

## CHAPTER FIVE: PROCUREMENT

### Annex 502.1B: Services Covered by Chapter Five

1. All services are covered except the following:
  - (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.

### Annex 502.1B: Interpretive Note No. 1

1. Annex 502.1B provides a list of services excluded from the coverage of Chapter 5 (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 5. To reduce any difficulties in making such a distinction, to aid in the application of the obligations in Chapter 5 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 5. 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 5 (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

## Services

---

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.