

Québec 

 Ontario

**TRADE AND COOPERATION AGREEMENT BETWEEN  
ONTARIO AND QUEBEC**

**SEPTEMBER 2015 PROTOCOL OF AMENDMENT**

**BETWEEN**

**THE GOVERNMENT OF QUÉBEC**

**AND**

**THE GOVERNMENT OF ONTARIO**

# TRADE AND COOPERATION AGREEMENT BETWEEN ONTARIO AND QUEBEC

## SEPTEMBER 2015 PROTOCOL OF AMENDMENT

The Government of Québec and the Government of Ontario, hereby agree to make the following modifications to the Trade and Cooperation Agreement between Québec and Ontario (the “Agreement”), in accordance with the procedure set out in article 14.3 of the Agreement.

Note: All changes relate to both the English and French versions of the Agreement, except where noted.

### A. **SPECIFIC COMMITMENTS AND RULES**

#### 1. Chapter Nine (Public Procurement)

1.1 Replace the current Chapter Nine (Public Procurement) with the new Chapter that is found as Attachment 1 to this Protocol of Amendment.

### B. **DISPUTE RESOLUTION**

#### 2. Chapter Twelve (Dispute Resolution)

##### 2.1 Article 12.2: Application

a. In the title of the article of the French version, delete the words “et mécanismes d’exécution” .

b. Replace paragraphs 1 to 7 with the following:

“1. Subject to paragraphs 2 and 3, this Chapter applies to the avoidance and resolution of disputes between Parties, regarding the interpretation or application of this Agreement.

2. This Chapter applies to Chapter 7 (Financial Services), subject to Article 7.8 (Exceptions), and as modified by

Articles 7.11 (Dispute Resolution) and 7.12 (Financial Services Experts Roster).

3. This Chapter does not apply to complaints made under Article 9.19 (Bid protest procedures). For greater certainty, a Party may not initiate a dispute under this Chapter on behalf of a supplier with respect to a complaint under Article 9.19 (Bid protest procedures).
4. This Chapter applies to Chapter 10 (Agriculture and Food Goods), subject to paragraphs 3 and 4 of Article 10.2 (Scope and Coverage), and to Article 10.5 (Dispute Settlement).
5. Where a Party believes that a measure may be inconsistent with both the *Agreement on Internal Trade* and this Agreement, it may choose one dispute resolution process and, once chosen, shall have no recourse to the other process regarding the same measure.”

#### C. **ENTRY INTO FORCE**

3. This Protocol of Amendment shall enter into force for both Parties on January 1<sup>st</sup>, 2016 with respect to the public procurement of ministries and agencies, as defined in Annex 9.1 of the new Chapter Nine that is found as Attachment 1 to this Protocol of Amendment and on September 1<sup>st</sup>, 2016 for the public procurement of all other covered entities, also as defined in Annex 9.1.

**IN WITNESS WHEREOF**, the undersigned being duly authorized by their respective Governments have signed the September 2015 Protocol of Amendment to the Trade and Cooperation Agreement between Ontario and Québec, one in French and the other in English, both versions being regarded as equally authentic and valid.

Signed in Québec City, on the 11<sup>th</sup> day of September 2015.

**FOR THE GOVERNMENT OF  
QUÉBEC**

**FOR THE GOVERNMENT OF  
ONTARIO**

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Philippe Couillard  
Premier ministre

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Kathleen Wynne  
Premier

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Jacques Daoust  
Ministre de l'Économie,  
de l'Innovation et des  
Exportations

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Brad Duguid  
Minister of Economic  
Development, Employment  
and Infrastructure

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Jean-Marc Fournier  
Ministre responsable des Affaires  
intergouvernementales  
canadiennes et de la  
Francophonie canadienne

## ATTACHMENT 1

### Chapter 9

#### Public Procurement

##### **Article 9.1 Objectives**

1. The objectives of this Chapter are to:
  - (a) establish a framework that will ensure equal access to procurement by all Ontario and Québec suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy in a context of transparency and efficiency; and
  - (b) foster a climate of collaboration in public procurement in order to respond to public demand for governments to be environmentally, economically and socially responsible.
2. The provisions of this Chapter shall not be interpreted as granting any rights, creating any obligations or conferring any benefits to governments, government entities, suppliers, enterprises, persons, products, services or investments that are not of a Party.

##### **Article 9.2 Relationship to other chapters of the Agreement**

1. Except for Articles 5.5 and 5.6, Chapter 5 (General Rules) does not otherwise apply to this Chapter.
2. Chapter 12 (Dispute Resolution) applies to the resolution of disputes arising under this Chapter but does not apply to complaints initiated under Article 9.19 (Bid protest procedures).
3. Article 14.5 (Regional Economic Development) does not apply to this Chapter.

### **Article 9.3 Definitions**

**bid** means a submission in response to a call for tenders;

**buying group** means a group of two or more members that combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations;

**Canadian good** means a good produced exclusively from domestic materials, a good manufactured in Canada or a good that, if exported outside of Canada, would qualify as a good of Canada under appropriate rules of origin;

**Canadian service** means a service performed in Canada by persons of a Party;

**Canadian supplier** means a supplier that has a place of business in Canada;

**Canadian value-added** means:

- a) in relation to services, the proportion of the service contract performed by residents of Canada; and
- b) in relation to goods, the difference between the dutiable value of imported goods and the selling price, taking into account any value added by manufacturers and distributors, and including any costs incurred in Canada related to: research and development; sales and marketing; communications and manuals; customization and modifications; installation and support; warehousing and distribution; training; and after-sales service.

With respect to Article 9.6(4), the preference for Canadian value-added means the premium that may be awarded by a Party during the evaluation of bids for Canadian value-added, not the required level of Canadian content.

**Committee** means the Committee on Government Procurement established by Article 9.22;

**construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

**electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

**financial service** has the same meaning as that set out in Chapter 7 (Financial Services), Article 7.13 (Definitions);

**goods** means, in relation to procurement, moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract;

**in writing** or **written** means any worded or numbered expression that can be read, reproduced and later communicated, including electronically transmitted and stored information;

**limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

**measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

**multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

**notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

**offset** means any condition or undertaking that encourages local development, such as the use of local content, the licensing of technology, investment, or other economic benefits criteria that are designed to favour local goods, services or suppliers;

**open tendering** means a procurement method whereby all interested suppliers may submit a tender;

**place of business** means an establishment where a supplier conducts activities on a permanent basis that is clearly identified by name and accessible during normal working hours;

**procurement process** is the process that begins after an entity has decided on its requirement and continues through to and including contract award;

**procuring entity** means an entity covered under Annex 9.1;

**qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

**selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

**services** means all services, including construction services, unless otherwise specified;

**supplier** means a person or group of persons that provides or could provide goods or services; and

**technical specification** means a tendering requirement that:



- (i) lays down the characteristics of a good or a service 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 a service.

## **Article 9.4 Scope and coverage**

### *Application of this Chapter*

1. This Chapter applies to any measure regarding covered procurement within Ontario or Québec.
2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:
  - (a) of a good, a service, or any combination thereof:
    - (i) as specified in Annex 9.1 to this Chapter; and
    - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service 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;
  - (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in Annex 9.1 to this Chapter, at the time of publication of a notice in accordance with Article 9.8;
  - (d) by a procuring entity; and
  - (e) that is not otherwise excluded from coverage in paragraph 4 or in Annex 9.2 to this Chapter.
3. Where a procuring entity, in the context of covered procurement, requires a person not covered under Annex 9.1 to this Chapter to procure in accordance

with particular requirements, Article 9.6 shall apply *mutatis mutandis* to such requirements.

*Non-Application of this Chapter*

4. Except where provided otherwise, this Chapter does not apply to:
  - (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
  - (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
  - (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
  - (d) public employment contracts;
  - (e) procurement conducted:
    - (i) for the specific purpose of providing international assistance, including development aid; or
    - (ii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;
  - (f) procurement between one government entity or government enterprise and another government entity or government enterprise;
  - (g) procurement in relation to an international crossing between a Party and another country, including the design, construction, operation or maintenance of the crossing as well as any related infrastructure;
  - (h) procurement between subsidiaries or affiliates of the same entity, or between an entity and any of its subsidiaries or affiliates, or between an

- entity and a general, limited or special partnership in which the entity has a majority or controlling interest;
- (i) procurement by a procuring entity on behalf of another entity where the procurement would not be covered by this Chapter if it were conducted by the other entity itself; or
  - (j) instruments of public debt, exchange rates, reserve management or other policies involving transactions in securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital. Accordingly, this Chapter does not apply to contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments.
5. Where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

*Valuation*

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:
- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and
  - (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
    - (i) premiums, fees, commissions and interest; and
    - (ii) where the procurement provides for the possibility of options, the total value of such options.
7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts

("recurring contracts"), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of a good or a service, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, Parties shall use subparagraph (b) for valuation.

## **Article 9.5 General exceptions**

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction

on interprovincial trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

- (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;
- (d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour; or
- (e) necessary for consumer protection.

For greater certainty, nothing in this Chapter shall prevent a Party, including its procuring entities, from taking any action or from not disclosing any information which it considers necessary to protect its essential security interests relating to the procurement of arms or ammunition<sup>1</sup>, or to procurement indispensable for its security.

## **Article 9.6 General principles**

### *Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and suppliers.

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<sup>1</sup> The expression "ammunition" in this Article is considered equivalent to the expression "munitions".

Except as otherwise provided in this Chapter, measures that are inconsistent with paragraph 1 include, but are not limited to, the following:

- (a) the imposition of conditions on the invitation to tender, registration requirements or qualification procedures that are based on the location of a supplier's place of business, the place where the goods are produced or the services are provided, or other like criteria;
- (b) the biasing of technical specifications in favour of, or against, particular goods or services, including those goods or services included in construction contracts, or in favour of, or against, the suppliers of such goods or services for the purpose of avoiding the obligations of this Chapter;
- (c) the timing of events in the tender process so as to prevent suppliers from submitting bids;
- (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be considered as deliberately designed to prevent suppliers from meeting the requirements of the procurement;
- (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to avoid the obligations of this Chapter;
- (f) the use of price discounts or preferential margins in order to favour particular suppliers; and
- (g) the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:
  - (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the other Party'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 are goods or services of the other Party.

#### *Buying groups*

3. Entities covered by this Chapter that participate in group purchasing activities through buying groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Chapter. The Parties shall not direct the procurement activities of buying groups in a manner inconsistent with this Chapter.

#### *Canadian Content*

4. Provided that the measure is consistent with a Party's international trade obligations, that its purpose is not to avoid competition or to discriminate against the other Party's goods, services or suppliers, and that it is not applied in a discriminatory manner, nothing in this Chapter prevents a Party from:
  - a) according a preference for Canadian value-added; or
  - b) limiting its tendering to Canadian goods, services or suppliers.

#### *Use of Electronic Means*

5. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

### *Conduct of Procurement*

6. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
- (a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

### *Offsets*

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

## **Article 9.7 Publication of measures regarding procurement**

1. Each Party shall:
- (a) publish any measure of general application relating to covered procurements, and any changes or additions to this information;
  - (b) upon request, respond to any inquiry relating to this information.



## **Article 9.8 Notices**

### *Notice of Intended Procurement*

1. For each covered procurement, except in the circumstances described in Article 9.14, a procuring entity shall publish a notice of intended procurement.
2. Procuring entities shall provide their notices of intended procurement, if accessible by electronic means, through links in a gateway electronic site that is accessible free of charge. Each Party shall provide the address of the electronic site to the Committee.

The notices may also be published in an appropriate paper medium that is widely disseminated and those notices shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice.

3. At such time as a suitable Canada-wide single point of access becomes available, all notices of intended procurement shall be directly accessible by electronic means free of charge through that point of access.
4. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:
  - (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
  - (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
  - (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
  - (d) a description of any options;
  - (e) the time-frame for delivery of goods or services or the duration of the contract;

- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language(s) in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where, pursuant to Article 9.10, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Chapter.

#### *Summary Notice*

5. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:
  - (a) the subject-matter of the procurement;
  - (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

- (c) the address from which documents relating to the procurement may be requested.

#### *Notice of Planned Procurement*

- 6. Procuring entities are encouraged to publish in the electronic and, where available, paper mediums referred to in paragraphs 2 and 3 as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.
- 7. A procuring entity may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 4 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

#### **Article 9.9 Conditions for participation**

- 1. A procuring entity shall limit any conditions for participation in a procurement to those that ensure that a supplier has the legal and financial capacity and the commercial and technical abilities to undertake the relevant procurement.
- 2. In establishing the conditions for participation, a procuring entity:
  - (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;
  - (b) may require relevant prior experience where essential to meet the requirements of the procurement; and
  - (c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:
  - (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
  - (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.
4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:
  - (a) bankruptcy or insolvency;
  - (b) false declarations;
  - (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
  - (d) final judgments in respect of serious crimes or other serious offences;
  - (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
  - (f) failure to pay taxes.

## **Article 9.10 Qualification of suppliers**

### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
  - (a) its procuring entities make efforts to minimize differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

#### *Selective Tendering*

4. Where a procuring entity intends to use selective tendering, the entity shall:
  - (a) include in the notice of intended procurement at least the information specified in Article 9.8(4) (a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation;
  - (b) provide, by the commencement of the time-period for tendering, at least the information in Article 9.8(4) (c), (d), (e), (h) and (i) to the qualified suppliers that it invites to submit tenders; and
  - (c) allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
5. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 4 (c).

#### *Multi-Use Lists*

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that it publishes, annually or otherwise makes available continuously by electronic means, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

- (a) a description of the goods or services, or categories thereof, for which the list may be used;
  - (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify whether a supplier satisfies the conditions;
  - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
  - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
  - (e) an indication that the list may be used for procurement covered by this Chapter.
7. Notwithstanding paragraph 6, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 6 only once, at the beginning of the period of validity of the list, provided that the notice:
- (a) states the period of validity and that further notices will not be published; and
  - (b) is published by electronic means and is made available continuously during the period of its validity.
8. A procuring entity shall allow a supplier to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.
9. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in accordance with Article 9.12, the procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request,

unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

10. A procuring entity may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice includes the information required and is published in accordance with paragraph 6, as much of the information required under Article 9.8(4) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
- (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 9.8(4), to the extent such information is available.

11. A procuring entity may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 8 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

### *Information on Procuring Entity Decisions*

12. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.
13. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## **Article 9.11 Technical specifications and tender documentation**

### *Technical Specifications*

1. A procuring entity shall 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 trade.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, 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.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.



4. A procuring entity shall 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.
5. A procuring entity shall 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.
6. For greater certainty, a Party, including its procuring entities, may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment, provided that it does so in accordance with this Article.

#### *Tender Documentation*

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
  - (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
  - (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

- (c) all evaluation criteria that the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
  - (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
  - (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
  - (f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;
  - (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
  - (h) any dates for the delivery of goods or the supply of services.
8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.
9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.
10. A procuring entity shall promptly:
- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
  - (b) provide, on request, the tender documentation to any interested supplier; and

- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

### *Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:
- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
  - (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

### **Article 9.12 Time periods**

1. A procuring entity shall, consistent with its own reasonable needs and mandatory deadlines under applicable trade agreements, provide sufficient time for suppliers to prepare and submit requests for participation and bids, taking into account such factors as:
- (a) the nature and complexity of the procurement;
  - (b) the extent of subcontracting anticipated; and
  - (c) the time necessary for transmitting tenders where electronic means are not used.

These time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

### **Article 9.13 Negotiation**

1. A Party may permit its procuring entities to conduct negotiations with suppliers where:
  - (a) the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 9.8(4); or
  - (b) it appears from the evaluation that no tender is clearly the most advantageous in satisfying the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
  - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
  - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

### **Article 9.14 Limited tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 9.8 through 9.10, paragraphs 7 through 11 of Article 9.11, and Articles 9.12, 9.13, 9.15 and 9.16 under any of the following circumstances:
  - (a) where:
    - (i) no tenders were submitted or no suppliers requested participation;
    - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
    - (iii) no suppliers satisfied the conditions for participation; or

- (iv) the tenders submitted have been collusive,  
provided that the requirements of the tender documentation are not substantially modified;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
  - (i) the requirement is for a work of art;
  - (ii) the protection of patents, copyrights or other exclusive rights; or
  - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) only when strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original

- development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
- (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

### **Article 9.15 Electronic auctions**

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

## **Article 9.16 Treatment of tenders and awarding of contracts**

### *Treatment of Tenders*

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

### *Awarding of Contracts*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
  - (a) the most advantageous tender; or
  - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

## **Article 9.17 Transparency of procurement information**

### *Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 9.18, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

### *Publication of Award Information*

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or



electronic medium. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 9.14, a description of the circumstances justifying the use of limited tendering.

#### *Maintenance of Documentation, Reports and Electronic Traceability*

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:
  - (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 9.14; and
  - (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

#### *Collection and Reporting of Statistics*

4. Each Party shall report annually to the other Party on procurement by its covered entities, except for procurement that is already reported in another

agreement applying to both Parties. The report shall contain the number and aggregate values of the procurements awarded that equal or exceed the applicable threshold values specified in Annex 9.1. The aggregate values shall be broken down by each category of procurement, being goods, services and construction. Statistics shall be collected on the basis of the fiscal year.

5. Where a Party publishes its statistics on an official website in a manner that is consistent with the requirements of paragraph 4, the Party may provide a link to the website instead of reporting to the other Party.

#### **Article 9.18 Disclosure of information**

##### *Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

##### *Non-Disclosure of Information*

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:
  - (a) would impede law enforcement;
  - (b) might prejudice fair competition between suppliers;
  - (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
  - (d) would otherwise be contrary to the public interest.

#### **Article 9.19 Bid protest procedures**

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:
  - (a) a breach of the Chapter; or
  - (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all complaints shall be in writing and made generally available.
2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in

a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a complaint, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier.
4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a complaint by a supplier arising in the context of a covered procurement.
5. Where a body other than an authority referred to in paragraph 4 initially reviews a complaint, the Party shall ensure that the 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 complaint.
6. Each Party shall 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 shall respond in writing to the complaint and disclose all relevant documents to the review body;
  - (b) the participants to the proceedings ("participants") shall have the right to be heard prior to a decision of the review body being made on the complaint;
  - (c) the participants shall have the right to be represented and accompanied;
  - (d) the participants shall have access to all proceedings;
  - (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the 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; and

(b) corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the complaint, or both, where a review body determines that there has been a breach or a failure as referred to in paragraph 1.

## **Article 9.20 Modifications and rectifications to coverage**

### *Notification of Proposed Modification*

1. A Party shall notify the other Party of any proposed rectification, withdrawal of an entity or other modification of its coverage (any of which is hereinafter referred to as "modification"). The Party proposing the modification ("modifying Party") shall include in the notification:

(a) for any proposed withdrawal of an entity from its coverage on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or

- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Chapter.

#### *Objection to Notification*

2. The Party whose rights under this Chapter may be affected by a proposed modification notified under paragraph 1 may notify the modifying Party of any objection to the proposed modification. Such objections shall be made within 30 days from the date of the circulation of the modification notification, and shall set out reasons for the objection.

#### *Consultations*

3. If there is an objection to notification, the Parties shall make every attempt to resolve the objection through consultations, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter.

#### *Implementation of Modifications*

4. A proposed modification shall become effective only where:
- (a) the other Party does not submit to the Committee a written objection to the proposed modification within 30 days from the date of circulation of the notification of the proposed modification under paragraph 1;
  - (b) the objecting Party has notified the modifying Party that it withdraws its objections to the proposed modification; or
  - (c) 90 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party

has informed the objecting Party in writing of its intention to implement the modification.

#### *Withdrawal of Substantially Equivalent Coverage*

5. Where a modification becomes effective pursuant to paragraph 4(c), the objecting Party may withdraw substantially equivalent coverage. The objecting Party shall inform the modifying Party in writing of any such withdrawal at least 30 days before the withdrawal becomes effective.

#### *Dispute Resolution*

6. Any dispute arising from a proposed modification shall be subject to Chapter 12 (Dispute Resolution).

### **Article 9.21 Ministers Responsible**

1. The Parties designate the following Ministers as responsible for this Chapter:
  - (a) for Ontario, the President of the Treasury Board; and
  - (b) for Québec, the Chair of the *Conseil du trésor*.
2. Ministers shall:
  - (a) provide overall management and oversight of this Chapter;
  - (b) consult with respect to improvements to this Chapter; and
  - (c) receive reports, as required, from the Committee on Government Procurement.
3. Ministers may make modifications to the Chapter subject to the endorsement of the Ministerial Council.

## **Article 9.22 Institutions**

### *Committee on Government Procurement*

1. The Committee shall be composed of officials from each Party and shall meet, as necessary, for the purpose of providing the Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out other responsibilities as may be assigned to it by the Parties.
2. The Committee shall meet, upon request of a Party, to:
  - (a) consider issues regarding public procurement that are referred to it by a Party;
  - (b) discuss any other matters related to the operation and implementation of this Chapter;
  - (c) provide recommendations to Ministers responsible for the Chapter to improve this Chapter where necessary, including modifications to the text of this Chapter; and
  - (d) determine and publish the inflation-adjusted thresholds.

## **Article 9.23 Relationship with other agreements**

If, after the entry into force of this Chapter, a Party accords to a non-Party greater access through another agreement to its government procurement market than the access that it has accorded to the other Party, that Party may, at the request of the other Party, enter into negotiations regarding the extension of the same access to the other party on a reciprocal basis.



## Annex 9.1 Applicable Thresholds

1. Unless otherwise specified in Annex 9.2, the following thresholds shall apply to procurement of goods, services and construction services by entities covered by this Chapter:

	<b>Ministries and agencies<sup>1</sup></b>	<b>School boards, academic, health and social service entities, and municipalities<sup>2</sup></b>	<b>Entities of a commercial or industrial nature and energy entities<sup>3</sup></b>
<b>Goods</b>	\$25,000	\$100,000	\$500,000
<b>Services</b>	\$100,000	\$100,000	\$500,000
<b>Construction Services</b>	\$100,000	\$100,000	\$5,000,000

### *Inflation adjustment<sup>4</sup>*

2. Thresholds in Annex 9.1 shall be adjusted in accordance with the following:
- a) the inflation rate shall be measured by the Consumer Price Index (CPI) published by Statistics Canada;

<sup>1</sup> For Québec, 'Agencies' means the bodies set out in subparagraphs (2) through (4) of the first paragraph of section 4 of the *Act Respecting Contracting by Public Bodies* (R.S.Q., c.C-65.1), and the persons set out in the second paragraph of that section, with the exception of the bodies and persons mentioned in section 5 of the Act.

<sup>2</sup> For Québec, "School boards, academic, health and social service entities and municipalities" means the municipalities, the municipal organizations, and the bodies set out in subparagraphs (5) and (6) of the first paragraph of section 4 of the *Act Respecting Contracting by Public Bodies*, including the legal persons or other entities owned or controlled by one or several of these organizations.

For Ontario, "School boards, academic, health and social service entities and municipalities" means municipalities, school boards and publicly-funded academic, health and social service entities.

<sup>3</sup> For Québec, "Entities of a commercial or industrial nature and energy entities" means a body set out in section 7 of the *Act Respecting Contracting by Public Bodies*.

<sup>4</sup> The adjustment shall be calculated according to the following formula:

$$T_c \times (1 + p_i) = T_n, \text{ where}$$

$T_c$  = Current level of threshold;  
 $p_i$  = accumulated inflation rate for the  $i^{\text{th}}$  two-year period; and  
 $T_n$  = New level of threshold, after adjustment.

- b) the first adjustment for inflation, to take effect on January 1, 2018, shall be calculated using the two-year period from November 1, 2015 through October 31, 2017; and
- c) all subsequent adjustments shall be calculated using two-year periods, each period beginning November 1, and shall take effect on January 1 of the year immediately following the end of the two-year period.

## **Annex 9.2**

### ***Excluded Entities***

The following entities are not covered by this Chapter:

Ontario:

- Infrastructure Ontario
- Electrical Safety Authority
- Ontario Independent Electricity System Operator
- Ontario Electricity Financial Corporation
- Offices of the Legislative Assembly

Québec:

- National Assembly of Québec and its Officers

### ***Party Specific Exceptions***

#### **Ontario**

1. Ontario Power Generation reserves the right to accord a preference to bids that provide benefits to the province, such as favouring local sub-contracting, in the context of procurements relating to the construction or maintenance of nuclear facilities or related services. A selection criterion of benefits to the province in the evaluation of tenders shall not exceed 20 percent of total points.

2. For greater certainty, this Chapter does not cover procurement for the production, transmission and distribution of renewable energy, other than hydro-electricity, by the province of Ontario as set out in the *Green Energy Act*.

## **Québec**

1. This Chapter does not cover procurement:
  - (a) of the following goods by Hydro-Québec (identified in accordance with the Harmonized System Codes (HS)): HS 7308.20; HS 8406; HS 8410; HS 8426; HS 8504; HS 8535; HS 8536; HS 8537; HS 8544; HS 8705.10; HS 8705.20; HS 8705.90; HS 8707; HS 8708; HS 8716.39; HS 8716.40.
  - (b) of the following services by Hydro-Québec (identified in accordance with the United Nations Provisional Central Products Classification (CPC)):
    - 7523 – Data and message transmission services
    - 84 – Computer and related services
    - 86724– Engineering design services for the construction of civil engineering works
    - 86729– Other engineering services.
  - (c) from a non-profit organization with respect to urban planning, as well as the resulting plans and specifications preparation and works management, provided that the non-profit organization respects, for its procurement, the procuring entity's obligations under this Chapter.
  - (d) in respect of shipbuilding and repair, including related architectural and engineering services.

- (e) of goods purchased for representational or promotional purposes, or of services or construction services purchased for representational or promotional purposes outside the province.
2. The Province of Québec reserves the right to adopt or maintain any measure favouring local outsourcing in the case of construction services contracts awarded by Hydro-Québec. For greater certainty, such measure would in no case be a condition for the participation or qualification of suppliers.

## **General Notes**

1. This Chapter does not cover procurement:
- (a) of food made, produced or harvested in Ontario or Québec for which the value is below \$50,000;
  - (b) of transportation services that form a part of, or are incidental to, a procurement contract;
  - (c) of services contracts, excluding construction services contracts, which grant to a supplier the right to provide and exploit a service to the public as complete or partial consideration for the delivery of a service under a procurement contract;
  - (d) targeting poverty reduction for disadvantaged people for which the value is below \$300,000;
  - (e) contracts with a non-profit organization;
  - (f) of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this Chapter;
  - (g) of any goods the interprovincial movement of which is restricted by laws not inconsistent with this Agreement;
  - (h) of goods and services related to computer software for educational purposes;

- (i) of goods or consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to public interest;
  - (j) of the following services:
    - (i) health services and social services;
    - (ii) 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, land surveyors, accountants, lawyers and notaries;
    - (iii) transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;
    - (iv) financial services, as well as services complementary or auxiliary to financial services;
    - (v) integrated engineering services for transportation infrastructure turnkey projects.
2. Any exclusion that is related either specifically or generally to Ontario or Québec entities or enterprises covered by this Chapter will also apply to any successor entity or entities, enterprise or enterprises, in such a manner as to maintain the value of the Parties' coverage.
3. Provided that it is in accordance with a Party's international trade obligations, when purchasing mass transit vehicles, a Party may, pursuant to the terms of this Chapter, require that the successful bidder contract up to 25 percent of the contract value in Canada. Québec may also require that final assembly takes place in Canada.