

AGREEMENT ON INTERNAL TRADE

Chapter 5



2009

PART IV
SPECIFIC RULES

Chapter Five

Procurement

Article 500: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination) and 406 (Transparency) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 402 (Right of Entry and Exit), 403 (No Obstacles), 404 (Legitimate Objectives) and 405 (Reconciliation) apply to this Chapter.
3. For the purposes of Article 504, the reference in Article 404 (Legitimate Objectives) to "Article 401" shall be construed as a reference to "Article 504".

Article 501: Purpose

Consistent with the principles set out in Article 101(3) (Mutually Agreed Principles) and the statement of their application set out in Article 101(4), the purpose of this Chapter is to establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy in a context of transparency and efficiency.

Article 502: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement within Canada by any of its entities listed in Annex 502.1A, where the procurement value is:
 - (a) \$25,000 or greater, in cases where the largest portion of the procurement is for goods;
 - (b) \$100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by Annex 502.1B;¹ or
 - (c) \$100,000 or greater, in the case of construction.
2. Subject to paragraphs 3, 3P6 and 4 and Article 517, entities listed in Annexes 502.2A and 502.2B are excluded from this Chapter.²
3. The entities listed in Annex 502.2B shall be free to pursue commercial procurement practices that may otherwise not comply with this Chapter. Nevertheless, the Parties shall not direct those entities to discriminate against the goods, services or suppliers of goods or services of any Party, including those related to construction.

¹ See Interpretive Note No.1, immediately following Annex 502.1B.

² This paragraph was amended by the Sixth Protocol of Amendment.

3P6. Annex 502.3 establishes the provisions to cover procurement by entities of a commercial or industrial nature or those which have been granted exclusive rights by a Party.³

4. Annex 502.4 establishes the provisions to cover procurement by municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities (MASH entities). Annex 502.4 will only apply to those Provinces who subscribe to the Annex by giving written notice to the Secretariat.⁴

5. ⁵

Article 503: Extent of Obligations

Further to Article 102 (Extent of Obligations), each Party is responsible for compliance with this Chapter by its entities listed in Annex 502.1A and Annex 502.3 and for those entities covered by Annex 502.4.⁶

Article 504: Reciprocal Non-Discrimination

1. Subject to Article 404 (Legitimate Objectives), with respect to measures covered by this Chapter, each Party shall accord to:

- (a) the goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own such goods and services; and
- (b) the suppliers of goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own suppliers of such goods and services.

2. With respect to the Federal Government, paragraph 1 means that, subject to Article 404 (Legitimate Objectives), it shall not discriminate:

- (a) between the goods or services of a particular Province or region, including those goods and services included in construction contracts, and those of any other Province or region; or
- (b) between the suppliers of such goods or services of a particular Province or region and those of any other Province or region.

3. Except as otherwise provided in this Chapter, measures that are inconsistent with paragraphs 1 and 2 include, but are not limited to, the following:

- (a) the imposition of conditions on the invitation to tender, registration requirements or qualification procedures that are based on the location of a supplier's place of business

³ This paragraph was added to the Agreement on Internal Trade by means of the Sixth Protocol of Amendment.

⁴ This paragraph was amended by the Third Protocol of Amendment.

⁵ This paragraph was deleted by the Sixth Protocol of Amendment.

⁶ This article was modified by the Sixth Protocol of Amendment.

in Canada, the place in Canada where the goods are produced or the services are provided, or other like criteria;⁷

- (b) the biasing of technical specifications in favour of, or against, particular goods or services, including those goods or services included in construction contracts, or in favour of, or against, the suppliers of such goods or services for the purpose of avoiding the obligations of this Chapter;
- (c) the timing of events in the tender process so as to prevent suppliers from submitting bids;
- (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent suppliers from meeting the requirements of the procurement;
- (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to avoid the obligations of this Chapter; and
- (f) the use of price discounts or preferential margins in order to favour particular suppliers.
- (g) ⁸

4. No Party shall impose or consider, in the evaluation of bids or the award of contracts, local content or other economic benefits criteria that are designed to favour:

- (a) the goods and services of a particular Province or region, including those goods and services included in construction contracts; or
- (b) the suppliers of a particular Province or region of such goods or services.

5. Except as otherwise required to comply with international obligations, a Party may accord a preference for Canadian value-added, subject to the following conditions:

- (a) the preference for Canadian value-added must be no greater than 10 per cent;
- (b) the Party shall specify in the call for tenders the level of preference to be used in the evaluation of the bid; and
- (c) all qualified suppliers must be informed through the call for tenders of the existence of the preference and the rules applicable to determine the Canadian value-added.

6. Except as otherwise required to comply with international obligations, a Party may limit its tendering to Canadian goods, Canadian services or Canadian suppliers, subject to the following conditions:

- (a) the procuring Party must be satisfied that there is sufficient competition among Canadian suppliers;

⁷ This paragraph was amended by the Seventh Protocol of Amendment.

⁸ This paragraph was deleted by the Seventh Protocol of Amendment and paragraphs (e) and (f) amended accordingly.

- (b) all qualified suppliers must be informed through the call for tenders of the existence of the preference and the rules applicable to determine Canadian content; and
- (c) the requirement for Canadian content must be no greater than necessary to qualify the procured good or service as a Canadian good or service.⁹

Article 505: Valuation of Procurement

1. An entity shall estimate the procurement value as at the time of publication of a notice of a call for tenders in accordance with Article 506.
2. An entity shall, in calculating the procurement value, take into account all forms of remuneration including premiums, fees, commissions and interest.
3. No entity shall prepare, design or otherwise structure a procurement, select a valuation method or divide procurement requirements in order to avoid the obligations of this Chapter.

Article 506: Procedures for Procurement

1. Each Party shall ensure that procurement covered by this Chapter is conducted in accordance with the procedures set out in this Article.
2. A call for tenders shall be made through one or more of the following methods:
 - (a) the use of an electronic tendering system that is equally accessible to all Canadian suppliers;
 - (b) publication in one or more predetermined daily newspapers that are easily accessible to all Canadian suppliers; or
 - (c) the use of source lists, provided that, in respect of any source list:
 - (i) registration on the source list is consistent with Article 504;
 - (ii) all registered suppliers in a given category are invited to respond to all calls for tenders in that category; and
 - (iii) a supplier that meets the conditions for registration on the source list is able to register at any time.
3. Each Party shall, no later than January 1, 1995, designate the electronic tendering system or predetermined daily newspapers referred to in paragraphs 2(a) and (b) that it will use when making its calls for tenders. If a Party decides to change the system or a newspaper so designated, it shall notify the other Parties at least 30 days prior to implementing the change.
4. A notice of a call for tenders shall contain at least the following information:
 - (a) a brief description of the procurement contemplated;

⁹ This paragraph was amended by the Seventh Protocol of Amendment.

- (b) the place where a person may obtain information and tender documents;
- (c) the conditions for obtaining the tender documents;
- (d) the place where the tenders are to be sent;
- (e) the date and time limit for submitting tenders;
- (f) the time and place of the opening of the tenders in the event of a public opening; and
- (g) a statement that the procurement is subject to this Chapter.

5. Each Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement.

6. In evaluating tenders, a Party may take into account not only the submitted price but also quality, quantity, transition costs, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria directly related to the procurement that are consistent with Article 504. The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.¹⁰

7. An entity may limit tenders to goods, services or suppliers qualified prior to the close of call for tenders. However, the qualification process must itself be consistent with Article 504. An invitation to qualify shall be published at least annually by a method referred to in paragraph 2(a) or (b) or shall be distributed to suppliers listed on a source list referred to in paragraph 2(c).

8. An entity may limit a contract award to goods, services or suppliers that have been assessed (for example, certified, evaluated, qualified, registered or verified) by an independent nationally-recognized and industry-supported organization such as the Standards Council of Canada.

9. If a procurement exempted from the obligations of this Chapter under paragraph 11 or 12 or Article 507 or 508 is publicly tendered in a daily newspaper or on an electronic tendering system, the tender notice shall indicate the restrictions and highlight the practices that do not conform with this Article or Article 504.

10. An entity that uses a source list shall:

- (a) include information in its policies, procedures and practices describing the circumstances and manner in which the source list is used and any qualification criteria that a supplier must meet in order to register on the source list;
- (b) provide written confirmation of registration to any supplier that requests registration on the source list or indicate the qualification criteria that were not met; and
- (c) on request by any Party, provide that Party with the tender notice and the list of suppliers that will be invited to bid on a specific tender.

11. An entity of a Party may use procurement procedures that are different from those described in paragraphs 1 through 10 in the following circumstances, provided that it does not do so for the

¹⁰ This paragraph was amended by the Seventh Protocol of Amendment.

purpose of avoiding competition between suppliers or in order to discriminate against suppliers of any other Party:

- (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
- (b) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- (c) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the Party and the organization includes rules for awarding contracts that differ from the obligations set out in this Chapter;
- (d) where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads;¹¹
- (e) where compliance with the open tendering provisions set out in this Chapter would interfere with a Party's ability to maintain security or order or to protect human, animal or plant life or health; and
- (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with the procedures set out in this Chapter.

12. Where only one supplier is able to meet the requirements of a procurement, an entity may use procurement procedures that are different from those described in paragraphs 1 through 10 in the following circumstances:

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- (b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- (d) for the purchase of goods on a commodity market;
- (e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- (f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;

¹¹ This paragraph was amended by the Second Protocol of Amendment.

- (g) for a contract to be awarded to the winner of a design contest;
- (h) for the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (i) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (j) for the procurement of original works of art;
- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals; and
- (l) for the procurement of real property.

Article 507: Non-Application

This Chapter does not apply to:

- (a) procurement of goods intended for resale to the public;
- (b) procurement of goods, services or construction:
 - (i) purchased on behalf of an entity not covered by this Chapter; or
 - (ii) purchased by entities which operate sporting or convention facilities in order to comply with a commercial agreement with an entity not covered by this Chapter that contains provisions incompatible with this Chapter;¹²
- (c) procurement from philanthropic institutions, prison labour or persons with disabilities;
- (d) procurement contracts with a public body or a non-profit organization;¹³
- (e) procurement of:
 - (i) goods purchased for representational or promotional purposes; or
 - (ii) services or construction purchased for representational or promotional purposes outside the territory of a Party;¹⁴ and
- (f) procurement of any goods the interprovincial movement of which is restricted by laws not inconsistent with this Agreement.

¹² This paragraph was amended by the Second and Seventh Protocols of Amendment.

¹³ This paragraph was amended by the Second Protocol of Amendment.

¹⁴ This paragraph was amended by the Seventh Protocol of Amendment.

Article 508: Regional and Economic Development

Exceptional Circumstances

1. A Party may, under exceptional circumstances, exclude a procurement from the application of this Chapter for regional and economic development purposes, provided that:

- (a) the exclusion of the procurement does not operate to impair unduly the access of persons, goods, services or investments of another Party;
- (b) the exclusion of the procurement is not more trade restrictive than necessary to achieve its specific objective;
- (c) notice of all such excluded procurements is provided no later than the time the contract is awarded by the methods usually used to publish this type of procurement under Article 506(2); this notice must provide details of the exceptional circumstances and, when published on an electronic tendering system, it must be accessible for a period of time sufficient to allow suppliers to become aware of the procurement; and notice of all such excluded procurements with details of the exceptional circumstances is also given to other Parties no later than the time the contract is awarded via email transmitted to the Internal Trade Secretariat which will redistribute it to the contact points designated under Article 512;¹⁵ and
- (d) the Party seeks to minimize the discriminatory effects of the exclusion on suppliers of the other Parties.

2. In the case of a dispute relating to a procurement excluded from the application of this Chapter under paragraph 1, factors such as the following are to be taken into account in the dispute resolution process:

- (a) the frequency of the use by the Party of such exclusions for its procurements;
- (b) the extent to which the use by the Party of the exclusion for the particular procurement may contribute to economic development objectives or to the reduction of economic disparities;
- (c) whether the use of the exclusion for the particular procurement was applied in a manner to minimize the discrimination among bidders; and
- (d) the extent to which the use by the Party of the exclusion affects the development of competitive Canadian companies.

Transitional and Non-Conforming Procurement Measures

3. A Party may continue the transitional procurement policies and programs listed in Column I of Annex 508.3 until January 1, 1996.

4. A Party may continue the non-conforming procurement policies and programs listed in Column II of Annex 508.3, provided that the Party:

¹⁵ This paragraph was amended by the Seventh Protocol of Amendment.

- (a) prepares an annual written report on such policies and programs; and
- (b) conducts a review of such policies and programs, no later than January 1, 1998, to ensure that they meet their regional and economic objectives.

Article 509: Language

Each entity shall specify the language requirements for its procurement procedures.

Article 510: Confidentiality

Nothing in this Chapter requires an entity to breach confidentiality obligations imposed by law or to compromise security or commercially sensitive or proprietary information identified by a supplier in its tender documents.

Article 511: Information and Reporting

1. Each Party shall report annually to the other Parties on procurement by its entities listed in Annex 502.1A. The report shall contain the number and aggregate values of the procurements awarded that equal or exceed the applicable threshold values specified in Article 502. The report shall also contain the estimated aggregate values of contracts awarded below the applicable threshold values. The aggregate values shall be broken down by each category of procurement, being goods, services and construction.
2. The Parties shall, before the date of entry into force of this Agreement, develop a general mechanism to report through an electronic tendering system as provided in Article 516(3).
3. Each Party shall report annually to the other Parties on procurement above the applicable threshold value specified in Article 502 for each of Articles 506(11)(a) and (e) and 506(12)(a) and (h) and on all procurement excluded under Article 508(1) and policies and programs listed in Column I of Annex 508.3, the following information:
 - (a) the number of contracts;
 - (b) a description including the value of what was procured for each procurement; and
 - (c) the total value of the procurements.
4. Statistics shall be collected on the basis of the fiscal year.
5. Each Party shall provide annually to the Secretariat information suitable for publication on that Party's procedures for procurement, and specify:
 - (a) the name of the contact point to which inquiries or complaints may be made;
 - (b) the name of any daily newspaper or electronic tendering system used; and
 - (c) the place where information may be obtained on how to register on a source list or acquire access to any electronic tendering system used.

6. The Secretariat shall compile the information received from each Party under paragraph 5 and publish the information electronically. Each Party shall provide links to the information compiled by the Secretariat by either electronic means or by posting a notice in a newspaper.¹⁶

7. Where, in the context of a procurement by another Party, a Party considers that its rights under this Chapter may have been adversely affected, that Party may request, with the intent of avoiding a dispute, any relevant bid information concerning that procurement from the Party whose entity is responsible for the procurement. On receipt of such a request, that Party shall promptly provide such information.¹⁷

Article 512: Contact Point

Each Party shall designate a contact point for receiving and reviewing complaints from Parties and suppliers that may arise from the application of this Chapter.

Article 513: Complaint Procedures - Provinces¹⁸

1. This Article applies to complaints regarding procurement by Provinces.

2. Where, in respect of a specific procurement, a supplier has had recourse to the dispute settlement procedures under another procurement agreement, it may not utilize the complaint procedures of this Chapter for that specific procurement.

3. The supplier shall communicate its concerns or complaints in writing to the entity responsible for the procurement with a view to resolving them. The entity shall acknowledge receipt of the complaint in writing within five working days and provide a response within 20 working days.

4. Where a supplier has not received a satisfactory response under paragraph 3, it may make a written request to the contact point in the Province where the supplier is located to seek resolution of the complaint. Such a request may only be made within 90 days after the date on which the supplier acquired, or should have acquired, knowledge of the alleged inconsistent measure that forms the basis for the complaint.

5. Within 20 working days after the date of delivery of the request by the supplier under paragraph 4, the following must occur:

- (a) the contact point shall decide whether or not to make representations on the supplier's behalf. Where the contact point decides not to do so, it shall provide the supplier with written notice, setting out reasons for its decision;
- (b) where the contact point decides to make representations on the supplier's behalf, it shall provide written notice to the supplier of its decision and shall, within the first 10 working days, proceed to make such representations to the contact point of the Province of the purchasing entity;

¹⁶ This paragraph was amended by the Eighth Protocol of Amendment.

¹⁷ This paragraph was amended by the Eighth Protocol of Amendment.

¹⁸ The former article was replaced with the current article by means of the Eighth Protocol of Amendment.

- (c) the contact point of the Province of the purchasing entity shall provide an initial response within 10 working days of the delivery of the representations;
- (d) the contact points of the two Provinces shall consult with a view to resolving the matter; and
- (e) the contact point of the supplier's Province shall provide written notice to the supplier of the outcome of the consultations and, in the case where consultations have failed to resolve the matter, shall indicate whether or not the contact point intends to request consideration of the complaint by a review panel pursuant to paragraph 7.

6. The supplier that has made a written request under paragraph 4 shall have recourse to Article 1711(2) (Initiation of Proceedings by Persons) where the contact point of the supplier's Province gives notice:

- (a) under paragraph 5(a), that it will not make representations on the supplier's behalf; or
- (b) under paragraph 5(e), that it will not request the establishment of a review panel.

Failure to provide such notice within the 20 working days after the date of delivery of the supplier's request or, with the mutual agreement of the two contact points, within a further period not to exceed 10 additional working days, is deemed to be notice for the purposes of Article 1711(2)(Initiation of Proceedings by Persons).

7. Where consultations have failed to resolve the matter, the contact point of the supplier's Province may make a written request for consideration of the complaint by a review panel. The request shall be delivered to the contact point of the Province of the purchasing entity and to the Secretariat.

The review panel shall consider the complaint in accordance with the following:

- (a) each Province shall, before the date of entry into force of this Agreement, establish a roster consisting of competent and impartial people who will be able to serve on and chair review panels, and deliver notice of the roster to the other Provinces and to the Secretariat;
- (b) the contact points of the two Provinces shall, within 10 working days after the date of delivery of the request to the Secretariat, each appoint one panellist from any roster and agree on the choice of a third panellist to act as chairperson;
- (c) notwithstanding paragraph (b), any other composition of a panel acceptable to both Provinces is permissible;
- (d) if a contact point fails to appoint a panellist under paragraph (b), or the two contact points fail to agree on the choice of a chairperson under paragraph (b), the Secretariat shall select the panellist or chairperson by lot from the rosters of those Parties not involved in the complaint;
- (e) the panel shall begin consideration of a complaint within five working days after the appointments of panellists and a chairperson are confirmed, and shall complete its work within 20 working days after this confirmation. Should extraordinary circumstances require an extension, the panel will provide written notice of the extension to the contact points of both Provinces and to the Secretariat;

- (f) the panel shall establish procedures and guidelines appropriate to each case. The contact points of the two Provinces shall provide secretarial and research support to the panel and maintain necessary records;
- (g) the panel shall investigate the complaint to determine whether there is an inconsistency with this Chapter. The panel is entitled to receive a copy of pertinent tender documents and other relevant support information that it may require to assist in its determination. In accordance with Article 510, the panel shall keep confidential all information obtained by it;
- (h) the panel shall deliver a written report to both contact points who shall consult with each other and the supplier with the objective of reaching a mutually acceptable accommodation based on the report; and
- (i) both Provinces shall share the fees and expenses of the panel equally.

8. The contact points shall, within 10 working days after the date of delivery of the report, append to the report a description of the accommodation or, if an agreement on accommodation has not been reached, the different positions of both Provinces. The report and the appendix or appendices shall constitute the complete and final report of the panel. The contact points shall send the complete and final report to the Secretariat which shall forward a copy to the other Parties.

9. Where a Province considers, as a result of a panel's report and subsequent consultations, or another series of similar unresolved complaints, that the other Province is not complying with the terms of this Chapter, that Province may have recourse to Article 1708 (Publication, Committee Agenda) or 1709 (Non-Implementation - Retaliatory Action).

Article 514: Bid Protest Procedures - Federal Government

1. This Article applies to complaints regarding procurement by the Federal Government.
2. In order to promote fair, open and impartial procurement procedures, the Federal Government shall adopt and maintain bid protest procedures for procurement covered by this Chapter that:
 - (a) allow suppliers to submit bid protests 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 to the awarding of the contract;
 - (b) encourage suppliers to seek a resolution of any complaint with the entity concerned prior to initiating a bid protest;
 - (c) ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;
 - (d) limit the period within which a supplier may initiate a bid protest, provided that the period is at least 10 business days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
 - (e) permit a supplier that does not achieve a successful resolution of its complaint to bring the matter to the attention of an authority, with no substantial interest in the outcome, to

receive and consider the complaint and make appropriate findings and recommendations with respect to the complaint;

- (f) require the reviewing authority to provide its findings and recommendations in writing and in a timely manner and make them available to the Parties; and
- (g) require the reviewing authority to specify its bid protest procedures in writing and make them generally available.

3. The reviewing authority may:

- (a) recommend, where appropriate, a delay in awarding a proposed contract pending the resolution of the bid protest;
- (b) issue a recommendation to resolve the bid protest, which may include directing the entity to re-evaluate offers or terminate or re-compete the contract in question;
- (c) recommend, where appropriate, the award of compensation for lost profit or the costs associated with filing the complaint and preparing the bid; and
- (d) make, where appropriate, written recommendations to the entity concerning practices that the reviewing authority considers to be inconsistent with this Chapter.

Article 515: Relationship to Other Agreements

In the event of an inconsistency between a provision of this Chapter and a provision of any comparable procurement liberalization agreement entered into by two or more Parties before the date of entry into force of this Agreement or subsequently under Article 1800 (Trade Enhancement Arrangements), the provision that is more conducive to trade liberalization prevails to the extent of the inconsistency.

Article 516: Future Reviews

1. Subject to Article 502(4), the Parties shall, within 12 months after the date of entry into force of this Agreement, undertake a review to:

- (a) assess whether this Chapter has met its objectives;
- (b) assess and adjust threshold levels, as necessary;
- (c) revise this Chapter to accommodate changing principles under this Agreement; and
- (d) review the opportunities for progress related to public procurement not covered by or excluded from this Chapter.

2. The Parties shall conduct subsequent reviews in March of each fiscal year and shall present their findings and recommendations to the Committee for inclusion in its annual report on the Agreement.

3. The Parties shall, no later than January 1, 1995, establish a working group on electronic tendering to:

- (a) review the operation of electronic tendering systems in relation to the provisions of this Chapter;
- (b) develop common approaches for improving:
 - (i) the cost effectiveness and efficiency for suppliers;
 - (ii) the accessibility of information to governments and suppliers; and
 - (iii) the quality of information and service to suppliers;
- (c) design ways to maximize the use of a common system or to ensure that the electronic tendering systems used by the Parties are fully compatible and accessible; and
- (d) develop a process for selecting the supplier or suppliers of a common electronic tendering system.

4. The Parties shall review the opportunity to harmonize or reconcile the bid protest procedures provided in Articles 513 and 514 and make appropriate recommendations to the Committee no later than three years after the date of entry into force of this Agreement.

5. The Parties shall, before the date of entry into force of this Agreement, review and finalize the list of excluded services set out in Annex 502.1B.

Article 517: Treatment of Excluded Entities¹⁹

Parties may exclude access to their procurement opportunities from suppliers of another Party if:

- (a) the other Party has a comparable entity that is not subject to the obligations of Chapter Five by virtue of coverage under Annex 502.1A, 502.3, or 502.4;
- (b) the other Party's comparable entity has excluded or impaired access to its procurement opportunities; and
- (c) consultations have failed to resolve the matter.

Article 518: Definitions

In this Chapter:

bid means a submission in response to a call for tenders;

call for tenders means a call for competitive bids from suppliers, inviting them to submit a tender or proposal for the purpose of a procurement;

Canadian good means a good produced exclusively from domestic materials, a good manufactured in Canada or a good which if exported outside of Canada would qualify as a good of Canada under appropriate rules of origin;

¹⁹ The former article was replaced with the current article by means of the Sixth Protocol of Amendment.

Canadian service means a service performed in Canada by persons of a Party;²⁰

Canadian supplier means a supplier that has a place of business in Canada;

Canadian value-added means:

- (a) in relation to services, the proportion of the service contract performed by residents of Canada; and
- (b) in relation to goods, the difference between the dutiable value of imported goods and the selling price, taking into account any value added by manufacturers and distributors, and including any costs incurred in Canada related to:
 - (i) research and development;
 - (ii) sales and marketing;
 - (iii) communications and manuals;
 - (iv) customization and modifications;
 - (v) installation and support;
 - (vi) warehousing and distribution;
 - (vii) training; and
 - (viii) after-sales service;

The preference for Canadian value-added, as used in Article 504(5)(a), means the premium that may be awarded by a Party during the evaluation of bids for Canadian value-added, not the required level of Canadian content;²¹

construction means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement;

electronic tendering means the use of a computer-based system directly accessible by suppliers and providing them with information related to calls for tenders and requests for information;

goods means, in relation to procurement, moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract;

²⁰ This definition was added to the Agreement on Internal Trade by means of the Seventh Protocol of Amendment.

²¹ This paragraph was added to the definition by means of the Seventh Protocol of Amendment.

information technology means software, electronic equipment or combinations thereof used to collect, store, process, communicate, protect or destroy information in all its forms, particularly in the form of text, symbol, sound and image;

place of business means an establishment where a supplier conducts activities on a permanent basis that is clearly identified by name and accessible during normal working hours;

procurement means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction, but does not include:

- (a) any form of government assistance such as grants, loans, equity infusion, guarantees or fiscal incentives; or
- (b) government provision of goods and services to persons or other government organizations;

procurement procedures means the processes by which suppliers are invited to submit a tender, a proposal, qualification information, or a response to a request for information and includes the ways in which those tenders, proposals or information submissions are treated;

procurement value means the estimated total financial commitment resulting from a procurement, not taking into account optional renewals when the compulsory part of the contract is of at least one year's duration;

qualification of goods and services means a process whereby a buyer establishes a list of goods or services capable of responding to a specific need;

request for information means a procurement procedure whereby suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. It may be used to assist in preparing a call for tenders;

request for qualification means a procurement procedure used for the qualification of goods or services or to invite suppliers, if they meet the required qualification criteria, to register on a permanent source list or on a particular source list intended for a specific tender or some specific subsequent tenders;

services means all services including printing, but does not include those services excluded by Annex 502.1B;

statutory monopoly means an enterprise that in any relevant market in the territory of a Party has been designated by law or by governmental authority as the sole provider of a good or service;

supplier means a person who, based on an assessment of that person's financial, technical and commercial capacity, is capable of fulfilling the requirements of a procurement and includes a person who submits a tender for the purpose of obtaining a construction procurement;

tender means a response to a call for tenders;

technical specification means a specification that sets out characteristics of goods or their related processes and production methods, or characteristics of services or their related operating methods, including applicable administrative provisions, and 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.

Government Entities Covered by Chapter Five

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

²² This Annex was amended by the Fifth Protocol of Amendment.

Annex 502.1B

Services Covered by Chapter Five

1. All services are covered except the following:²³
 - (a) services that may, under the applicable laws of the Party issuing the tender, only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
 - (b) transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;
 - (c) services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
 - (d) financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
 - (e) health services and social services; and
 - (f) advertising and public relation services.
2. The foregoing is an illustrative list. The Parties shall, before the date of entry into force of this Agreement, review the list and reduce it in accordance with the principle of open government procurement.

²³ This paragraph was amended by the Second Protocol of Amendment.

Interpretive Note No. 1²⁴

Annex 502.1B (Services Covered by Chapter Five)

1. Annex 502.1B provides a list of services excluded from the coverage of Chapter Five (Procurement). The Parties recognize that there may be difficulties in distinguishing between contracts *for* service which may be the subject of procurement by a Party and contracts *of* service which may be categorized as employer-employee relationships and which are not intended by the Parties to be subject to the procurement obligations found in Chapter Five. To reduce any difficulties in making such a distinction, to aid in the application of the obligations in Chapter Five and to clearly state their original intent, the Parties issue this interpretive note.
2. Contracts of service are not the procurement of services within the meaning of Chapter Five. Contracts of service is a term which is not to be construed narrowly but rather refers to an employer-employee relationship between a Party and one or more individuals.
3. The Parties recognize that the existence of an employer-employee relationship may be determined according to various tests. For the purposes of determining whether a contract is subject to the procurement obligations of Chapter Five (or an employer-employee relationship which is not subject to this chapter), the Parties are of the view that consideration should be given to the various elements which constitute the relationship between a Party and an individual or individuals, including the nature of the work and the circumstances in which it is performed.
4. In making a determination as to whether there is an employer-employee relationship between a Party and an individual or individuals, the Parties also believe that consideration should be given, among other factors, to whether:
 - (a) the Party reserves the right of direction and control over the individual or individuals;
 - (b) the Party is responsible for remuneration;
 - (c) the Party hires and has the power to dismiss the individual or individuals;
 - (d) the Party is believed to be the employer by the employee or employees;
 - (e) there exists an intention to create an employer-employee relationship, or
 - (f) there is a chance of profit or risk of loss for the individual or individuals.

²⁴ This Interpretive Note was added to the Agreement on Internal Trade by means of the First Protocol of Amendment.

Annex 502.2A²⁵

Government Entities Excluded from Chapter Five

This Annex includes entities that are not accountable to executive branches of governments of the Parties, entities whose objective is national security, businesses of a commercial nature or in competition with the private sector, and state monopolies involved in the transformation and distribution of goods and services.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

²⁵ This Annex was amended by the Fifth Protocol of Amendment.

Government Entities Covered by Non-Intervention Commitment

This Annex includes entities that are businesses of a commercial nature or in competition with the private sector, and state monopolies involved in the transformation and distribution of goods and services.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

²⁶ This Annex was amended by the Fifth Protocol of Amendment.

Annex 502.3²⁷

Procurement - Provisions for Entities of a Commercial or Industrial Nature or Those Which Have Been Granted Exclusive Rights by a Party

A. Scope and Coverage

1. This Annex shall apply to contracting by entities listed in Appendix "A".
2. This Annex applies to measures, related to the procurement within Canada of goods, services and construction, which are adopted and maintained by the entities covered by this Annex, where the procurement value is:
 - (a) \$500,000 or more in cases where the procurement is for goods or services;
 - (b) \$5,000,000 or more in cases where the procurement is for construction.
3. In the case of framework agreements or long-term agreements with one or more suppliers, all procurement covered by said agreements shall be considered in determining the value of the contracts.

B. Relationship to the Agreement on Internal Trade

1. Chapter Five (Procurement) and the provisions of other Chapters of the Agreement on Internal Trade apply only as specified in this Annex.
2. The following Articles of the Agreement on Internal Trade, or portions thereof, apply to this Annex: Article 505 (Valuation of Procurement); Article 509 (Language); Article 512 (Contact Point); Article 518 (Definitions); Article 1600 (a), (b), and (d) (Committee on Internal Trade); Article 1603.4 (Secretariat); Article 1802 (Aboriginal Peoples); Article 1803 (Culture); Article 1805 (Taxation); and Article 1811 (Accession and Withdrawal).

C. Contracting Rules

1. Entities covered by this Annex shall maintain a procurement policy for procurements subject to this Annex, and shall make that policy available on request. Entities may continue existing policies and procedures, provided they are consistent with the provisions of this Annex.
2. Policies referred to in paragraph 1 may contain measures intended to achieve a legitimate objective as defined in Article 200 of the Agreement on Internal Trade, provided that it can be demonstrated that:
 - (a) the purpose of the measure is to achieve a legitimate objective;
 - (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet the legitimate objective;
 - (c) the measure is not more trade restrictive than is necessary to achieve the legitimate objective; and

²⁷ This annex was added to the Agreement on Internal Trade by means of the Sixth Protocol of Amendment.

(d) the measure does not create a disguised restriction on trade.

3. A call for tenders includes all methods of tendering such as Requests for Information, Requests for Quotations, Requests for Proposals, Request for Qualification and Requests for tenders.

4. All forms of discrimination based on the province of origin, either of goods, services or construction materials or of suppliers of such goods, services or materials of construction contractors, shall be eliminated from practices used in all stages of the procurement process.

5. Procurements covered by this Annex shall be announced by a notice on any electronic tendering system easily accessible to all suppliers in Canada. The information published shall give potential suppliers an overview of the proposed procurement and basic tendering information. Entities subject to this Annex shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information, the complexity and the context of the procurement.

6. An entity subject to this Annex may restrict a tender to pre-qualified goods, services or suppliers. The pre-qualification process shall be announced as provided in clause 5.

An entity shall announce its prequalification process sufficiently in advance of either a procurement or each procurement cycle so as to give suppliers an opportunity to qualify.

Pre-qualification of potential suppliers shall be on the basis of their ability to meet the entity's requirements. For reasons of efficiency, an entity may limit the number of potential suppliers pre-qualified in a manner consistent with clauses 3 and 4 while ensuring a competitive and fair process.

7. Tender appraisals may consider price, quality, quantity, delivery, security of supply, maintenance services, experience and financial capacity of the supplier, or any other criteria directly related to the contract that are consistent with the provisions of this Annex. Tender documents, including the notice for pre-qualification, shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids, the relative importance of those criteria, and a brief outline of the methods that will be used to evaluate those criteria.

Entities subject to this Annex may include in the bid document requirements for maintaining their effective operation, including best business practices, provided that such requirements are not designed to favour:

- (a) the goods and services of a particular Province, including those goods and services included in construction contracts; or
- (b) the suppliers of a particular Province of such goods or services, including construction contractors.

8. Entities subject to this Annex may restrict all tendering to Canadian goods or suppliers or provide a margin of preference to Canadian goods or suppliers.

9. A Party may, under exceptional circumstances, exclude a procurement of an entity covered by this Annex from the provisions of this Annex for regional and economic development purposes provided that all such exceptions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Parties with an explanation of the reasons justifying the decision. A Party invoking this provision will seek to minimize the discriminatory effects of the exception on the goods or suppliers of the other Parties.

D. Buying Groups

1. Entities subject to this Annex who participate in group purchasing activities through Buying Groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Annex.
2. Buying Group means an organization, involving two or more entities, created to achieve efficiencies and economies of scale by combining the purchasing requirements and activities of the members of the group into one joint procurement process. Buying Groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the organization administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.
3. The Parties agree not to direct the procurement activities of Buying Groups so as to discriminate against out-of-province suppliers for procurement covered by this Annex.

E. Exclusions

1. The following procurements shall be excluded from the provisions of this Annex:
 - (a) contracts between subsidiaries or affiliates of the same entity, or between an entity and any of its subsidiaries or affiliates, or between an entity and a general, limited or special partnership in which the entity has a majority or controlling interest, and contracts with a public body or non-profit organization;
 - (b) procurement intended for resale to the public or on behalf of an entity not covered by this Annex;
 - (c) contracts with the only supplier able to meet the bid requirements, including contracts to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
 - (d) contracts with the only supplier able to ensure the continuation of guarantees or warranties;
 - (e) contracts for procuring cultural or artistic goods or services including goods and services relating to the creation, production, distribution or broadcasting of programming in Canada including co-productions, sports and news;
 - (f) contracts concluded where a situation of urgency is brought about by events unforeseeable by the entity;
 - (g) contracts for procuring services which, under applicable laws or regulations in the province of tender, can be provided only by the following authorized professional: physicians, dentists, nurses, pharmacists, veterinarians, engineers, architects, land surveyors, accountants, lawyers and notaries;
 - (h) contracts for procuring financial services for managing the entity's assets (including endowment funds) and liabilities, and accessory consulting and information services;

- (i) contracts for procuring goods and services to be used outside Canada or for construction work outside Canada;
- (j) goods or services regarding matters of a confidential, competitive or privileged nature, where disclosure of those matters could reasonably be expected to compromise confidentiality, cause economic disruption or otherwise be contrary to the public interest or the interests of the entity;
- (k) contracts financed under international cooperative agreements, only where such agreements include rules for awarding contracts;
- (l) contracts for goods purchased on a commodity market;
- (m) for the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (n) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (o) contracts for the transportation of alcoholic products in bulk by sea or for the transportation of alcoholic products by air; and
- (p) advertising and public relations services.

F. Dispute Resolution

1. Each entity covered by this Annex shall establish a complaint process which provides equal treatment to all Canadian suppliers and shall provide a written description thereof to any supplier requesting same.
2. If a supplier, after completing the complaint process of an entity, continues to believe that the entity has not adhered to the provisions of this Annex, the supplier may register a complaint with the designated contact point of the Party where the supplier is located. If a Party has received recurring complaints from suppliers about a specific covered entity regarding its failure to adhere to the provisions of this Annex, or if a Party agrees that there is merit in an individual supplier's complaint against a covered entity, that Party shall inform the Party responsible for that entity. Both Parties shall make every effort to work with affected suppliers and entities so that entities do adhere to this Annex.
3. The complaints process shall not cause delay in the awarding of a contract by an entity covered by this Annex.

G. Confidentiality

Nothing in this Annex requires an entity to:

- (a) breach confidentiality obligations imposed by law;
- (b) breach confidentiality obligations imposed by a contract with a third party with respect to confidential information provided by the third party to the entity;
- (c) compromise security or commercially sensitive or proprietary information of its own through the dispute resolution process in this Annex;

- (d) compromise commercially sensitive or proprietary information identified by a supplier in its tender documents; or
- (e) disclose those provisions of a contract where such disclosure would compromise the competitive position of, or cause economic disruption to, the entity.

H. Final Provisions

1. This Annex shall come into force on January 1, 2005 for all provinces and on April 1, 2005 for the federal government.
2. After the date of entry into force of the Annex, entities covered by this Annex will be encouraged to use the electronic tendering system or systems referred to in paragraph C for all covered procurement and six months after the date of entry into force of this Annex, entities covered by this Annex will be required to post tender notices on the above mentioned electronic tendering system or systems.
3. Contracts awarded under an agreement predating, or initiated, prior to the coming into force of this Annex shall not be subject to this Annex. Nevertheless, any agreement providing for contracting over a period extending five years beyond the coming into force of Annex shall be announced by the entity within three months of the adoption of this Annex.
4. The Parties agree to review the provisions of this Annex within two years of the coming into force of this Annex with a view to determining how adequately the procurement activities of the entities subject to this Annex are covered and the efficiency of the dispute resolution mechanism in resolving complaints.
5. Following the review referred to in paragraph 4, the Parties shall conduct yearly reviews of the operation of this Annex and present their findings to the Committee on Internal Trade.

APPENDIX "A"

Government Entities Covered by Annex 502.3

This Annex includes entities of a commercial or industrial nature or those which have been granted exclusive rights by a Party.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

Annex 502.4²⁸

Procurement - Provisions for municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities

A. Purpose

This Annex establishes the provisions required to extend coverage of Chapter Five (Procurement) to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities.

B. Application of Chapter Five and Relationship to other Chapters

1. Chapter Five (Procurement) and the provisions of other Chapters of the Agreement on Internal Trade apply only as specified in this Annex.
2. The following provisions of the Agreement on Internal Trade apply to this Annex: Chapter One (Operating Principles); Chapter Three (Reaffirmation of Constitutional Powers and Responsibilities); Article 502(4) (Scope and Coverage); Article 512 (Contact Point); Article 602(2) (Scope and Coverage); Article 1600 (a), (b), and (d) (Committee on Internal Trade); Article 1603(4) (Secretariat); Article 1802 (Aboriginal Peoples); Article 1803 (Culture); Article 1805 (Taxation); Article 1809 (Relationship to International Agreements); Article 1811 (Accession and Withdrawal); Article 1812 (Language); and Article 1813 (Rules of Interpretation).

C. Scope and Coverage

1. This Annex covers all municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding.
2. At the time of its adherence to this Annex, each Province shall provide the Secretariat with a list of its legislation applicable to entities covered by this Annex. Those lists will be attached as Appendix "A" (Legislation applicable to entities covered by Annex 502.4) to this Annex. Thereafter, each province shall advise the Secretariat of any changes to its list and the Secretariat shall maintain an up to date list of all applicable legislation. Each province shall also maintain an up to date list of all its entities covered by this Annex.
3. This Annex applies to measures related to the procurement, within Canada, of goods, services and construction which are adopted or maintained by the entities covered by this Annex where the procurement value is
 - (a) \$100,000 or greater, in the case of goods or services; or
 - (b) \$250,000 or greater, in the case of construction.
4. For procurement below the thresholds in paragraph 3, entities covered by this Annex are encouraged to respect the spirit of this Annex.

²⁸ This annex was added to the Agreement on Internal Trade by means of the Third Protocol of Amendment.

D. Non-Discrimination

1. Provinces shall not adopt or maintain any measures that would operate to require the entities covered by this Annex to differentiate between suppliers, or goods or services on the basis of geographic location in Canada.
2. Entities covered by this Annex shall not adopt or maintain any forms of discrimination based on the province of origin of goods, services, construction materials or the suppliers of such goods, services or construction materials in their procurement practices.
3. Discriminatory procurement practices which are not allowed under this Annex include, but are not limited to, those listed in Appendix "B" (Discriminatory Practices).
4. Nothing in this Annex is intended to provide, nor shall be construed to provide, directly or indirectly, to any Province not subject to this Annex or to its goods, services, suppliers or entities any right, claim, benefit or remedy pursuant to any provision of this Annex.

E. Transparency

1. Each Province shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.
2. Each entity covered by this Annex shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.
3. Each entity covered by this Annex shall ensure that its notices of contract award are made readily accessible.

F. Legitimate Objectives

1. Where it is established that a measure is inconsistent with Section "D" (Non-Discrimination) of this Annex, that measure is still permissible under this Annex where it can be demonstrated that:
 - (a) the purpose of the measure is to achieve a legitimate objective;
 - (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Province that meet that legitimate objective;
 - (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
 - (d) the measure does not create a disguised restriction on trade.
2. In this Annex, legitimate objective means one of the following objectives:
 - (a) public security and safety;
 - (b) public order;
 - (c) protection of human, animal or plant life or health;
 - (d) protection of the environment;

- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers; or
- (g) affirmative action programs for disadvantaged groups;

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

The protection of the production of a Province is not a legitimate objective.

G. Fair Acquisition Process

1. Procurements covered by this Annex shall be subject to a tendering process.
2. "Tendering Process" includes all methods of tendering such as requests for information, requests for quotations, requests for proposals, requests for qualification and calls for tenders.
3. Entities covered by this Annex may continue existing policies and procedures to the extent that they are compatible with the provisions of this Annex.
4. Purchasing practices which may depend on a long term arrangement between an entity covered by this Annex and a supplier are permitted provided that each such arrangement is undertaken in a manner consistent with this Annex.
5. Entities covered by this Annex shall ensure that their needs, within Canada, of goods, services and construction are met through a fair acquisition process that is based on the highest degree of competition, efficiency and effectiveness, and is consistent with Sections "D" (Non-Discrimination) and "E" (Transparency) of this Annex.
6. The Provinces recognize that the transparency and non-discrimination of fair acquisition processes necessary to ensure access for all Canadian suppliers to public procurement opportunities can best be promoted through the widespread adoption of an electronic tendering system or systems.
7. Accordingly, Provinces agree that an electronic tendering system or systems which are low cost, easy to use and readily accessible across Canada, shall be made available to the entities covered by this Annex no later than December 31, 1998. The electronic tendering system or systems shall be capable of transmitting notices of contract awards.
8. After the date of entry into force of this Annex, entities covered by this Annex shall be required to post tender notices on the electronic tendering system or systems, referred to in paragraph 7, for all covered procurement.

Prior to the date of entry into force of this Annex, entities covered by this Annex are encouraged to use the electronic system or systems, for all covered procurement.

The dates above are subject to review under Section "P" (Review of Provisions and Future Negotiations) by the Committee on Internal Trade to ensure that the electronic tendering system or systems are operational and that an adequate period is provided for their adoption.

9. The information provided in the tender notice shall include at least the following:
 - (a) a brief description of the procurement contemplated;
 - (b) the place where a person may obtain information and tender documents;
 - (c) the conditions for obtaining the tender documents;
 - (d) the place where the tenders are to be sent;
 - (e) the date and time limit for submitting tenders;
 - (f) the time and place of the opening of the tenders in the event of a public opening; and
 - (g) a statement that the procurement is subject to this Annex.
10. Consistent with Section “E” (Transparency), entities covered by this Annex may, in evaluating bids, take into account the submitted price, quality, quantity, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria consistent with Section “D” (Non-Discrimination). The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.
11. Subject to Section “D” (Non-Discrimination), an entity covered by this Annex may limit tenders to goods, services or suppliers qualified prior to the close of call for tenders.

H. Buying Groups

1. Entities covered by this Annex that participate in group purchasing activities through buying groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Annex.
2. No Province shall direct the procurement activities of buying groups in a manner inconsistent with this Annex.
3. Buying group means a group of two or more members which combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.

I. Exceptions

1. An entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix “C” (Exceptions - Circumstances for Exclusions) provided that it does not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers of any other Province.
2. Where only one supplier is able to meet the requirements of a procurement, an entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix “D” (Exceptions - Circumstances for Sole Supplier Procurement), provided it does not do so for the purpose of avoiding competition or in order to discriminate against suppliers of any other Province.

J. Canadian Content

1. Entities covered by this Annex may accord a preference for Canadian value-added, provided that the preference is no greater than 10 percent.
2. An entity covered by this Annex may limit its tendering to Canadian goods or suppliers, provided the procuring entity is satisfied that there is sufficient competition among Canadian suppliers and the requirement for Canadian content is no greater than necessary to qualify the procured good as a Canadian good.

K. Regional Economic Development

A Province may, under exceptional circumstances, exclude a procurement of an entity covered by this Annex from the application of this Annex for economic development purposes provided that all such exclusions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Provinces with an explanation of the reasons justifying the decision. A Province invoking this provision will seek to minimize the discriminatory effects of the exclusion on the suppliers of the other Provinces.

L. Non-Application

This Annex does not apply to:

- (a) procurement of goods intended for resale to the public;
- (b) contracts with a public body or a non-profit organization;
- (c) procurement of goods, services or construction purchased on behalf of an entity not covered by this Annex;
- (d) procurement from philanthropic institutions, prison labour or persons with disabilities;
- (e) procurement of any goods the interprovincial movement of which is restricted by laws not inconsistent with the Agreement on Internal Trade;
- (f) procurement of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this Annex;
- (g) procurement of goods and services related to cultural or artistic fields and computer software for educational purposes;
- (h) procurement of services that in the province of the entity issuing the tender may, by legislation or regulation, be provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
- (i) procurement of services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
- (j) procurement of financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;

- (k) procurement of goods and services for use outside Canada as well as construction work done outside Canada; and
- (l) health services and social services.

M. Dispute Resolution

1. Entities covered by this Annex shall document their non-judicial complaint process and provide this information to suppliers or Provinces upon request.
2. Entities covered by this Annex shall provide suppliers from other Provinces the opportunity and process to challenge contract decisions that are equal to those available to local suppliers.
3. If a supplier, after completing the non-judicial complaint process of the entity, continues to believe that the entity has not adhered to the provisions of this Annex, the supplier may register a complaint with the designated contact point in the Province where the supplier is located.
4. If a Province has received recurring complaints about a specific entity, or if a Province agrees that an individual supplier's complaint has merit, that Province may inform the Province of the entity. Both Provinces shall make every effort to work with the affected suppliers and entities to resolve the complaints in a satisfactory manner.
5. Where the Provinces fail to resolve a complaint, one of them may require that the complaint be considered by an expert panel. A panel shall usually consist of three members or any other composition acceptable to both Provinces. The panel's report shall be made public and shall be provided to both Provinces. The Provinces shall consult each other in order to reach a mutually acceptable settlement based on the panel's report.
6. Each Province shall be responsible for costs incurred by itself and any entity within its jurisdiction involved in a dispute referred to a panel. Both Provinces shall share the fees and expenses of any panel equally.
7. The dispute resolution process shall not cause delay in the awarding of a contract by an entity covered by this Annex.
8. If a Province considers, as a result of a panel's report and subsequent consultations, the other Province is not complying with the terms of this Annex, the Province may temporarily suspend the application of equivalent benefits under this Annex to the non-complying Province and its resident suppliers, until such time as a mutually satisfactory solution is reached.

N. Language

Entities covered by this Annex shall specify the language requirements for their respective procurement procedures.

O. Confidentiality

Nothing in this Annex requires an entity covered by this Annex to breach confidentiality obligations imposed by law or to compromise security or commercially sensitive or proprietary information identified by a supplier in its tender documents.

P. Review of Provisions and Future Negotiations

1. The Secretariat shall prepare a progress report on the development of the electronic tendering system or systems referred to in Section "G" (Fair Acquisition Process) by the entry into force of this Annex. The progress report shall assess the provisions of this Annex in light of progress in the implementation of the electronic tendering system or systems and make appropriate recommendations, if necessary, to the Committee on Internal Trade.
2. Entities covered by this Annex may report to their respective Province any concerns or problems they encounter in the implementation of this Annex.
3. The Secretariat shall prepare a report for the Committee on Internal Trade based on any concerns or problems with the implementation of this Annex reported by the Provinces.
4. This Annex may be reviewed, as required, by the Ministers as part of the annual meetings of the Committee on Internal Trade. Opportunities for progress related to public procurement not covered by this Annex, or excluded from this Annex by virtue of paragraph L (h), shall be part of that review.
5. Each Province shall establish a process and guidelines leading to the harmonization of standard terms and conditions in the tender documents and to standardized procedures for complaint processes used by their entities covered by this Annex. The Provinces shall establish a Working Group to review the work of the Provinces with the perspective of harmonization. The Working Group shall report regularly through the Secretariat and shall report progress to the Committee on Internal Trade by July 1, 2000.
6. The Provinces shall review the application of Section "J" (Canadian Content) and of Section "K" (Regional Economic Development) and shall conclude such a review within two years of the entry into force of this Annex. If, as a result of that review, the Provinces agree that there is no justification for those Sections or for one of them, then the Section or Sections shall no longer apply to the procurement of entities covered by this Annex.
7. The Provinces shall review the operation of Section "M" (Dispute Resolution) following the review of standardized procedures for complaint processes noted in paragraph 5 and shall conclude the review within one year. In particular, the Provinces shall review whether Section "M" (Dispute Resolution) provides adequate access for private parties to the dispute resolution process.

Q. Relationship to Other Agreements

1. Provinces may continue or enter into additional agreements covering procurement by entities covered by this Annex. In the event of an inconsistency between such an agreement and this Annex, the agreement more conducive to trade liberalization prevails to the extent of the inconsistency.
2. Other Provinces will be provided the opportunity to gain access to any such agreement referred to in paragraph 1 within a reasonable time if they are prepared to accept the terms of the agreement.

R. Implementation

1. This Annex enters into force July 1, 1999.
2. This Annex does not apply to contracts entered into before July 1, 1999 or to calls for tenders or other procurement procedures initiated before such date.
3. Each Province shall not establish new trade barriers or increase the non-conformity of existing non-conforming measures in the areas to be covered by this Annex between the date it adheres to this Annex and the entry into force of this Annex.
4. Each Province is responsible for compliance with this Annex by its entities covered by this Annex.

S. Definitions

1. The definitions in Article 200 (Definitions of General Application) and in Article 518 (Definitions) of the Agreement on Internal Trade apply to this Annex insofar as any of the terms in those Articles are used in this Annex, except for the definition of "legitimate objective" in paragraph F2.

APPENDIX "A"

Legislation Applicable to Entities Covered by Annex 502.4

NEWFOUNDLAND AND LABRADOR

The City of Corner Brook Act
The City of Mount Pearl Act
The City of St. John's Act
The Municipalities Act
The Hospitals Act
The Schools Act
The Health and Community Services Act
The Memorial University Act
The Colleges Act
The Public Tender Act

NOVA SCOTIA

Municipal Government Act
Universities Assistance Act
Community Colleges Act
Education Act
School Boards Act
Hospitals Act

PRINCE EDWARD ISLAND

Municipalities Act
Charlottetown Area Municipalities Act
City of Summerside Act
Holland College Act
School Act
University Act
Health and Community Services Act
Hospitals Act

NEW BRUNSWICK

Adult Education and Training Act
Clean Environment Act
Education Act
Hospital Act
Municipalities Act
Public Purchasing Act
University of New Brunswick Act
St. Thomas College Incorporation Act

QUÉBEC

Financial Administration Act
Regulation respecting the promise and awarding of grants
Cities and Towns Act
Municipal Code of Québec
Municipal Powers Act
Act respecting the exercise of certain municipal powers in certain urban agglomerations
Act respecting the Communauté métropolitaine de Montréal
Act respecting the Communauté métropolitaine de Québec
Regulation respecting the awarding of contracts for certain professional services
Act respecting intermunicipal boards of transport in the area of Montréal
Act respecting public transit authorities
Act respecting mixed enterprise companies in the municipal sector
*Act to amend various legislative provisions concerning municipal affairs [2002, c. 37, a. 282,
modified by the Act, 2003, c.19, a.237]*
*Rules for the awarding of certain contracts required by a municipal body or school board to
implement, operate or use a broadband telecommunications network*
Charter of Ville de Gatineau
Charter of Ville de Longueuil
Charter of Ville de Montréal
Charter of Ville de Québec
Act respecting Northern villages and the Kativik Regional Government;
Act respecting the Société d'habitation du Québec
Education Act
Regulation respecting construction contracts for immovables of school boards
General and Vocational Colleges Act
*Regulation respecting contracts for the construction of immovables of general and vocational
colleges*
Act respecting educational institutions at the university level
University Investments Act
Act respecting health services and social services
Act respecting health services and social services for Cree Native persons
Regulation respecting the application of the Act respecting health services and social services
*Regulation respecting building construction by establishments, regional councils and the
Corporation d'hébergement du Québec*

ONTARIO

Municipal Act, 2001
City of Greater Sudbury Act, 1999
City of Hamilton Act, 1999
City of Ottawa Act, 1999
City of Toronto Act, 1997 (See also City of Toronto Act, 1997 (No. 2))
Town of Haldimand Act, 1999
Town of Moosonee Act, 2000
Town of Norfolk Act, 1999
Education Act
Ministry of Training, Colleges and Universities Act

Ontario Colleges of Arts and Technology Act, 2002
Brock University Act, 1964, S.O. 1964, c.127
The Carleton University Act, 1952, S.O. 1952, c.117
The University of Guelph Act, 1964, S.O. 1964, c.120
The Lakehead University Act, 1965, S.O. 1965, c.54
The Laurentian University of Sudbury Act, 1960, S.O. 1960, c.151
The McMaster University Act, 1976, S.O. 1976, c.98
Nipissing University Act, 1992, S.O.1992, c. Pr52; S.O. 2001, c.Pr.20
Ontario College of Art & Design Act, 2002, S.O. 2002, c.8, Sched. E
University of Ontario Institute of Technology Act, 2002, S.O. 2002, c.8, Sched. O
The University of Ottawa Act, 1965, S.O. 1965, c.137
Ryerson University Act, 1977, S.O. 1977, c.47
The University of Toronto Act, 1971, S.O. 1971, c.56
The Trent University Act, 1962-63, S.O. 1962-63, c.192
The University of Waterloo Act, 1972, S.O. 1972, c.200
University of Western Ontario Act, 1982, S.O. 1982, c.92
The Wilfrid Laurier University Act, 1973, S.O. 1973, c.87
The University of Windsor Act, 1962-63, S.O. 1962-63, c.194
The York University Act, 1965, S.O. 1965, c.143
Public Hospitals Act
Mental Health Act
Private Hospitals Act
Developmental Services Act
Youth Criminal Justice Act
Provincial Offences Act

MANITOBA

Legislation applicable to:

Municipalities

The City of Winnipeg Charter
The Municipal Act
The Local Government Districts Act
The Northern Affairs Act

Family Services and Housing

The Child and Family Services Act
The Social Services Administration Act
The Housing and Renewal Corporation Act

Health

The Hospitals Act
The Health Services Insurance Act
The Regional Health Authorities Act
The District Health and Social Services Act
The Health Services Act
The CancerCare Manitoba Act
The Addictions Foundation of Manitoba Act
The Sanatorium Board Act

Education, Citizenship and Youth

The Blind and Deaf Person's Maintenance and Education Act

The Education Administration Act
The Public Schools Act
The Public Schools Finance Board Act
The Teachers' Pensions Act
The Teachers' Society Act

Education and Training

The Adult Learning Centres Act
The Apprenticeship and Trades Qualifications Act
The Brandon University Act
The Colleges Act
The Council on Post-Secondary Education Act
The Education Administration Act (clause 3(1)(h), as it relates to advanced education and training)
The Department of Labour and Immigration Act (as it applies to certain training programs)
The Student Aid Act
The University of Manitoba Act
The University of Winnipeg Act
The Private Vocational Institutions Act

SASKATCHEWAN

Education Act
University of Saskatchewan Act
University of Regina Act
Regional Colleges Act
Saskatchewan Institute of Applied Sciences and Technology Act
Health Districts Act
Rural Municipality Act
Urban Municipality Act
Northern Municipalities Act
The Cities Act
The City of Lloydminster Act
The Health Quality Council Act
The Cancer Foundation Act
The Saskatchewan Health Research Foundation Act

ALBERTA

Municipal Government Act
Post-Secondary Learning Act
Access to the Future Act
School Act
Regional Health Authorities Act
Hospitals Act
Nursing Homes Act
Public Health Act
Provincial Mental Health Advisory Board Regulation
Cancer Programs Act

BRITISH COLUMBIA

Local Government Act
Vancouver Charter
Islands Trust Act
Resort Municipality of Whistler Act
University Act
College & Institute Act
Institute of Technology Act
Open Learning Agency Act
School Act
Health Authorities Act
Society Act
Community Charter

NORTHWEST TERRITORIES

Aurora College Act
Charter Communities Act
Cities, Towns and Villages Act
Education Act
Hamlets Act
Hospital Insurance and Health and Social Services Administration Act
Public Health Act

YUKON

DOES NOT ADHERE TO ANNEX 502.4

CANADA

NOT APPLICABLE

APPENDIX "B"

Discriminatory Practices

For the purposes of D3, discriminatory procurement practices which are not allowed under this Annex include, but are not limited to:

- (a) registration requirements and restrictions on calls for bids based upon the location of a supplier and its subcontractors, or the place where the goods or services are produced and, generally, qualification procedures that discriminate between suppliers by province of origin;
- (b) the biasing of specifications in favour of, or against, a particular good or service for the purpose of circumventing this Annex;
- (c) the timing of bid opening and closing dates so as to prevent qualified suppliers from submitting bids;
- (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent qualified suppliers from meeting the requirements of the procurement;
- (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to circumvent this Annex;
- (f) the consideration, in evaluating bids, of provincial content or economic benefits that favour a supplier or good of one of the participating Provinces;
- (g) the giving of preference to selected bids after bids have been submitted and without any mention of the intended preference in the tender documents;
- (h) the use of price discounts or preferential margins to favour suppliers of one Province;
- (I) the unjustifiable exclusion of a qualified supplier from bidding;
- (j) the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.

APPENDIX "C"

Exceptions - Circumstances for Exclusions

The following are the exceptions for the purposes of paragraph I(1):

- (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
- (b) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- (c) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in this Annex;
- (d) where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads;
- (e) where compliance with the open tendering provisions set out in this Annex would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and
- (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with this Annex.

APPENDIX "D"

Exceptions - Circumstances for Sole Supplier Procurement

The following are the exceptions for the purposes of paragraph I(2):

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- (b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- (d) for the purchase of goods on a commodity market;
- (e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- (f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- (g) for a contract to be awarded to the winner of a design contest;
- (h) for the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (i) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (j) for the procurement of original works of art;
- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals;
and
- (l) for the procurement of real property.

Annex 508.3

Transitional and Non-Conforming Measures

COLUMN I²⁹

TRANSITIONAL PROCUREMENT
POLICIES AND PROGRAMS

COLUMN II³⁰

NON-CONFORMING
PROCUREMENT POLICIES AND
PROGRAMS

Federal Government

Industrial and Regional Benefits Policy

The Federal Government may seek national industrial and regional benefits in procurement exceeding \$2 million provided that the evaluation of regional benefits is carried out in a non-discriminatory manner with respect to regions for which the Federal Government has a general framework of regional development.

British Columbia

The RISP contract system (B.C.
Transportation and Highways)

Northwest Territories

Business Incentive Policy (BIP)

The Government of the Northwest Territories (G.N.W.T.) will continue to apply the BIP, or successor programs having similar objectives, to all procurements by G.N.W.T. departments and corporations, as well as communities and other organizations which receive fifty-one (51) per cent or more of funding from the G.N.W.T. The program has the objective of compensating business for the higher costs of northern operations. It

²⁹ Column I was amended by the Sixth and Seventh Protocols of Amendment.

³⁰ Column II was amended by the Fifth and Sixth Protocols of Amendment.

operates to discount 2bids from both northern and southern contractors on the basis of northern and/or local content included in the tender. Most tenders are publicly called and opened and details of the program and its criteria are publicly available and generally are included in tender calls.

Yukon

The Government of Yukon will continue to apply the following programs or contracting conditions, or the successor programs and contracting conditions having similar objectives, to all procurements by the Government of Yukon.

Business Incentive Policies (BIPs)

The Business Incentive Policies which provide cash rebates for the use of Yukon apprentices, the use of Yukon labour and materials, and the provision of Yukon-made goods.

Community Contracting Policy

The Community Contracting Policy (CCP) which states that "Government departments shall contract for goods and services in the communities in which they are to be used, to the extent that their needs can be met by community-based businesses."

Supplementary Conditions in Construction Contracts

The Supplementary Conditions which require contractors to provide adequate living accommodation, meals, and transportation to the job site, and to make other "best efforts" to hire locally.

Prince Edward Island

Public Purchasing Act Regulations

Section 11 exempts certain commodities, including those related to highway maintenance and construction from the application of the Act. The effect of section 11 is to create opportunities to encourage local and regional suppliers.