

CHAPTER FIVE: PROCUREMENT**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;
 - (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.¹
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 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

¹ This paragraph was amended by the Seventh Protocol of Amendment.

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;²
- (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;
- (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;

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

- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals;
and
- (l) for the procurement of real property.