

**AGREEMENT
BETWEEN THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON GOVERNMENT PROCUREMENT**

The Government of Canada and the Government of the United States of America (hereinafter referred to as “the Parties”) have agreed as follows:

Part A: Mutual Exchange of Coverage of Annex 2 Entities under the WTO Agreement on Government Procurement

Article 1: Notifications to the WTO Committee on Government Procurement

The Parties shall provide, as of February 16, 2010, reciprocal access to each other for procurement by the sub-central entities listed in their respective Annex 2 of Appendix I of the WTO Agreement on Government Procurement (hereinafter “1994 GPA”). To give effect to such reciprocal access, each Party shall submit, by February 12, 2010, a notification to the WTO Committee on Government Procurement as provided for under Article XXIV:6(a) of the 1994 GPA, as set out in Appendix A for Canada and in Appendix B for the United States.

Article 2: Provincial Compliance with 2007 Revised GPA

1. The Canadian entities listed in Canada’s Annex 2 of Appendix I of the 1994 GPA shall be subject to the *Revised Text of the Agreement on Government Procurement (Articles I-XXI) as at 13 November 2007* (WTO Document negs 268 (19 November 2007)) (hereinafter “2007 Revised GPA”), until such time as a revised GPA enters into force for the Parties.
2. For greater certainty, the United States agrees that the entities listed in Canada’s Annex 2 of Appendix I of the 1994 GPA shall not be subject to Articles I-XXIV of the 1994 GPA with respect to the United States.
3. The United States shall not resort to Article 9 or to dispute settlement in the World Trade Organization for a period of 12 months following the date of entry into force of this Agreement in relation to an alleged failure by Canada to comply with the 2007 Revised GPA, as provided for in paragraph 1, with respect to the following obligations:
 - a. Article II:6(b) (with respect to the consideration of options in estimating the total value of the procurement) and 7 and 8 (with respect to the valuation of the estimated total value of the procurement);
 - b. Article VII:2 and Article IX:4 (Content of Notices of Intended Procurement) with respect to the content of the notices, provided that the notices contain

sufficient information to enable a supplier to determine its interest in a procurement and its ability to submit a responsive tender;

- c. Article IX:5, 7(b), 10 and 11(Selective Tendering) with respect to any limitation on the number of suppliers, continuous publication of a multi-use list, right of suppliers to apply at any time for inclusion on a multi-use list, and ability of non-listed suppliers to request participation in a procurement based on a multi-use list within specified time periods;
- d. Article XI:2 through 7 (Deadlines), provided that the procuring entity provides sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, but in no event less than ten days from the date of publication of the notice of intended procurement and the date for submission of tenders or requests for participation;
- e. Article XIII:2 (Report on Use of Limited Tendering), provided that the procuring entity maintains a record of each contract award using limited tendering;
- f. Article XV:2 (Treatment of Delayed Tenders), with respect to the Province of New Brunswick;
- g. Article XVI:1 (Information on Awards to Participating Suppliers) with respect to providing in writing information on the characteristics and relative advantages of the successful tender and 2 (Publication of Award Information); and
- h. Article XVIII:7(a) (interim measures) with respect to all provinces and territories and Article XVIII:7(b) (remedies) with respect to the Yukon Territory.

Article 3: Canada's Revised GPA Offer

Canada shall submit, by February 12, 2010, to the WTO Committee on Government Procurement in the ongoing negotiations under Article XXIV:7(b) of the 1994 GPA, a Revised Offer in which Canada shall offer the same coverage as set out in Appendix A of this Agreement.

Article 4: Revision of U.S. Revised GPA Offer

The United States shall submit, by February 12, 2010, to the WTO Committee on Government Procurement in the ongoing negotiations under Article XXIV:7(b) of the 1994 GPA, a revision of its *Revised Offer of the United States* (WTO Document GPA/O/USA/2/Rev.1 (3 Oct. 2006)), in which the United States shall modify Note 5 of the General Notes in Annex 7 of the U.S. Revised Offer by deleting the reference to Canada with respect to Annex 2.

Article 5: U.S. Administrative Steps

The United States shall, by February 16, 2010, take the necessary administrative steps to provide that section 1605(a) of the *American Reinvestment and Recovery Act of 2009* shall not be applied to Canadian iron, steel, or manufactured goods in procurement covered by Annex 2 of the GPA.

Part B: Temporary Agreement on Enhanced Coverage

Article 6: Canada's Sub-Central Coverage

1. Canada shall provide access to sub-federal procurement of construction services to the United States in accordance with Appendix C of this Agreement. For greater certainty, this includes all U.S. iron, steel and manufactured goods used in a construction project, unless otherwise noted.
2. This Article shall remain in force through September 30, 2011.

Article 7: U.S. Coverage

The United States shall modify its Annex 3 of Appendix I of the GPA by listing seven programs under List C and providing that with respect to those programs, the domestic purchasing requirement of section 1605(a) of the *American Reinvestment and Recovery Act of 2009* will not be applied as a condition of financing those programs with respect to Canadian iron, steel, and manufactured products in procurement above the Annex 3 threshold for construction services through September 30, 2011. The United States shall include such modifications in its notification to the WTO Committee on Government Procurement, as set out in Appendix B to this Agreement.

Article 8: Extension

The Parties may extend the time period for the application of Articles 6 and 7 by mutual written consent.

Part C: Final Provisions

Article 9: Future Discussions

1. The Parties shall, within 12 months of the entry into force of this Agreement enter into discussions to explore an agreement that would expand, on a reciprocal basis, commitments with respect to market access for procurement.
2. Recognizing the important trade relationship between the Parties and the value of reciprocal market access in government procurement, where a Party requests expedited consultations on any matter related to government procurement, the

other Party shall promptly engage in such consultations, which shall commence no later than 10 days after the request has been made.

Article 10: Consultations

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation.
2. Either Party may request consultations with the other Party with respect to any matter affecting the operation or interpretation of this Agreement. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.
3. The requesting Party may request that the other Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.
4. The Parties shall make every attempt to arrive at a mutually agreeable resolution through consultations whenever a dispute arises concerning the interpretation of this Agreement or a Party considers that the other Party has failed to carry out its obligations under this Agreement.

Article 11: Entry into Force

This Agreement shall enter into force on February 16, 2010.

Article 12: Amendment or Modification

The Parties may amend or modify this Agreement upon their mutual written consent.

Article 13: Termination

Either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect 30 days after the date of notification.

Signed in duplicate at _____ on this 10th day of February, 2010, in the English and French languages.

FOR THE GOVERNMENT
OF CANADA:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

Appendix A: Canada's GPA Article XXIV:6(a) Notification
Appendix B: United States' GPA Article XXIV:6(a) Notification
Appendix C: Canada's Temporary Offer