Personal Care Services (incl. services such as Barber and Beauty Shop, Shoe Repairs and Tailoring etc.)

K1 Custodial Services

K100 Custodial - Janitorial Services

K101 Fire Protection Services

K102 Food Services

K103 Fueling and Other Petroleum Services - Excluding Storage

K104 Trash/Garbage Collection Services - Including Portable Sanitation Services

K105 Guard Services

K106 Insect and Rodent Control Services

K107 Landscaping/Groundskeeping Services

K108 Laundry and Dry Cleaning Services

K109 Surveillance Services

K110 Solid Fuel Handling Services

K111 Carpet Cleaning

K112 Interior Plantscaping

K113 Snow Removal/Salt Service (also spreading aggregate or other snow meltings material)

K114 Waste Treatment and Storage

K115 Preparation and Disposal of Excess and Surplus Property

K116 Other Salvage Services

K199 Other Custodial and Related Services

**L - Financial and Related Services**

L000 Government Life Insurance Programs

L001 Government Health Insurance Programs

L002 Other Government Insurance Programs

L003 Non-Government Insurance Programs

L004 Other Insurance Services

L005 Credit Reporting Services

L006 Banking Services

L007 Debt Collection Services

L008 Coin Minting

L009 Banknote Printing

L099 Other Financial Services

**M - Operation of Government - Owned Facilities**

M110 Administrative Facilities and Service Buildings

M120 Airfield, Communications, and Missile Facilities

M130 Educational Buildings

M140	Hospital Buildings
M150	Industrial Buildings
M160	Residential Buildings
M170	Warehouse Buildings
M180	Research and Development Facilities
M190	Other Buildings
M210	Conservation and Development Facilities
M220	Highways, Roads, Streets, Bridges and Railways
M230	Electric Power Generation (EPG) Facilities
M240	Utilities
M290	Other Non-Building Facilities

**R - Professional, Administrative and Management Support Services**

R0	Professional Services
R001	Specifications Development Services
R002	Technology Sharing/Utilization Services
R003	Legal Services
R004	Certifications and Accreditations for products and institutions other than Educational Institutions
R005	Technical Assistance
R006	Technical Writing Services
R007	Systems Engineering Services
R008	Engineering and Technical Services (incl. Mechanical, Electrical, Chemical, Electronic Engineering)
R009	Accounting Services
R010	Auditing Services
R011	Ongoing Audit Operations Support
R012	Patent and Trade Mark Services
R013	Real Property Appraisals Services
R014	Operations Research Studies / Quantitative Analysis Studies
R015	Simulation
R016	Personal Services Contracts
R019	Other Professional Services
R1	Administrative and Management Support Services
R100	Intelligence Services
R101	Expert Witness
R102	Weather Reporting/Observation Services
R103	Courier and Messenger Services
R104	Transcription Services
R105	Mailing and Distribution Services (Excluding Post Office Services)
R106	Post Office Services
R107	Library Services
R108	Word Processing/Typing Services
R109	Translation and Interpreting Services (Including Sign Language)
R110	Stenographic Services
R111	Personal Property Management Services

R112 Information Retrieval (non-automated)  
R113 Data Collection Services  
R114 Logistics Support Services  
R115 Contract, Procurement, and Acquisition Support Services  
R116 Court Reporting Services  
R117 Paper Shredding Services  
R118 Real Estate Brokerage Services  
R119 Industrial Hygienics  
R120 Policy Review/Development Services  
R121 Program Evaluation Studies  
R122 Program Management/Support Services  
R123 Program Review/Development Services  
R199 Other Administrative and Management Support Services

R2 Personnel Recruitment

R200 Military Personnel Recruitment  
R201 Civilian Personnel Recruitment (incl. Services of Employment Agencies)

**S - Utilities**

S000 Gas Services  
S001 Electric Services  
S002 Telephone and/or Communications Services (incl. Telegraph, Telex and Cablevision Service)  
S003 Water Services  
S099 Other Utilities

**T - Communications, Photographic, Mapping, Printing and Publication Services**

T000 Communications Studies  
T001 Market Research and Public Opinion Services (Formerly Telephone and Field Interview Services incl. Focus testing, Syndicated and attitude Surveys)  
T002 Communications Services (incl. exhibit Services)  
T003 Advertising Services  
T004 Public Relations Services (incl. Writing Services, Event Planning and Management, Media Relations, Radio and TV Analysis, Press Services)  
T005 Arts/Graphics Services  
T006 Cartography Services  
T007 Charting Services  
T008 Film Processing Services  
T009 Film/Video Tape Production Services  
T010 Microfiche Services  
T011 Photogrammetry Services  
T012 Aerial Photographic Services  
T013 General Photographic Services - Still  
T014 Print/Binding Services  
T015 Reproduction Services

- T016 Topography Services
- T017 General Photographic Services - Motion
- T018 Audio/Visual Services
- T019 Land Surveys, Cadastral Services (non-construction)
- T099 Other Communication, Photographic, Mapping, Printing and Publication Services

**U - Educational and Training Services**

- U001 Lectures For Training
- U002 Personnel Testing
- U003 Reserve Training (Military)
- U004 Scientific and Management Education
- U005 Tuition, Registration, and Membership Fees
- U006 Vocational/Technical
- U007 Faculty Salaries for Schools Overseas
- U008 Training/Curriculum Development
- U009 Informatics Training
- U010 Certifications and Accreditations for Educational Institutions
- U099 Other Education and Training Services

**V - Transportation, Travel and Relocation Services**

- V0 Land Transport Services
  
- V000 Motor Pool Operations
- V001 Motor Freight
- V002 Rail Freight
- V003 Motor Charter for Things
- V004 Rail Charter for Things
- V005 Motor Passenger Service
- V006 Rail Passenger Service
- V007 Passenger Motor Charter Service
- V008 Passenger Rail Charter Service
- V009 Ambulance Service
- V010 Taxicab Services
- V011 Security Vehicle Service
  
- V1 Water Transport Services
  
- V100 Vessel Freight
- V101 Marine Charter for Things
- V102 Marine Passenger Service
- V103 Passenger Marine Charter Service

- V2 Air Transport Services
  - V200 Air Freight
  - V201 Air Charter for Things
  - V202 Air Passenger Service
  - V203 Passenger Air Charter Service
  - V204 Specialty air Services including Aerial Fertilization, Spraying and Seeding
- V3 Space Transportation and Launch Services
- V4 Other Transport Services
  - V401 Other Transportation Travel and Relocation Services
  - V402 Other Cargo and Freight Services
  - V403 Other Vehicle Charter for Transportation of Things
- V5 Supporting and Auxiliary Transport Services
  - V500 Stevedoring
  - V501 Vessel Towing Service
  - V502 Relocation Services
  - V503 Travel Agent Services
  - V504 Packing/Crating Services
  - V505 Warehousing and Storage Services
  - V506 Salvage of Marine Vessels
  - V507 Salvage of Aircraft
  - V508 Navigational Aid and Pilotage Services

**W - Lease and Rental of Equipment**

- W0 Lease or Rental of Equipment

**Annex 1001.1b-3**

**Construction Services**

**Section A - General Provisions**

1. This Chapter applies to all construction services set out in Appendix 1001.1b-3-A, except those listed in Section B, that are procured by the entities listed in Annex 1001.1a-1 and 1001.1a-2.
2. The Parties shall update Appendix 1001.1b-3-A at such times as they mutually agree.

**Section B - Excluded Coverage**

**Schedule of Canada**

The following services contracts are excluded:

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

**Schedule of the United States**

The following services contracts are excluded:

Dredging

**Note:** In accordance with this Chapter, buy national requirements on articles, supplies and materials acquired for use in construction contracts covered by this Chapter shall not apply to goods of Canada or Mexico.

## Appendix 1001.1b-3-A

### Common Classification System

#### Construction Work Codes

**Note:** Based on the United Nations Central Product Classification (CPC) Division 51.

**Definition of Construction work:**

Pre-erection work; new construction and repair, alteration, restoration and maintenance work on residential buildings, non-residential buildings or civil engineering works. This work can be carried out either by general contractors who do the complete construction work for the owner of the project, or on own account; or by subcontracting parts of the construction work to contractors specializing, e.g., in installation work, where the value of work done by subcontractors becomes part of the main contractor's work. The products classified here are services which are essential in the production process of the different types of constructions, the final output of construction activities.

**Code      Descriptions**

**511      Pre-erection work at construction sites**

5111	Site investigation work
5112	Demolition work
5113	Site formation and clearance work
5114	Excavating and earthmoving work
5115	Site preparation work for mining (except for mining of oil and gas which is classified under FO42)
5116	Scaffolding work

**512      Construction works for buildings**

5121	For one and two dwelling buildings
5122	For multi-dwelling buildings
5123	For warehouses and industrial buildings
5124	For commercial buildings
5125	For public entertainment buildings
5126	For hotel, restaurant and similar buildings
5127	For educational buildings
5128	For health buildings
5129	For other buildings

**513 Construction work for civil engineering**

- 5131 For highways (except elevated highways), streets , roads, railways and airfield runways
- 5132 For bridges, elevated highways, tunnels ,subways and railroads
- 5133 For waterways, harbours, dams and other water works
- 5134 For long distance pipelines, communication and power lines (cables)
- 5135 For local pipelines and cables; ancillary works
- 5136 For constructions for mining and manufacturing
- 5137 For constructions for sport and recreation
- 5138 Dredging services
- 5139 For engineering works n.e.c.

**514 Assembly and erection of prefabricated constructions**

**515 Special trade construction work**

- 5151 Foundation work, including pile driving
- 5152 Water well drilling
- 5153 Roofing and water proofing
- 5154 Concrete work
- 5155 Steel bending and erection, including welding
- 5156 Masonry work
- 5159 Other special trade construction work

**516 Installation work**

- 5161 Heating, ventilation and air conditioning work
- 5162 Water plumbing and drain laying work
- 5163 Gas fitting construction work
- 5164 Electrical work
- 5165 Insulation work (electrical wiring, water, heat, sound)
- 5166 Fencing and railing construction work
- 5169 Other installation work

**517 Building completion and finishing work**

- 5171 Glazing work and window glass installation work
- 5172 Plastering work
- 5173 Painting work
- 5174 Floor and wall tiling work
- 5175 Other floor laying, wall covering and wall papering work
- 5176 Wood and metal joinery and carpentry work
- 5177 Interior fitting decoration work
- 5178 Ornamentation fitting work
- 5179 Other building completion and finishing work

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

## Annex 1001.1c

## Indexation and Conversion of Thresholds

1. The calculations referred to in Article 1001(1)(c) shall be made in accordance with the following:

- (a) the U.S. inflation rate shall be measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics;
- (b) the first adjustment for inflation, to take effect on January 1, 1996, shall be calculated using the period from November 1, 1993 through October 31, 1995;
- (c) all subsequent adjustments shall be calculated using two-year periods, each period beginning November 1, and shall take effect on January 1 of the year immediately following the end of the two-year period;
- (d) the United States shall notify the other Parties of the adjusted threshold values no later than November 16 of the year before the adjustment takes effect; and
- (e) the inflationary adjustment shall be estimated according to the following formula

$$T_0 \times (1 + \check{\theta}_i) = T_1$$

- $T_0$ = threshold value at base period
- $\check{\theta}_i$ = accumulated U.S. inflation rate for the  $i^{\text{th}}$  two year-period
- $T_1$ = new threshold value.

2. Mexico and Canada shall calculate and convert the value of the thresholds set out in Article 1001(1)(c) into their national currencies using the conversion formula set out in paragraph 3 or 4, as appropriate. Mexico and Canada shall notify each other and the United States of the value, in their respective currencies, of the newly calculated thresholds no later than one month before the respective thresholds take effect.

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

4. Mexico shall use the conversion rate of the Bank of Mexico ("Banco de México"). Its conversion rate shall be the existing value of the Mexican peso in terms of the U.S. dollar as of

December 1 and June 1 of each year, or the first working day thereafter. The conversion rate as of December 1 shall apply from January 1 to June 30 of the following year, and as of June 1 shall apply from July 1 to December 31 of that year.

**Annex 1001.2a****Transitional Provisions for Mexico**

Notwithstanding any other provision of this Chapter, Annexes 1001.1a-1 through 1001.1b-3 are subject to the following:

**Pemex, CFE and Non-Energy Construction**

1. Mexico may set aside from the obligations of this Chapter for a calendar year set out in paragraph 2 the percentage specified in that paragraph of:
  - (a) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by Pemex in the year that are above the thresholds set out in Article 1001(1)(c);
  - (b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in Article 1001(1)(c); and
  - (c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Article 1001(1)(c), excluding procurement contracts for construction services procured by Pemex and CFE.
2. The calendar years to which paragraph 1 applies and the percentages for those calendar years are as follows:
 

<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
50%	45%	45%	40%	40%
<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003 and thereafter</u>
35%	35%	30%	30%	0%
3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in this Chapter.
4. Mexico shall ensure that the total value of procurement contracts under any single FSC class (or other classification system agreed by Parties) that are set aside by Pemex or CFE under

paragraphs 1 and 2 for any year does not exceed 10 percent of the total value of the procurement contracts that may be set aside by Pemex or CFE for that year.

5. Mexico shall ensure that, after December 31, 1998, Pemex and CFE each shall make all reasonable efforts to ensure that the total value of procurement contracts under any single FSC class (or other classification system agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any year does not exceed 50 percent of the total value of all Pemex or CFE procurement contracts under that FSC class (or other classification system agreed by the Parties) for that year.

### **Pharmaceuticals**

6. Until January 1, 2002, this Chapter shall not apply to the procurement by the Secretaría de Salud, IMSS, ISSSTE, Secretaría Defensa Nacional and the Secretaría de Marina of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice rights under Chapter Seventeen (Intellectual Property).

### **Time Limits for Tendering and Delivery**

7. Mexico shall use its best efforts to comply with the 40-day time limit requirements of Article 1012, and in any event shall fully comply with that obligation no later than January 1, 1995.

### **Provision of Information**

8. The Parties recognize that Mexico may be required to undertake extensive retraining of personnel, introduce new data maintenance and reporting systems and make major adjustments to the procurement systems of certain entities in order to comply with Article 1019. The Parties also recognize that Mexico may encounter difficulties in making the transition to procurement systems that facilitate full compliance with this Chapter.

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

10. Canada and the United States shall cooperate with Mexico to provide technical assistance, as appropriate and mutually agreed pursuant to Article 1020, to aid Mexico's transition.

11. Nothing in paragraphs 8 through 10 shall be construed to excuse compliance with the obligations of this Chapter.

**Note:** The General Notes for Mexico set out in Annex 1001.2b apply to this Annex.

**Annex 1001.2b**

**General Notes**

**Schedule of Canada**

1. This Chapter does not apply to procurements in respect of:
  - (a) shipbuilding and repair;
  - (b) urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
  - (c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
  - (d) set-asides for small and minority businesses;
  - (e) the Departments of Transport, Communications and Fisheries and Oceans 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
  - (f) agricultural products made in furtherance of agricultural support programs or human feeding programs.
2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
3. Pursuant to Article 1018, 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 most-favored-nation obligation of Article 1003 does not apply to procurements covered by Annex 1001.2c.

**Schedule of Mexico**

1. This Chapter does not apply to procurements made:

- (a) with a view to commercial resale by government-owned retail stores;
  - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); or
  - (c) by one entity from another entity of Mexico.
2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
3. Notwithstanding any other provision in this Chapter, Mexico may set aside procurement contracts from the obligations of this Chapter, subject to the following:
- (a) the total value of the contracts set aside that may be allocated by all entities, except Pemex and CFE, may not exceed the Mexican peso equivalent of
    - (i) US\$1.0 billion, in each year until December 31, 2002, and
    - (ii) US\$1.2 billion, in each year beginning January 1, 2003;
  - (b) no contract may be set aside under this paragraph by Pemex or CFE prior to January 1, 2003;
  - (c) the total value of the contracts set aside by Pemex and CFE under this paragraph may not exceed the Mexican peso equivalent of US\$300 million, in each year beginning January 1, 2003;
  - (d) the total value of contracts under any single FSC class (or other classification system agreed by the Parties) that may be set aside under this paragraph in any year shall not exceed 10 percent of the total value of contracts that may be set aside under this paragraph for that year; and
  - (e) no entity subject to subparagraph (a) may set aside contracts in any year of a value of more than 20 percent of the total value of contracts that may be set aside for that year.
4. Beginning one year after the date of entry into force of this Agreement, the dollar values referred to in paragraph 3 shall be adjusted annually for cumulative inflation from the date of entry into force of this Agreement, based on the implicit price deflator for U.S. Gross Domestic Product (GDP) or any successor index published by the Council of Economic Advisors in "Economic Indicators".

The dollar values adjusted for cumulative inflation up to January of each year following 1994 shall be

equal to the original dollar values multiplied by the ratio of:

- (a) the implicit U.S. GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year, to
- (b) the implicit U.S. GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of the date of entry into force of this Agreement,

provided that the price deflators under subparagraph (a) and (b) have the same base year.

The resulting adjusted dollar values shall be rounded to the nearest million dollars.

5. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

6. Notwithstanding any other provision of this Chapter, an entity may impose a local content requirement of no more than:

- (a) 40 percent, for labor-intensive turnkey or major integrated projects; or
- (b) 25 percent, for capital-intensive turnkey or major integrated projects.

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

- (c) the prime contractor is vested with the authority to select the general contractors or subcontractors;
- (d) neither the Government of Mexico nor its entities fund the project;
- (e) the person bears the risks associated with non-performance; and
- (f) the facility will be operated by an entity or through a procurement contract of that entity.

7. Notwithstanding the thresholds set out in Article 1001(1)(c), Article 1003 shall apply to any procurement from locally-established suppliers of oil and gas field supplies or equipment by Pemex at any project site where it performs works.

8. In the event that Mexico exceeds in any given year the total value of the contracts it may set aside for that year in accordance with paragraph 3 or the reserved procurement under Annex

1001.2a(1)(2) or (4), Mexico shall consult with the other Parties with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

9. Notwithstanding Annex 1001.2a(6), Mexico may not set aside from the obligations of this Chapter procurement contracts by its entities for biologicals and drugs patented in Mexico.

10. Nothing in this Chapter shall be construed to require Pemex to enter into risk-sharing contracts.

### **Schedule of the United States**

1. This Chapter does not apply to set-asides on behalf of small and minority businesses.

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

3. The most-favored-nation obligation of Article 1003 does not apply to procurements covered by Annex 1001.2c.

**Annex 1001.2c**

**Country-Specific Thresholds**

As between Canada and the United States,

- (a) for any entity listed in the Schedule of Canada or of the United States in Annex 1001.1a-1, the applicable threshold for goods contracts, which may include incidental services such as delivery and transportation, shall be US\$25,000 and the equivalent in Canadian dollars, as the case may be;
- (b) Annex 1001.1c, except paragraphs 2 and 3 of that Annex for the purpose of calculating and converting the value of the threshold set out in subparagraph (a), does not apply to such goods contracts; and
- (c) Chapter Thirteen of the *Canada - United States Free Trade Agreement* shall govern any procurement procedures that began before January 1, 1994, and that Chapter is hereby incorporated and made a part of this Agreement solely for that purpose.

**Annex 1010.1**

**Publications**

**Section A - Publications for Notices of Procurement  
in Accordance with Article 1010 (Invitation to Participate)**

**Schedule of Canada**

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

**Schedule of Mexico**

1. Major daily newspapers of national circulation or the *Official Gazette of the Federation* ("Diario Oficial de la Federación").
2. Mexico shall endeavor to establish a specialized publication for purposes of notices of procurement. When established, the publication shall substitute for those referred to in paragraph 1.

**Schedule of United States**

Commerce Business Daily (CBD)

**Section B - Publications for Measures  
in Accordance with Article 1019 (Provision of Information)**

**Schedule of Canada**

1. Laws and regulations:
  - (a) Statutes of Canada; and
  - (b) Canada Gazette.
2. Precedential judicial decisions:
  - (a) Dominion Law Reports;
  - (b) Supreme Court Reports;
  - (c) Federal Court Reports; and
  - (d) National Reporter.

3. Administrative rulings and procedures:
  - (a) Government Business Opportunities; and
  - (b) Canada Gazette.

### **Schedule of Mexico**

1. *Official Gazette of the Federation* ("Diario Oficial de la Federación")
2. *Judicial Weekly of the Federation* ("Semanao Judicial de la Federación") (for precedential judicial decisions only).
3. Mexico shall endeavor to establish a specialized publication for administrative rulings of general application and any procedure, including standard contract clauses regarding procurements. When established, the publication shall substitute for those set out in paragraphs 1 and 2 for this purpose.

### **Schedule of United States**

1. Laws and regulations:
  - (a) U.S. Statutes at Large
  - (b) U.S. Code of Federal Regulations.
2. Precedential decisions:
  - (a) U.S. Reports (U.S. Supreme Court);
  - (b) Federal Reporter (Circuit Court of Appeals);
  - (c) Federal Supplement Reporter (District Courts);
  - (d) Claims Court Reporter (Claims Court);
  - (e) Boards of Contract Appeals (unofficial publication by Commerce Clearing House);  
and
  - (f) Comptroller General of the United States (Those not officially published as decisions of the Comptroller General are published unofficially by Federal Publications, Inc.).
3. All U.S. laws, regulations, judicial decisions, administrative rulings and procedures regarding government procurement covered by this Chapter are codified in the Defense Federal Acquisition Regulation Supplement (DFARS) and the Federal Acquisition Regulation (FAR), both of which are published as a part of the U.S. Code of Federal Regulations (CFR). The DFARS and the FAR are published in title 48 of CFR.