

APPENDIX C

PART A – CORE PRINCIPLES

Scope and Coverage

1. For the purposes of this Appendix, covered procurement means procurement for government purposes:
 - (a) of construction services:
 - i. as specified in Part B – Market Access; and
 - ii. not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy; and
 - (c) for which the value equals or exceeds the relevant threshold specified in Part B – Market Access at the time of publication of a tender notice.

2. This Appendix does not apply to:
 - (a) procurement of construction services:
 - (i) purchased on behalf of an entity not covered by this Appendix; 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 Appendix that contains provisions incompatible with this Appendix;
 - (b) procurement made by an entity or state enterprise from another entity or state enterprise of any level of government or a non-profit organization;
 - (c) procurement of construction services for representational or promotional purposes outside of a province or territory;
 - (d) non-contractual agreements or any form of assistance that a Province or Territory provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
 - (e) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon; or

- (f) procurement funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Appendix.

General Exceptions

3. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail or disguised restriction on international trade, nothing in this Appendix will be construed to prevent Provinces and Territories from imposing or enforcing measures *inter alia*:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to construction services of persons with disabilities, philanthropic institutions or prison labour.

National Treatment and Non-Discrimination

4. With respect to any measure regarding covered procurement, provinces and territories will accord immediately and unconditionally to the goods and services of the United States that are included in a procurement of construction services and to the suppliers of the United States offering such goods or services that are included in a procurement of construction services, treatment no less favourable than the treatment provinces and territories accords to domestic goods, services and suppliers.

5. With respect to any measure regarding covered procurement, provinces and territories will not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of U.S. affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement of construction services are goods or services of the United States.

6. With regard to covered procurement, provinces and territories will not seek, take account of, impose or enforce any offset.

Transparency

7. Provinces and territories will ensure that their legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Appendix are made readily accessible.

8. Procuring entities covered by this Appendix will issue an open competitive solicitation for a covered procurement and will publish a tender notice with 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, which will not be less than 10 days; and
- (f) the time and place of the opening of the tenders in the event of a public opening.

9. A procuring entity may use procurement procedures other than open competitive solicitations described in paragraph 9 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:

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, 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 construction services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for a contract to be awarded to the winner of a design contest;
- (d) for the procurement of a prototype or a first construction 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;
- (e) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (f) where an unforeseeable situation of urgency exists and the construction service cannot be obtained in time by means of competitive procurement procedures;
- (g) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through a competitive tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- (h) in the absence of a receipt of any bids in response to a call for tenders;

- (i) for the procurement of original works of art; or
 - (j) 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.
10. Procuring entities will not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.
11. In prescribing the technical specifications for the construction services being procured, procuring entities will, where appropriate:
- (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.
12. Where design or descriptive characteristics are used in the technical specifications, procuring entities will indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.
13. Procuring entities will not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.
14. Procuring entities will not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.
15. For greater certainty, this Appendix is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:
- (a) to promote the conservation of natural resources or protect the environment;
or
 - (b) to require a supplier to comply with generally applicable laws regarding
 - (i) fundamental principles and rights at work; and
 - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the country in which the construction service is performed.

Domestic Review

16. Provinces and territories will provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a U.S. supplier may challenge a covered procurement for failure to conduct a covered procurement in accordance with this Appendix, in which the U.S. supplier has, an interest.

17. In the event of a complaint by a U.S. supplier, arising in the context of covered procurement in which the U.S. supplier has an interest that there has been a failure as referred to in paragraph 16, procuring entities conducting the procurement are encouraged to seek resolution of the complaint through consultations. Procuring entities will accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the U.S. supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

18. Each U.S. supplier will be allowed a sufficient period of time to prepare and submit a challenge, which in no case should be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the U.S. supplier.

19. Each province and territory will establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a U.S. supplier arising in the context of a covered procurement.

20. Where a body other than an authority referred to in paragraph 19 initially reviews a challenge, the province or the territory will ensure that the U.S. supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

21. Each province and territory will ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

- (a) the procuring entity will respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants will have access to all proceedings;
- (c) the review body will make its decisions or recommendations in a timely fashion, in writing, and will include an explanation of the basis for each decision or recommendation.

22. Each province and territory will adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the U.S. supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; or
- (b) where a review body has determined that there has been a failure as referred to in paragraph 16, corrective action or compensation, where such compensation may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

Definitions

23. For the purposes of this Appendix:

construction services is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification. For greater certainty, this includes all U.S. iron, steel and manufactured goods used in a construction project, unless otherwise noted.

offset means any condition or undertaking that encourages local development such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

procuring entities or procuring entity means an entity not otherwise excluded from Part B – Market Access.

technical specification means a tendering requirement that:

- (i) lays down the characteristics of goods or services to be used in construction services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service to be used in construction services.

PART B – MARKET ACCESS

Provincial and Territorial Agencies, Crown Corporations and Municipalities as specified below:

Thresholds: \$ Cdn 8,500,000 for construction

CONSTRUCTION SERVICES COVERED BY THIS APPENDIX

Construction

All services contained in Division 51 of the Central Product Classification except dredging. For greater certainty, this includes all U.S. iron, steel and manufactured goods used in a construction project, unless otherwise noted.

General exclusions

1. This Appendix does not apply to procurements in respect of shipbuilding and repair.
2. This Appendix does not apply to any measure adopted or maintained with respect to Aboriginal peoples. It does not affect existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.
3. This Appendix does not apply to restrictions comparable to any new preferential procurement measure that may be introduced by any state and local government of the United States after the entry into force of this Appendix.
4. Except for Ontario and Quebec, this Agreement does not apply to the procurement of goods, services or construction purchased for the benefit of, or which is to be transferred to the authority of, school boards or their functional equivalents, publicly-funded academic institutions, social services entities or hospitals.
5. This Appendix does not apply to preferences or restrictions associated with programs promoting the development of distressed areas.
6. This Appendix does not apply to procurement that is intended to contribute to economic development within the provinces or territories of Newfoundland and Labrador, New Brunswick, Prince Edward Island, Nova Scotia, Yukon, or Northwest Territories.

PROCURING ENTITIES COVERED BY THIS APPENDIX

ALBERTA

All Crown Corporations are covered except:

Credit Union Deposit Guarantee Corporation
Alberta Investment Management Corporation
Alberta Treasury Branches (operating as ATB Financial)
Alberta Capital Finance Authority
Alberta Pensions Administration Corporation
Alberta Local Authorities Pension Plan Corporation

Travel Alberta
Alberta Gaming and Liquor Commission
Agriculture Financial Services Corporation
Alberta Research Council Inc.
iCORE Inc. (informatics Circle of Research Excellence)
Safety Codes Council

The following municipalities are covered:

Calgary
Edmonton
Red Deer
Strathcona County (Sherwood Park and surroundings)
Lethbridge
St. Albert
Medicine Hat
Municipal District of Wood Buffalo (Fort McMurray and surroundings)

BRITISH COLUMBIA

All Crown Corporations and all municipalities are covered.

MANITOBA

All Crown Corporations are covered except:

Manitoba Hydro-Electric Board
Manitoba Public Insurance Corporation
Venture Manitoba Tours Limited

The following municipality is covered:

Winnipeg

NEW BRUNSWICK

The following municipalities are covered:

Fredericton
Moncton
Saint John

NEWFOUNDLAND AND LABRADOR

All municipalities are covered.

All Crown Corporations are covered except:

Nalcor subsidiaries or affiliates as stated below and any and all subsidiaries and affiliates of such companies that may be created in the future:

- Nalcor Energy
- Newfoundland and Labrador Hydro
- Churchill Falls (Labrador) Corporation Limited
- Nalcor Energy - Oil and Gas Inc.
- Nalcor Energy - Bull Arm Fabrication Inc.
- Twin Falls Power Corporation Limited
- Gull Island Power Company Limited
- Lower Churchill Development Corporation Limited

Research & Development Corporation of Newfoundland and Labrador and any subsidiary.

NORTHWEST TERRITORIES

All territorial Crown Corporations and all municipalities are covered.

This Appendix does not apply to Northwest Territories contracts which exceed the thresholds and which are subject to the Northwest Territories Business Incentive Policy.

NOVA SCOTIA

This Appendix applies to entities performing regulatory, advisory and quasi-judicial functions and to all governmental units designated under the *Governmental Unit and Government Business Enterprise Designations Regulations* made under the *Provincial Finance Act* except:

- Academic Institutions
- School Boards
- Health Authorities
- Social Services Entities
- NS Pension Agency
- Housing Authorities
- NS Lands Inc. and related entities:
 - Sydney Environmental Resources Limited
 - Sydney Tar Ponds Agency
 - Harbourside Commercial Park

This Appendix applies to all government business enterprises designated under the *Governmental Unit and Government Business Enterprise Designations Regulations* made under the *Provincial Finance Act* except

- Atlantic Lottery Corporation
- Inter-provincial Lottery Corporation
- NS Liquor Corporation

The following municipality is covered:

Halifax Regional Municipality

NUNAVUT

All territorial entities and municipalities are covered.

This Appendix does not apply to contracts awarded under Nunavut's Nunavummi Nangminiaqtunik Ikajuuti Policy (NNI Policy).

ONTARIO

All provincial agencies are covered except:

1) The following agencies:

All cultural, educational and hospital agencies, and university foundations
Metrolinx
Hyro One and its affiliates and subsidiaries
Independent Electricity System Operator and its affiliates and subsidiaries
Infrastructure Ontario
Ontario Education Commission Authority (TV Ontario)
L'Office des telecommunications educatives de langue fancaise de l'Ontario
Ontario Electricity Financial Corporation
Ontario Power Authority and its affiliates and subsidiaries
Ontario Power Generation and its affiliates and subsidiaries
Ontario Energy Board
Toronto Waterfront Corporation

2) Ministries and the following agencies covered under the WTO Agreement on Government Procurement:

AgriCorp
Centennial Centre of Science and Technolgy (Ontario Science Centre)
Deposit Insurance Corporation of Ontario
Metropolitan Convention Centre Corporation
Niagara Parks Commission
Ontario Clean Water Agency
Ontario Financial Services Commission
Ontario Immigrant Investor Corporation
Ontario Mortgage and Housing Corporation
Ontario Mortgage Corporation
Ontario Northland Transportation Commission
Ontario Tourism Marketing Partnership Corporation
Ottawa Congress Centre
Science North

The following municipalities are covered:

Ajax
Barrie
Brampton
Brantford
Burlington
Calendon
Cambridge
Chatham-Kent
Clarington
Greater Sudbury/Grand Sudbury
Guelph
Halton Hills
Hamilton
Kawartha Lakes
Kingston
Kitchener
London
Markham
Milton
Mississauga
Newmarket
Niagara Falls
Norfolk County
North Bay
Oakville
Oshawa
Ottawa
Peterborough
Pickering
Regional Municipality of Durham
Regional Municipality of Halton
Regional Municipality of Niagara
Regional Municipality of Peel
Regional Municipality of Waterloo
Regional Municipality of York
Richmond Hill
Sarnia
Sault Ste. Marie
St. Catharines
Thunder Bay
Toronto
Vaughan
Waterloo
Whitby
Windsor

This Appendix does not apply to municipal cultural agencies, or to local electricity distributing companies owned in whole or in part by municipalities.

This Appendix does not apply to restrictions attached to funds for mass transit and highway projects

PRINCE EDWARD ISLAND

All Crown Corporations are covered except:

Innovation PEI.

The following municipality is covered:

Charlottetown

This Appendix does not apply to construction materials that are used for highway construction and maintenance.

QUÉBEC

The following public bodies are covered:

Agence de l'efficacité énergétique
Autorité des marchés financiers
Bibliothèque et Archives nationales du Québec
Bureau de décision et de révision en valeurs mobilières
Centre de services partagés du Québec
Commission administrative des régimes de retraite et d'assurances
Commission de la capitale nationale du Québec
Commission de la construction du Québec
Commission de la qualité de l'environnement Kativik
Commission de la santé et de la sécurité du travail
Commission de reconnaissance des associations d'artistes et des associations de producteurs
Commission des lésions professionnelles
Commission des normes du travail
Commission des relations du travail
Commission des services juridiques
Conseil Cris-Québec sur la foresterie
Conseil de gestion de l'assurance parentale
Conseil des arts et des lettres du Québec
Conservatoire de musique et d'art dramatique du Québec
Corporation d'urgence-santé
École nationale de police du Québec
École nationale des pompiers du Québec
Financement-Québec
Fondation de la faune du Québec

Fonds d'aide aux recours collectifs
Fonds d'assurance-prêts agricoles et forestiers
Fonds de la recherche en santé du Québec
Fonds québécois de la recherche sur la nature et les technologies
Fonds québécois de la recherche sur la société et la culture
Immobilière SHQ
Institut de la statistique du Québec
Institut de tourisme et d'hôtellerie du Québec
Institut national de santé publique du Québec
Investissement Québec
La Financière agricole du Québec
Musée d'Art contemporain de Montréal
Musée de la Civilisation
Musée national des beaux-arts du Québec
Office des professions du Québec
Office Québec-Amériques pour la jeunesse
Régie de l'assurance-maladie du Québec
Régie de l'énergie
Régie des rentes du Québec
Régie du bâtiment du Québec
Régie du cinéma
Services Québec
Société de développement des entreprises culturelles
Société de la Place des Arts de Montréal
Société de l'assurance automobile du Québec
Société des Traversiers du Québec
Société d'habitation du Québec
Société du Grand Théâtre de Québec
Société immobilière du Québec
Société québécoise d'assainissement des eaux
Tribunal administratif du Québec
Centre de recherche industriel du Québec
Régie des installations olympiques
Société des alcools du Québec
Société des loteries du Québec
Société du Centre des congrès de Québec
Société du Palais des congrès de Montréal
Société du parc industriel et portuaire de Bécancour
Société Innovatech Québec et Chaudière-Appalaches
Société québécoise de récupération et de recyclage (Recyc-Québec)
Société québécoise d'information juridique

The following municipalities are covered:

Montréal
Québec
Laval
Gatineau

Longueuil
Sherbrooke
Saguenay
Lévis
Trois-Rivières
Terrebonne
Saint-Jean-sur-Richelieu
Repentigny
Brossard
Drummondville
Saint-Jérôme

Québec retains the right to impose restrictions comparable to those used by the federal or sub-federal governments of the United States, in the area of mass transit and highway projects, where US procurement practices discriminate against Québec suppliers, goods and services.

This Appendix does not apply to procurement of cultural or artistic goods and services or to any measure adopted or maintained with respect to culture or cultural industries.

This Appendix does not apply to procurement of seedling production.

SASKATCHEWAN

All Crown Corporations are covered except:

Treasury Board Crowns

Prairie Agricultural Machinery Institute
Saskatchewan Research Council
Workers' Compensation Board (Saskatchewan)
Workers' Compensation Superannuation Board

Government Enterprises (CIC Crowns)

SaskEnergy Incorporated
Saskatchewan Government Growth Fund Management Corporation
Saskatchewan Gaming Corporation
Saskatchewan Government Insurance
Saskatchewan Opportunities Corporation
Saskatchewan Power Corporation
Saskatchewan Telecommunications
Saskatchewan Transportation Company

The following municipalities are covered:

City of Regina
City of Saskatoon

YUKON

All Crown Corporations are covered except:

Yukon Development Corporation
Yukon Energy Corporation

The following municipality is covered:

Whitehorse