

Annex 502.3

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

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
 - (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.