

## CHAPTER 13

### GOVERNMENT PROCUREMENT

#### Article 13.1: Definitions

For the purposes of this Chapter:

**build-operate-transfer contract and public works concession contract** means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

**commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

**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);

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

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

**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 requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade, or similar action to encourage local development or to improve a Party's balance of payments accounts;

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

**procuring entity** means an entity listed in Annex 13-A;

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

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

**services** includes construction services, unless otherwise specified;

**supplier** means a person or group of persons that provides or could provide a good or service to a procuring entity; and

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

- (a) sets out the characteristics of:
  - (i) goods to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production, or
  - (ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or
- (b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

## **Article 13.2: Scope**

### *Application of Chapter*

1. This Chapter applies to any measure regarding covered procurement.
2. For the purposes of this Chapter, covered procurement means government procurement:
  - (a) of a good, service, or any combination thereof as specified in each Party's Schedule to Annex 13-A;
  - (b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;
  - (c) for which the value, as estimated in accordance with paragraphs 9 and 10, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 13-A, at the time of publication of a notice of intended procurement;

- (d) by a procuring entity; and
- (e) that is not otherwise excluded from coverage under this Agreement.

3. This Chapter applies only as between Mexico and the United States. Accordingly, for the purposes of this Chapter, “Party” or “Parties” means Mexico or the United States, singly or collectively.

*Activities Not Covered*

4. Unless otherwise provided in a Party’s Schedule to Annex 13-A, 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, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives, and sponsorship arrangements;
- (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;
- (e) public employment contracts; and
- (f) procurement conducted:
  - (i) for the specific purpose of providing international assistance, including development aid,
  - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project, or
  - (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance if the applicable procedure or condition would be inconsistent with this Chapter.

### *Schedules*

5. Each Party shall specify the following information in its Schedule to Annex 13-A:
  - (a) in Section A, the central government entities for which procurement is covered by this Chapter;
  - (b) in Section B, other entities for which procurement is covered by this Chapter;
  - (c) in Section C, the goods covered by this Chapter;
  - (d) in Section D, the services, other than construction services, covered by this Chapter;
  - (e) in Section E, the construction services covered by this Chapter;
  - (f) in Section F, any General Notes;
  - (g) in Section G, the applicable Threshold Adjustment Formula; and
  - (h) in Section H, the publication information required under Article 13.5.2 (Publication of Procurement Information).

### *Compliance*

6. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.
7. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.
8. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

### *Valuation*

9. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:
  - (a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

- (b) the value of any option clause; and
- (c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

10. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

### **Article 13.3: Exceptions**

1. Subject to the requirement that the measure is 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 international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

- (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 the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labor.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

### **Article 13.4: General Principles**

#### *National Treatment and 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, treatment no less favorable than the treatment that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to a measure regarding covered procurement, no Party, including its procuring entities, shall:

- (a) treat a locally established supplier less favorably than another locally established

supplier on the basis of degree of foreign affiliation or ownership; or

- (b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

#### *Procurement Methods*

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 13.8 (Qualification of Suppliers) or Article 13.9 (Limited Tendering) applies.

#### *Rules of Origin*

5. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

#### *Offsets*

6. With regard to covered procurement, no Party, including its procuring entities, shall seek, take account of, impose, or enforce any offset, at any stage of a procurement.

#### *Measures Not Specific to Procurement*

7. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

#### *Use of Electronic Means*

8. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices, and tender documentation, and for the receipt of tenders.

9. 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) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

### **Article 13.5: Publication of Procurement Information**

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.
2. Each Party shall list in Section I of its Schedule to Annex 13-A the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 13.6 (Notices of Intended Procurement), Article 13.8.3 (Qualification of Suppliers), and Article 13.15.3 (Transparency and Post-Award Information).
3. Each Party shall, on request, provide an explanation in response to an inquiry relating to the information referred to in paragraph 1.

### **Article 13.6: Notices of Intended Procurement**

1. For each covered procurement, except in the circumstances described in Article 13.9 (Limited Tendering), a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 13-A. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.
2. The notices shall, if accessible by electronic means, be provided free of charge:
  - (a) for central government entities that are covered under Annex 13-A, through a single point of access; and
  - (b) for other entities covered under Annex 13-A, through links in a single electronic portal.
3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:
  - (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 the cost and terms of payment to obtain the relevant documents,

if any;

- (b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known;
- (c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;
- (d) if applicable, the address and any final date for the submission of requests for participation in the procurement;
- (e) the address and the final date for the submission of tenders;
- (f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity;
- (g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide;
- (h) if, pursuant to Article 13.8 (Qualification of Suppliers), 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, if applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (i) an indication that the procurement is covered by this Chapter.

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

#### *Notice of Planned Procurement*

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (notice of planned procurement) which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

### **Article 13.7: Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the



commercial and technical abilities to fulfil the requirements of that 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 given Party or that the supplier has prior work experience in the territory of that Party; and
  - (b) may require relevant prior experience if essential to meet the requirements of the procurement.
3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:
  - (a) 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) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.
4. If 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 the 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 actions or omissions that adversely reflect on the commercial integrity of the supplier; or
  - (f) failure to pay taxes.
5. For greater certainty, this Article is not intended to preclude a procuring entity from promoting compliance with laws in the territory in which the good is produced or the service is performed relating to labor rights as recognized by the Parties and set forth in Article 23.3 (Labor Rights), provided that such measures are applied in a manner consistent with Chapter 29 (Publication and Administration), and are not applied in a manner that constitutes a means of

arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade between the Parties.<sup>1</sup>

## **Article 13.8: 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. No Party, including its procuring entities, shall:
  - (a) adopt or apply any 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; or
  - (b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

### *Selective Tendering*

3. If a procuring entity intends to use selective tendering, the procuring entity shall:
  - (a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and
  - (b) include in the notice of intended procurement the information specified in Article 13.6.3(a), (b), (d), (g), (h), and (i) (Notices of Intended Procurement).
4. The procuring entity shall:
  - (a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;
  - (b) provide, by the commencement of the time period for tendering, at least the information in Article 13.6.3 (c), (e), and (f) (Notices of Intended Procurement) to the qualified suppliers that it notifies as specified in Article 13.13.3(b) (Time Periods); and

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<sup>1</sup> The adoption and maintenance of these measures by a Party should not be construed as evidence that the other Party has breached the obligations under Chapter 23 (Labor) with respect to labor.

- (c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

5. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 4(c).

#### *Multi-Use Lists*

6. A Party, including its procuring entities, may establish or maintain a multi-use list provided that it publishes annually, or otherwise makes continuously available 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 and 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 or other government agency will use to verify a supplier's satisfaction of those conditions;
- (c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to 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, if 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;
- (e) the deadline for submission of applications for inclusion on the list, if applicable; and
- (f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 13.5.2 (Publication of Procurement Information).

7. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

8. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on the multi-use list and submits all required documents, within the time period

provided for in Article 13.13.2 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement unless the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

#### *Information on Procuring Entity Decisions*

9. A procuring entity or other entity of a Party 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 decision with respect to the request or application.

10. If a procuring entity or other entity of a Party rejects a supplier's request for participation 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 reason for its decision.

#### **Article 13.9: Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Article 13.6 (Notices of Intended Procurement), Article 13.7 (Conditions for Participation), Article 13.8 (Qualification of Suppliers), Article 13.10 (Negotiations), Article 13.11 (Technical Specifications), Article 13.12 (Tender Documentation), Article 13.13 (Time Periods), or Article 13.14 (Treatment of Tenders and Awarding of Contracts). A procuring entity may use limited tendering only under the following circumstances:

- (a) if, in response to a prior notice, invitation to participate, or invitation to tender:
  - (i) no tenders were submitted or no suppliers requested participation,
  - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation,
  - (iii) no suppliers satisfied the conditions for participation, or
  - (iv) the tenders submitted were collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

- (b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists 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 or its authorized agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:
  - (i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, or due to conditions under original supplier warranties, and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) for a good purchased on a commodity market or exchange;
- (e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or 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 prototype or 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 prototype or the first 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;
- (f) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy, or receivership, but not for routine purchases from regular suppliers;
- (g) if a contract is awarded to the winner of a design contest, provided that:
  - (i) the contest has been organized in a manner that is consistent with this Chapter, and

- (ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or
  - (h) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.
- 3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

### **Article 13.10: Negotiations**

- 1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:
  - (a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 13.6 (Notices of Intended Procurement); or
  - (b) it appears from the evaluation that no tender is obviously the most advantageous in terms of 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) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

### **Article 13.11: 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 effect of creating an unnecessary obstacle to trade between the Parties.
- 2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

- (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. 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 these cases, the procuring entity includes words such as “or equivalent” in the tender documentation.

4. 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.

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or the protection of the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting, or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting, or processing of such information outside the territory of the Party.

### **Article 13.12: Tender Documentation**

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

- (a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

- (b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;
- (c) all criteria to be considered in the awarding of the contract and the relative importance of those criteria;
- (d) if there will be a public opening of tenders, the date, time, and place for the opening;
- (e) any other terms or conditions relevant to the evaluation of tenders; and
- (f) any date for delivery of a good or supply of a service.

2. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such 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.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

#### *Modifications*

4. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends, or re-issues a notice or tender documentation, it shall publish or provide those modifications, or the amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating in the procurement at the time of the modification, amendment, or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

### **Article 13.13: Time Periods**

#### *General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:



- (a) the nature and complexity of the procurement; and
- (b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

### *Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

- (a) the procuring entity has published a notice of planned procurement under Article 13.6 (Notices of Intended Procurement) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement,
  - (ii) the approximate final dates for the submission of tenders or requests for participation,

- (iii) the address from which documents relating to the procurement may be obtained, and
  - (iv) as much of the information that is required for the notice of intended procurement as is available;
- (b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or
- (c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

## **Article 13.14: 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. If the tender of a supplier is received after the time specified for receiving tenders, the procuring entity shall not penalize that supplier if the delay is due solely to the mishandling on the part of the procuring entity.
3. If 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 notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria

specified in the notice and tender documentation, submits:

- (a) the most advantageous tender; or
- (b) if price is the sole criterion, the lowest price.

6. If a procuring entity received 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 covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

### **Article 13.15: Transparency and Post-Award Information**

#### *Information Provided to Suppliers*

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing or through the prompt publication of the notice in paragraph 3, provided that the notice includes the date of award. If a supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 13.16 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender.

#### *Publication of Award Information*

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

- (a) a description of the good or service procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the contract award;
- (e) the date of award or, if the procuring entity has already informed suppliers of the date of the award under paragraph 1, the contract date; and

- (f) the procurement method used and, if a procedure was used pursuant to Article 13.9 (Limited Tendering), a brief description of the circumstances justifying the use of that procedure.

#### *Maintenance of Records*

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 13.9.3 (Limited Tendering), for at least three years after the award of a contract.

#### *Collection and Reporting of Statistics*

5. Each Party shall prepare a statistical report on its covered procurement, and make such report publicly available on an official website. Each report shall cover one year and be available within two years of the end of the reporting period, and shall contain:

- (a) for Section A procuring entities:
  - (i) the number and total value, for all such entities, of all contracts covered by this Chapter,
  - (ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system, and
  - (iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;
- (b) for Section B procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities; and
- (c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, if it is not feasible to provide the data.

### **Article 13.16: Disclosure of Information**

#### *Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly information sufficient to

demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement 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, except to the extent required by law or with the written authorization of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information if that 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 13.17: Ensuring Integrity in Procurement Practices**

1. Each Party shall ensure that criminal, civil, or administrative measures exist that can address corruption, fraud, and other wrongful acts in its government procurement.

2. These measures may include procedures to debar, suspend, or declare ineligible from participation in the Party's procurements, for a stated period of time, a supplier that the Party has determined to have engaged in corruption, fraud, or other wrongful acts relevant to a supplier's eligibility to participate in a Party's government procurement. Each Party:

- (a) may consider the seriousness of the supplier's acts or omissions and any remedial measures or mitigating factors in making any decisions on debarment or suspension, including in making a decision on whether to reduce the period or extent of debarment or suspension at the supplier's request pursuant to paragraph 2(b)(ii); and
- (b) shall provide a supplier of the other Party directly implicated by a proceeding

applying procedures adopted or maintained under paragraph 2:

- (i) reasonable notice that the proceeding was initiated, including a description of the nature of the proceeding, a statement of the authority under which the proceeding was initiated, and the reasons for the proceeding, and
  - (ii) reasonable opportunity to present facts and arguments in support of its position; and
- (c) shall publish and update a list of enterprises and, subject to its law, natural persons it has debarred, suspended, or declared ineligible.

3. Each Party shall ensure that it has in place policies or procedures to address potential conflicts of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may also put in place policies or procedures, including provisions in tender documentation, that require successful suppliers to maintain and enforce effective internal controls, business ethics, and compliance programs, taking into account the size of the supplier, particularly SMEs, and other relevant factors, for preventing and detecting corruption, fraud, and other wrongful acts.

#### **Article 13.18: Domestic Review**

1. Each Party shall maintain, establish, or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent, and effective manner, a challenge or complaint (complaint) by a supplier that there has been:

- (a) a breach of this Chapter; or
- (b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for these 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 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, if appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future

procurement or to its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. If a body other than the review authority initially reviews a complaint, a Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity that is the subject of the complaint.

4. If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to either the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

- (a) a supplier shall be allowed sufficient time to prepare and submit a complaint in writing, 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;
- (b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;
- (c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and
- (d) the review authority shall provide its decision on a supplier's complaint in a timely manner, in writing, with an explanation of the basis for the decision.

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

- (a) prompt interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter; and
- (b) corrective action that may include compensation under paragraph 4.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

### **Article 13.19: Modifications and Rectifications of Annex**

1. A Party shall notify any proposed modification or rectification (modification) to its Schedule to Annex 13-A by circulating a notice in writing to the other Party through the Agreement Coordinator designated under Article 30.5 (Agreement Coordinator and Contact Points). A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification concerns one of the following:

- (a) a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or
- (b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 13-A, such as:
  - (i) changes in the name of a procuring entity,
  - (ii) the merger of one or more procuring entities listed in its Schedule,
  - (iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the procuring entities listed in the same Section of the Annex, or
  - (iv) changes in website references,

and the other Party does not object under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or (b).

3. A Party whose rights under this Chapter may be affected by a proposed modification that is notified under paragraph 1 shall notify the other Party of any objection to the proposed modification within 45 days of the date of circulation of the notice.

4. If a Party objects to a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, that Party may request additional information, including information on the nature of any government control or influence, with a view to clarifying and reaching agreement on the proposed modification, including the procuring entity's continued coverage under this Chapter. The modifying Party and the objecting Party shall make every attempt to resolve the objection through consultations.



5. The Commission shall modify Annex 13-A to reflect any agreed modification.

#### **Article 13.20: Facilitation of Participation by SMEs**

1. The Parties recognize the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.
2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.
3. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:
  - (a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;
  - (b) endeavor to make all tender documentation available free of charge;
  - (c) conduct procurement by electronic means or through other new information and communication technologies; and
  - (d) consider the size, design, and structure of the procurement, including the use of subcontracting by SMEs.

#### **Article 13.21: Committee on Government Procurement**

1. The Parties hereby establish a Committee on Government Procurement (Government Procurement Committee), composed of government representatives of each Party. On request of a Party, the Government Procurement Committee shall meet to address matters related to the implementation and operation of this Chapter, such as:
  - (a) facilitation of participation by SMEs in covered procurement, as provided for in Article 13.20 (Facilitation of Participation by SMEs);
  - (b) experiences and best practices in the use and adoption of information technology in conducting covered procurement. This could include topics such as the use of digital modeling in construction services; and
  - (c) experiences and best practices in the use and adoption of measures to promote opportunities for socially or economically disadvantaged people when conducting covered procurement.

## ANNEX 13-A

### SCHEDULE OF MEXICO

#### Section A: Central Government Entities

*Thresholds:*

Unless otherwise specified, Chapter 13 (Government Procurement) covers procurement by entities listed in this Section, in accordance with the following thresholds:

US\$80,317	Goods and Services
US\$10,441,216	Construction Services

The thresholds set out in this paragraph shall be adjusted in accordance with Section G (Threshold Adjustment Formula) of this Schedule.

*List of Entities:*

1. *Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación* (Ministry of Agriculture, Livestock, Rural Development, Fisheries and Feeding) and the following entities:

- (a) *Agencia de Servicios a la Comercialización y Desarrollo de Mercados Agropecuarios* (Support Services for Agricultural Marketing);
- (b) *Comisión Nacional de Acuacultura y Pesca* (National Commission of Aquaculture and Fisheries);
- (c) *Instituto Nacional de Investigaciones Forestales, Agrícolas y Pecuarias* (National Forestry, Agriculture and Cattle Research Institute);
- (d) *Instituto Nacional de Pesca* (National Institute of Fisheries);
- (e) *Servicio de Información Agroalimentaria y Pesquera* (Information Service and Agro-alimentary and Fisheries Statistics);
- (f) *Servicio Nacional de Inspección y Certificación de Semillas* (National Service of Inspection and Certification of Seeds); and
- (g) *Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria* (National Service of Health, Innocuous and Agro-alimentary Quality)

2. *Secretaría de Comunicaciones y Transportes* (Ministry of Communication and Transportation) and the following entity:
  - (a) *Instituto Mexicano del Transporte* (Mexican Institute of Transportation)
3. *Secretaría de la Defensa Nacional* (Ministry of National Defense)
4. *Secretaría de Desarrollo Agrario, Territorial y Urbano* (Ministry of Agrarian Territorial and Urban Development) and the following entities:
  - (a) *Comisión Nacional de Vivienda* (National Housing Commission);
  - (b) *Procuraduría Agraria* (Agrarian Office of the Attorney); and
  - (c) *Registro Agrario Nacional* (National Agrarian Registry)
5. *Secretaría de Desarrollo Social* (Ministry of Social Development) and the following entity:
  - (a) *Coordinación Nacional de PROSPERA* (National Coordination PROSPERA)
6. *Secretaría de Economía* (Ministry of Economy) and the following entities:
  - (a) *Comisión Nacional de Mejora Regulatoria* (National Commission of Regulatory Improvement); and
  - (b) *Instituto Nacional del Emprendedor* (National Entrepreneur Institute)
7. *Secretaría de Educación Pública* (Ministry of Public Education) and the following entities:
  - (a) *Comisión Nacional de Cultura Física y Deporte* (National Physical Culture and Sports Commission);
  - (b) *Consejo Nacional para la Cultura y las Artes* (National Council for Culture and Arts);
  - (c) *Instituto Nacional de Antropología e Historia* (National Institute of Anthropology and History);
  - (d) *Instituto Nacional de Bellas Artes y Literatura* (National Institute of Fine Arts and Literature);
  - (e) *Instituto Nacional del Derecho de Autor* (National Institute for Copyrights);
  - (f) *Instituto Nacional de Estudios Históricos de las Revoluciones de México*

(National Institute of Historical Studies of Mexican Revolutions); and

- (g) *Radio Educación* (Radio Education)
8. *Secretaría de Energía* (Ministry of Energy) and the following entities:
- (a) *Comisión Nacional de Seguridad Nuclear y Salvaguardias* (National Commission on Nuclear Safety and Safeguards);
  - (b) *Comisión Nacional para el Uso Eficiente de la Energía* (National Commission for Energy Conservation); and
  - (c) *Comisión Reguladora de Energía* (Regulatory Commission of Energy)
9. *Secretaría de la Función Pública* (Ministry of Public Administration)
10. *Secretaría de Gobernación* (Ministry of Government) and the following entities:
- (a) *Archivo General de la Nación* (General Archives of the Nation);
  - (b) *Centro Nacional de Prevención de Desastres* (National Disaster Prevention Center);
  - (c) *Centro de Producción de Programas Informativos y Especiales* (Production Center for Informative Programs and Specials);
  - (d) *Coordinación General de la Comisión Mexicana de Ayuda a Refugiados* (General Coordination of the Mexican Commission on Refugee Assistance);
  - (e) *Instituto Nacional de Migración* (National Institute of Migration);
  - (f) *Instituto Nacional para el Federalismo y el Desarrollo Municipal* (National Institute for Federalism and Municipal Development);
  - (g) *Policía Federal* (Federal Police);
  - (h) *Prevención y Readaptación Social* (Prevention and Social Readaptation);
  - (i) *Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública* (Executive Secretariat of the Public Security National System);
  - (j) *Secretaría General del Consejo Nacional de Población* (General Secretary of the National Population Council); and
  - (k) *Secretaría Técnica de la Comisión Calificadora de Publicaciones y Revistas Ilustradas* (Technical Secretary of Illustrated Periodicals and Publications Examining Commission)

11. *Secretaría de Hacienda y Crédito Público* (Ministry of Finance and Public Credit) and the following entities:

- (a) *Comisión Nacional Bancaria y de Valores* (National Banking and Securities Commission);
- (b) *Comisión Nacional de Seguros y Fianzas* (National Commission of Insurance and Guarantees);
- (c) *Comisión Nacional del Sistema de Ahorro para el Retiro* (National Commission of the Saving System for Retirement);
- (d) *Servicio de Administración y Enajenación Bienes* (Assets Management and Disposition Agency); and
- (e) *Servicio de Administración Tributaria* (Tax Administration Service)

12. *Secretaría de Marina* (Ministry of Navy)

13. *Secretaría de Medio Ambiente y Recursos Naturales* (Ministry of Environment and Natural Resources) and the following entities:

- (a) *Instituto Mexicano de Tecnología del Agua* (Mexican Water Technology Institute); and
- (b) *Instituto Nacional de Ecología y Cambio Climático* (National Institute of Ecology and Climate Change)

14. *Secretaría de Relaciones Exteriores* (Ministry of Foreign Relations)

15. *Secretaría de Salud* (Ministry of Health) and the following entities:

- (a) *Administración del Patrimonio de la Beneficencia Pública* (Public Charity Fund Administration);
- (b) *Centro Nacional de Equidad de Género y Salud Reproductiva* (National Centre of Reproductive Health and Gender Equity);
- (c) *Centro Nacional de Trasplantes* (National Transplants Center);
- (d) *Centro Nacional de la Transfusión Sanguínea* (National Blood Transfusion Center);
- (e) *Centro Nacional para la Prevención y Control del VIH/SIDA* (National Center for the Prevention and Control of HIV/AIDS);

- (f) *Centro Nacional para la Salud de la Infancia y la Adolescencia* (National Center for Health of Childhood and Adolescence);
  - (g) *Comisión Federal para la Protección contra Riesgos Sanitarios* (Federal Commission for Protection against Health Risks);
  - (h) *Comisión Nacional de Arbitraje Médico* (National Commission of Medical Arbitration);
  - (i) *Instituto Nacional de Rehabilitación* (National Rehabilitation Institute);
  - (j) *Laboratorios de Biológicos y Reactivos de México, S.A. de C.V.* (Laboratories of Biologicals and Reagents of Mexico); and
  - (k) *Servicios de Atención Psiquiátrica* (Psychiatric Attention Services)
16. *Secretaría del Trabajo y Previsión Social* (Ministry of Labor and Social Welfare) and the following entity:
- (a) *Procuraduría Federal de la Defensa del Trabajo* (Office of the Federal Attorney for Labor Defense)
17. *Secretaría de Turismo* (Ministry of Tourism) and the following entity:
- (a) *Instituto de Competitividad Turística* (Institute for Tourist Competitiveness)
18. *Procuraduría General de la República* (Office of the Attorney General of the Republic)
19. *Centro de Ingeniería y Desarrollo Industrial* (Engineering and Industrial Development Center)
20. *Comisión Nacional de Libros de Texto Gratuitos* (National Commission of Free Textbooks)
21. *Comisión Nacional de las Zonas Áridas* (National Commission on Arid Zones)
22. *Consejo Nacional de Fomento Educativo* (National Educational Development Council)
23. *Instituto Federal de Telecomunicaciones* (Federal Telecommunications Institute)

**Note to Section A**

English translation of entities listed in this Section is only provided for the purposes of reference; it is not an official translation.

## Section B: Other Entities

### *Thresholds:*

Unless otherwise specified, Chapter 13 (Government Procurement) covers procurement by the entities listed in this Section, in accordance with the following thresholds:

US\$401,584	Goods and Services
US\$12,851,327	Construction Services

The thresholds set out in this paragraph shall be adjusted in accordance with Section G (Threshold Adjustment Formula) of this Schedule.

### *List of Other Entities:*

1. *Aeropuerto Internacional de la Ciudad de México, S.A. de C.V.* (International Airport of Mexico City)
2. *Aeropuertos y Servicios Auxiliares (ASA)* (Airports and Auxiliary Services)
3. *Caminos y Puentes Federales de Ingresos y Servicios Conexos (CAPUFE)* (Federal Toll Roads and Bridges and Related Services)
4. *Centro de Integración Juvenil, A.C.* (Youth Integration Centers)
5. *Comisión Federal de Electricidad (CFE)* (Federal Electricity Commission) and the following entities:
  - (a) *Comisión Federal de Electricidad (Cooperativo)* (Federal Electricity Commission –Corporate–);
  - (b) *Empresa Productiva Subsidiaria CFE Distribución* (Subsidiary Productive Company CFE Distribution);
  - (c) *Empresa Productiva Subsidiaria CFE Transmisión* (Subsidiary Productive Company CFE Transmission);
  - (d) *Empresa Productiva Subsidiaria CFE Generación I* (Subsidiary Productive Company CFE Generation I);
  - (e) *Empresa Productiva Subsidiaria CFE Generación II* (Subsidiary Productive Company CFE Generation II);

- (f) *Empresa Productiva Subsidiaria CFE Generación III* (Subsidiary Productive Company CFE Generation III);
  - (g) *Empresa Productiva Subsidiaria CFE Generación IV* (Subsidiary Productive Company CFE Generation IV);
  - (h) *Empresa Productiva Subsidiaria CFE Generación V* (Subsidiary Productive Company CFE Generation V);
  - (i) *Empresa Productiva Subsidiaria CFE Generación VI* (Subsidiary Productive Company CFE Generation VI); and
  - (j) *Empresa Productiva Subsidiaria CFE Suministrador de Servicios Básicos* (Subsidiary Productive Company CFE Basic Services Provider)
6. *Comisión Nacional del Agua* (National Water Commission)
  7. *Comisión Nacional Forestal* (National Forestry Commission)
  8. *Comisión Nacional para el Desarrollo de los Pueblos Indígenas* (National Commission for the Development of Indigenous People)
  9. *Consejo Nacional de Ciencia y Tecnología (CONACYT)* (National Science and Technology Council)
  10. *Consejo de Promoción Turística de México, S.A. de C.V.* (México Tourism Board)
  11. *Distribuidora Impulsora Comercial de Conasupo S.A. de C.V.* (Diconsa) (Commercial Distributor and Trade Promotion)
  12. *Ferrocarril del Istmo de Tehuantepec, S.A. de C.V.* (Railroad of the Itsmo de Tehuantepec)
  13. *Grupo Aeroportuario de la Ciudad de México S.A. de C.V.* (Airport Group of Mexico City)
  14. *Instituto Mexicano de Cinematografía* (Mexican Institute of Cinematography)
  15. *Instituto Mexicano de la Juventud* (Mexican Youth Institute)
  16. *Instituto Mexicano del Seguro Social (IMSS)* (Mexican Social Security Institute)
  17. *Instituto Nacional de la Infraestructura Física Educativa* (National Institute of Physical Educational Infrastructure)



18. *Instituto Nacional de las Mujeres* (Women National Institute)
19. *Instituto Nacional de las Personas Adultas Mayores* (National Institute for the Elderly)
20. *Instituto Nacional del Suelo Sustentable* (National Institute of Sustainable Land)
21. *Instituto Mexicano de la Propiedad Industrial* (Mexican Institute of Industrial Property)
22. *Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas* (Social Security for the Mexican Armed Forces Institute)
23. *Instituto Nacional para la Educación de los Adultos* (National Institute for Adult Education)
24. *Leche Industrializada Conasupo S.A. de C.V.* (Liconsa) (Conasupo Industrialized Milk)
25. *Lotería Nacional para la Asistencia Pública* (National Lottery for Public Assistance)
26. *NOTIMEX S.A. de C.V.*
27. *Petróleos Mexicanos* (PEMEX) (Mexican Petroleum) and the following entities:
  - (a) *PEMEX Corporativo* (PEMEX Corporate);
  - (b) *PEMEX Exploración y Producción* (PEMEX Exploration and Production);
  - (c) *PEMEX Perforación y Servicios* (PEMEX Drilling and Services);
  - (d) *PEMEX Transformación Industrial* (PEMEX Industrial Transformation);
  - (e) *PEMEX Logística* (PEMEX Logistics);
  - (f) *PEMEX Cogeneración y Servicios* (PEMEX Co-Generation and Services);
  - (g) *PEMEX Etileno* (PEMEX Ethylene); and
  - (h) *PEMEX Fertilizantes* (PEMEX Fertilizers)
28. *Procuraduría Federal del Consumidor* (Federal Office of The Attorney for Consumers)
29. *Pronósticos para la Asistencia Pública* (Forecasting for Public Assistance)
30. *Servicio Aeroportuario de la Ciudad de México, S.A. de C.V.* (Airport Services of Mexico City)

31. *Servicio Geológico Mexicano* (Mexican Geological Service)
32. *Servicio Postal Mexicano* (Mexican Postal Services)
33. *Sistema Nacional para el Desarrollo Integral de la Familia* (DIF) (National System for Integral Family Development)
35. *Talleres Gráficos de México* (National Printers of Mexico)
36. *Telecomunicaciones de México* (TELECOM) (Telecommunications of México)

### **Notes to Section B**

1. English translation of entities listed in this Section is only provided for the purposes of reference; it is not an official translation.
2. Chapter 13 (Government Procurement) shall not cover procurements by PEMEX and CFE of the following goods (numbers refer to the Federal Supply Classification (FSC) code): (i) Hoisery, Handwear, and Clothing Accessories, Men's (8440); (ii) Hoisery, Handwear, and Clothing Accessories, Women's (8445); (iii) Clothing Special Purpose (8415); (iv) Underwear and Nightwear, Men's (8420); (v) Underwear and Nightwear, Women's (8425); (vi) Footwear, Men's (8430); and (vii) Machine Shop Sets, Kits, and Outfits (3470).
3. Chapter 13 (Government Procurement) shall not cover procurements by LICONSA of agricultural goods made in furtherance of agricultural support programs or human feeding programs.
4. Chapter 13 (Government Procurement) shall not cover procurements by PEMEX of fuel and gas.
5. Chapter 13 (Government Procurement) shall not cover procurements by DIF of agricultural goods made in furtherance of agricultural support programs or human feeding programs.

### **Section C: Goods**

Unless otherwise specified, Chapter 13 (Government Procurement) covers all goods that are procured by the entities listed in Sections A (Central Government Entities) and B (Other Entities). However, for procurement by the *Secretaría de la Defensa Nacional* (Ministry of National Defense) and the *Secretaría de Marina* (Ministry of Navy), only the following goods are included in the coverage of this Chapter:

(Note: numbers refer to the Federal Supply Classification (FSC) code)

<i>FSC</i>	<i>Description</i>
22	Railway equipment
23	Ground effect vehicles, motor vehicles, trailers and cycles (except buses in 2310; and military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metal-working machinery
35	Service and trade equipment
36	Special industry machinery
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain, and fittings
41	Refrigeration, air conditioning, and air circulating equipment
42	Firefighting, rescue, and safety equipment; and environmental protection equipment and materials
43	Pumps and compressors
44	Furnace, steam plant, and drying equipment; and nuclear reactors
45	Plumbing, heating, and waste disposal equipment
46	Water purification and sewage treatment equipment
47	Pipe, tubing, hose, and fittings
48	Valves
49	Maintenance and repair shop equipment
52	Measuring tools
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm, signal and security detection systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	Automatic data processing equipment (including firmware), software, supplies and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment

- 74 Office machines, text processing systems and visible record equipment
- 75 Office supplies and devices
- 76 Books, maps, and other publications (except 7650: drawings and specifications)
- 77 Musical instruments, phonographs, and home-type radios
- 78 Recreational and athletic equipment
- 79 Cleaning equipment and supplies
- 80 Brushes, paints, sealers, and adhesives
- 81 Containers, packaging, and packing supplies
- 85 Toiletries
- 87 Agricultural supplies
- 88 Live animals
- 91 Fuels, lubricants, oils, and waxes
- 93 Nonmetallic fabricated materials
- 94 Nonmetallic crude materials
- 96 Ores, minerals, and their primary products (except 9620: minerals, natural and synthetic)
- 99 Miscellaneous

#### **Section D: Services**

Chapter 13 (Government Procurement) does not cover the procurement of the following services identified in accordance with the Common Classification System, Appendix 13-D-1 (Common Classification System Services), that are procured by entities listed in Sections A (Central Government Entities) and B (Other Entities):

- A Research and Development
- C All classes
- D Architecture and Engineering Services
  - Restoration (only for preservation of historic sites and buildings) Information
  - C130 Processing and Related Telecommunications Services
    - ADP Telecommunications and Transmissions Services except for those services that are classified as enhanced or value added, defined as telecommunications services using computerized processing systems, which: (a) act on the format, content, code, protocol or similar aspects of the information transmitted by the user, (b) provide the customer with additional, different or restructured information, or (c) involve user interaction with stored information. For purposes of this provision, the acquisition of ADP Telecommunications and Transmission Services do not include the ownership or furnishing of facilities for voice or data transmission services.
    - ADP Services for Teleprocessing and Timeshare.
  - D309 Information and Data Broadcasting Services or Data Distribution Services.
  - D316 Telecommunications Network Management Services.
  - D317 Automated News Services, Data Services, or Other Information Services
    - Buying Data (the electronic equivalent of books, periodicals, newspapers, etc.)
  - D399 Other ADP Telecommunications Services (includes data storage on tape, CDs, etc.)

- F Natural Resources Services.
- F011 Pesticides/Insecticides Support Services
- G Health and Social Services.
- All classes
- J Maintenance, Repair, Modification, Rebuilding and Installation of Goods / Equipment
- J010 Armament
- J011 War Nuclear Material
- J012 Fire Equipment and Control
- J013 Ammunition and Explosives
- J014 Guided Missiles
- J015 Aircrafts and Aircraft Structures Components
- J016 Aircrafts Components and Accessories
- J017 Takeoff, Landing, and Ground Handling Aircraft Equipment
- J018 Space Vehicles
- J019 Shipments, Small Structures, Barges and Floating Docks
- J020 Boats and Marine Equipment
- J022 Rail Equipment
- J023 Land Vehicles, Motored Vehicles, Trailers and Motorcycles
- J024 Tractors
- J025 Motor Vehicles Parts
- J998 Non-nuclear Ships Repair
- K Custodial Operations and Related Services (professional services only for protection, personal security installations carried out by armed guards)
- K103 Fueling and Other Petroleum Services –Excluding Storage-
- K105 Guard services (professional services only for protection, personal security and surveillance installations carried out by armed guards)
- K109 Surveillance services (professional services only for protection, personal security and surveillance installations carried out by armed guards)
- K110 Solid Fuel Handling Services
- L Financial and Related Services
- All classes
- R Professional, Administrative and Management Support Services
- R003 Legal Services
- R004 Certifications and Accreditations for products and institutions other than Educational Institutions
- R012 Patent and Trade Mark Services
- R016 Personal Services Contracts
- R101 Expert Witness (Only for legal services)
- R103 Courier and Messenger Services
- R105 Mail and Distribution Services (Post Office Services excluded)
- R106 Post Office Services
- R116 Court Reporting Services
- R200 Military Recruitment
- S Utilities
- All classes
- T Communications, Photographic, Mapping, Printing and Publication Services

T000	Communications Studies
T001	Market Research and Public Opinion Services (Formerly Telephone and Field Interviews services, including Focus testing, Syndicated and attitude surveys) Except for CPC 86503 Management Consulting Marketing Services.
T002	Communication Services (including Exhibit Services)
T003	Advertising Services
T004	Public Relations Services (Including Writing Services, Even Planning and Management, Media Relations, Radio and TV Analysis, Press Services)
T005	Arts/Graphics Services
T008	Film Processing Services
T009	Film/Video Production Services
T010	Microfiche Services
T013	General Photography Services - Still
T014	Print/Binding Services
T015	Reproduction Services
T017	General Photography Services – Motion
T018	Audio/Visual Services
T099	Other Communication, Photography, Mapping, Printing and Publication Services
U	Educational and Training Services
U003	Reserves Training (Military)
U010	Certifications and Accreditations for Educational Institutions
V	Transportation, Travel and Relocation Services All classes (except V503 Travel Agent Services)
W	Lease and Rental of equipment which require patent protection, copyright or other proprietary rights.
W058	Communication, Detection and Coherent Radiation Equipment

#### **Notes to Section D**

1. Chapter 13 (Government Procurement) does not apply to the operation of government facilities under concessions.
2. All services related to goods acquired by the *Secretaría de la Defensa Nacional* (Ministry of National Defense) and the *Secretaría de Marina* (Ministry of Navy) that are not covered by this Chapter, are excluded.
3. All services that are not excluded from the coverage of Chapter 13 (Government Procurement) are subject to Chapter 15 (Cross-Border Trade in Services) and Annex I and Annex II of this Agreement.
4. The management and operating services contracts awarded to research and development centers operating with federal funds, or related to the implementation of research programs sponsored by the government are excluded from the disciplines of Chapter 13 (Government Procurement).

## **Section E: Construction Services**

Chapter 13 (Government Procurement) applies to all construction services procured by the entities listed in Sections A (Central Government Entities) and B (Other Entities), identified in Division 51 of the United Nations Provisional Central Product Classification (CPC Prov) which can be found at: <https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lg=1&Co=51>, unless otherwise specified in Chapter 13 (Government Procurement), including this Schedule.

## **Section F: General Notes**

The following General Notes apply to Chapter 13 (Government Procurement), including Sections A through E:

1. Chapter 13 (Government Procurement) does not apply to procurements made:
  - (a) with a view to commercial resale by government owned retail stores;
  - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); or
  - (c) by one entity from another entity of Mexico.
2. Chapter 13 (Government Procurement) does not apply to the procurement of transportation services that are part of, or are incidental to a purchase contract.
3. Chapter 13 (Government Procurement) does not apply to build-operate-transfer contracts and public works concessions contracts.
4. Notwithstanding any provision in Chapter 13 (Government Procurement), Mexico may set aside procurement contracts from the obligations of Chapter 13 (Government Procurement), subject to the following:
  - (a) the total value of the contracts set aside may not exceed the Mexican peso equivalent of US\$2,328,000,000 in each calendar year from the date of entry into force of this Agreement, which may be allocated by all entities, including PEMEX and CFE;
  - (b) the total value of contracts under any single FSC class (or other classification system agreed by the Parties) that may be set aside under this paragraph in any year shall not exceed 10 per cent of the total value of contracts that may be set aside under this paragraph for that year;
  - (c) no entity subject to subparagraph (a) may set aside contracts in any calendar

year of a value of more than 20 per cent of the total value of contracts that may be set aside for that year; and

- (d) the total value of the contracts set aside by PEMEX and CFE may not exceed the Mexican peso equivalent of US\$466,000,000 in each calendar year.
- 5.
- (a) Beginning in January of the next calendar year after the date of entry into force of this Agreement, the dollar values referred to in paragraph 4 shall be adjusted annually for cumulative inflation from January 2017, based on the implicit price deflator for the United States Gross Domestic Product (USGDP) or any successor index published by the Council of Economic Advisors in “Economic Indicators”.
  - (b) The dollar values adjusted for cumulative inflation up to January of each calendar year following 2016 shall be equal to the original dollar values multiplied by the ratio of:
    - (i) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in “Economic Indicators”, current as of January of that year, to
    - (ii) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in “Economic Indicators”, current as of the date of entry into force of this Agreement,

provided that the price deflators under subparagraphs (i) and (ii) have the same base year.

- (c) The resulting adjusted dollar values shall be rounded to the nearest million dollars.
6. The national security exception provided for in Article 32.2 (Essential Security) shall cover procurements made in support of safeguarding nuclear materials or technology.
- 7.
- (a) Notwithstanding any provision of Chapter 13 (Government Procurement), an entity may impose a local content requirement of no more than:
    - (i) 40 per cent, for labor-intensive turnkey or major integrated projects, or
    - (ii) 25 per cent, for capital-intensive turnkey or major integrated projects.
  - (b) For the purposes of this paragraph, “turnkey or major integrated project” means, in general, a construction, supply, or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:
    - (i) the prime contractor is vested with the authority to select the general



contractors or subcontractors,

- (ii) neither the Government of Mexico nor its entities fund the project,
- (iii) the person bears the risks associated with non-performance, and
- (iv) the facility will be operated by an entity or through a procurement contract of that entity.

8. In the event that Mexico exceeds in any given year the total value of contracts it may set aside for that year in accordance with paragraph 4 of this Section, Mexico shall consult with the other Party with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under Chapter 31 (Dispute Settlement).

### **Section G: Thresholds Adjustment Formula**

1. The thresholds in Sections A (Central Government Entities) and B (Other Entities) shall be calculated in accordance with the following:

- (a) the U.S. inflation rate shall be measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics;
- (b) 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;
- (c) the United States shall notify the other Party of the adjusted threshold values no later than November 16 of the year before the adjustment takes effect; and
- (d) the inflationary adjustment shall be estimated according to the following formula:

$$T_0 \times (1 + \pi_i) = T_1$$

$T_0$  = threshold value at base period

$\pi_i$  = accumulated U.S. inflation rate for the  $i$ th two year-period

$T_1$  = new threshold value.

2. Mexico shall calculate and convert the value of the thresholds into Mexican pesos using the conversion rate of the *Banco de México* (Bank of Mexico). The conversion rate shall be the existing value of the Mexican peso in terms of the U.S. dollar as of December 1 and June 1 of each year, or the first working day thereafter. The conversion rate as of December 1 shall apply from January 1 to June 30 of the following year, and the conversion rate as of June 1 shall apply from July 1 to December 31 of that year.

3. Information related to thresholds shall be published in [www.compranet.gob.mx](http://www.compranet.gob.mx)

### **Section H: Procurement Information**

Information on government procurement shall be published in the following websites:

[www.dof.gob.mx](http://www.dof.gob.mx)

[www.compranet.gob.mx](http://www.compranet.gob.mx)

[www.pemex.com](http://www.pemex.com)

[www.cfe.mx](http://www.cfe.mx)

## **SCHEDULE OF THE UNITED STATES**

### **Section A: Central Government Entities**

#### *Thresholds:*

1. Chapter 13 (Government Procurement) applies to the entities of the central level of government listed in this Section where the value of the procurement is estimated, in accordance with Article 13.2.8 (Scope) and Article 13.2.9 (Scope), to equal or exceed:

- (a) for procurement of goods and services: US\$80,317; and
- (b) for procurement of construction services: US\$10,441,216.

The thresholds set out in this paragraph shall be adjusted in accordance with Section G (Threshold Adjustment Formula) of this Schedule.

2. Unless otherwise specified herein, Chapter 13 (Government Procurement) applies to all agencies subordinate to the entities listed in this Section.

#### *List of Entities:*

- 1. American Battle Monuments Commission
- 2. Broadcasting Board of Governors
- 3. Commission on Civil Rights
- 4. Commodity Futures Trading Commission
- 5. Consumer Product Safety Commission
- 6. Corporation for National and Community Service
- 7. Department of Agriculture (Note 1)
- 8. Department of Commerce
- 9. Department of Defense (Note 2)
- 10. Department of Education
- 11. Department of Energy (Note 3)

12. Department of Health and Human Services
13. Department of Homeland Security (Note 4)
14. Department of Housing and Urban Development
15. Department of the Interior, including the Bureau of Reclamation
16. Department of Justice
17. Department of Labor
18. Department of State
19. Department of Transportation
20. Department of the Treasury
21. Department of Veterans Affairs
22. Environmental Protection Agency
23. Equal Employment Opportunity Commission
24. Executive Office of the President
25. Export-Import Bank of the United States
26. Farm Credit Administration
27. Federal Communications Commission
28. Federal Deposit Insurance Corporation
29. Federal Housing Finance Agency
30. Federal Maritime Commission
31. Federal Mediation and Conciliation Service
32. Federal Trade Commission
33. General Services Administration (Note 5)
34. Merit Systems Protection Board
35. National Aeronautics and Space Administration

36. National Archives and Records Administration
37. National Credit Union Administration
38. National Labor Relations Board
39. National Mediation Board
40. National Science Foundation
41. National Transportation Safety Board
42. Nuclear Regulatory Commission
43. Office of Personnel Management
44. Overseas Private Investment Corporation
45. Peace Corps
46. Railroad Retirement Board
47. Rural Utilities Services (Note 6)
48. Securities and Exchange Commission
49. Selective Service System
50. Smithsonian Institution
51. United States Agency for International Development
52. United States International Trade Commission

**Notes to Section A**

1. Department of Agriculture: Chapter 13 (Government Procurement) does not cover procurement of any agricultural good made in furtherance of an agricultural support program or a human feeding program.
2. Department of Defense:
  - (a) Chapter 13 (Government Procurement) does not cover procurement of any good described in any Federal Supply Code classification (for complete listing of U.S. Federal Supply Classification, see any of the following Federal Supply Code (FSC), which can be found in the Product Code Section of the Federal

Procurement Data System Product and Service Code Manual at [https://www.acquisition.gov/Acquisition\\_Systems](https://www.acquisition.gov/Acquisition_Systems)) listed below:

<i>FSC</i>	<i>Description</i>
FSC 11	Nuclear Ordnance
FSC 1555	Space Vehicles
FSC 1675	Space Vehicle Component
FSC 1677	Space Vehicle Remote Control System
FSC 1725	Space Vehicle Launchers
FSC 1735	Space Vehicle Handling and Servicing Equipment
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 20	Ship and Marine Equipment (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 2310	Passenger Motor Vehicles (only buses)
FSC 2350	Combat, Assault & Tactical Vehicles, Tracked
FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 60	Fiber Optics Materials, Components, Assemblies, and Accessories
FSC 8140	Ammunition & Nuclear Ordnance Boxes, Packages & Special Containers
FSC 83	Textiles, Leather, Furs, Apparel, Shoe Findings, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstuffs, flagpoles, and flagstaff trucks)
FSC 84	Clothing, Individual Equipment, and Insignia and Jewelry (all elements other than sub-class 8457 – jewelry and 8460 – luggage)
FSC 89	Subsistence (all elements other than sub-class 8975- tobacco products)

- (b) Chapter 13 (Government Procurement) does not cover procurement of any specialty metal or any good containing one or more specialty metals. **Specialty metal** means:
- (i) steel for which the maximum alloy content exceeds one or more of the following levels: manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.60 per cent;
  - (ii) steel that contains more than 0.25 per cent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium;
  - (iii) a metal alloy consisting of a nickel, iron-nickel or cobalt base alloy that

contains a total of other alloying metals (except iron) in excess of 10 per cent;

- (iv) titanium or a titanium alloy; or
  - (v) zirconium or a zirconium base alloy.
- (c) Chapter 13 (Government Procurement) generally shall not cover procurement of any good described in any of the following FSC classifications, due to the application of Article 32.2 (Essential Security):

<i>FSC</i>	<i>Description</i>
FSC 10	Weapons
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aerospace Craft and Structural Components
FSC 16	Aerospace Craft Components and Accessories
FSC 17	Aerospace Craft Launching, Landing and Ground Handling and Servicing Equipment
FSC 19	Ships, Small Craft, Pontoons and Floating Docks
FSC 20	Ship and Marine Equipment
FSC 28	Engines, Turbines and Components
FSC 31	Bearings
FSC 58	Communications, Detection, and Coherent Radiation Equipment
FSC 59	Electrical and Electronic Equipment Components
FSC 95	Metal Bars, Sheets, and Shapes

3. Department of Energy: Due to the application of Article 32.2 (Essential Security), Chapter 13 (Government Procurement) does not cover procurement of:

- (a) any good or service that supports the safeguarding of nuclear materials or technology, where the Department of Energy conducts the procurement under the authority of the *Atomic Energy Act*; or
- (b) any oil purchase related to the Strategic Petroleum Reserve.

4. Department of Homeland Security:

- (a) Chapter 13 (Government Procurement) does not cover procurement by the Transportation Security Administration of FSC 83 (Textiles, Leather, Furs, Apparel, Shoe Findings, Tents and Flags) and FSC 84 (Clothing, Individual Equipment, and Insignia and Jewelry).
- (b) The national security considerations applicable to the Department of Defense

apply equally to the U.S. Coast Guard.

5. General Services Administration: Chapter 13 (Government Procurement) does not cover procurement of any good in any of the following FSC classifications:

<i>FSC</i>	<i>Description</i>
FSC 51	Hand Tools
FSC 52	Measuring Tools FSC 7340 Cutlery and Flatware

6. Rural Utilities Service: Federal buy national requirements imposed as conditions of funding by the Rural Utilities Service will not apply to goods of Mexico, suppliers of such goods, and service suppliers of Mexico.

### **Section B: Other Entities**

#### *Thresholds:*

1. Chapter 13 (Government Procurement) applies to the other covered entities listed in this Section where the value of the procurement is estimated, in accordance with Article 13.2.8 (Scope) and Article 13.2.9 (Scope), to equal or exceed:

- (a) for procurement of goods and services: US\$401,584; and
- (b) for procurement of construction services: US\$12,851,327.

The monetary threshold set out in subparagraph (b) shall be adjusted in accordance with Section G (Threshold Adjustment Formula) of this Schedule.

2. Unless otherwise specified herein, Chapter 13 (Government Procurement) applies only to the entities listed in this Section.

#### *List of Entities:*

- 1. Tennessee Valley Authority
- 2. Bonneville Power Administration
- 3. Western Area Power Administration
- 4. Southeastern Power Administration
- 5. Southwestern Power Administration
- 6. St. Lawrence Seaway Development Corporation



## **Section C: Goods**

Chapter 13 (Government Procurement) covers all goods procured by the entities listed in Sections A (Central Government Entities) and B (Other Entities), subject to the Notes to the respective Sections and the General Notes.

## **Section D: Services**

Chapter 13 (Government Procurement) covers all services procured by the entities listed in Sections A and B, subject to the Notes to the respective Sections, the General Notes and the Notes to this Section.

### **Notes to Section D**

1. This Chapter does not cover the procurement of the following services, as elaborated in the Common Classification System, Appendix 13-D-1:

**A. Research and Development:**

All classes

**D. Information Processing and Related Telecommunications Services:**

D304 ADP Telecommunications and Transmission Services, except for those services classified as “enhanced or value-added services.” For the purposes of this provision, the procurement of “ADP Telecommunications and Transmission Services” does not include the ownership or furnishing of facilities for the transmission of voice or data services.

D305 ADP Teleprocessing and Timesharing Services

D316 Telecommunications Network Management Services

D317 Automated News Services, Data Services or Other Information Services

D399 Other ADP and Telecommunications Services

**J. Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment:**

J019 Maintenance, Repair, Modification, Rebuilding and Installation of Equipment Related to Ships

J998 Non-nuclear Ship Repair

**M. Operation of Government-Owned Facilities:**

All facilities operated by the Department of Defense, Department of Energy, and the National Aeronautics and Space Administration; and for all entities:

M180 Research and Development facilities

**S. Utilities:**

All Classes

**V. Transportation, Travel and Relocation Services:**

All Classes except V503 Travel Agent Services

2. Chapter 13 (Government Procurement) does not cover procurement of any service in support of military forces located overseas.

**Section E: Construction Services**

Chapter 13 (Government Procurement) covers all construction services procured by the entities listed in Sections A and C, listed in Division 51 of the Provisional Central Product Classification (CPC), which is found at: <https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lg=1&Co=51>, subject to the Notes to the respective Sections, the General Notes and the Notes to this Section.

**Note to Section E**

Chapter 13 (Government Procurement) does not cover procurement of dredging services.

**Section F: General Notes**

Unless otherwise specified herein, the following General Notes apply without exception to Chapter 13 (Government Procurement), including to all sections of this Schedule.

1. Chapter 13 (Government Procurement) does not apply to any set-aside on behalf of a small- or minority-owned business. A set-aside may include any form of preference, such as the exclusive right to provide a good or service, or any price preference.
2. Chapter 13 (Government Procurement) does not cover procurement of transportation services that form a part of, or are incidental to, a procurement contract.
3. For goods and services (including construction services) of Mexico and suppliers of such goods and services, this Chapter does not apply to procurement done by the contractual means of build-operate-transfer contract or public works concessions contract. The United States is prepared to amend this note at such time as coverage with respect to build-operate-transfer contracts and public works concessions contracts can be resolved with Mexico.

## **Section G: Threshold Adjustment Formula**

1. Any threshold denominated in U.S. Dollars shall be made in accordance with the following:

- (a) the U.S. inflation rate shall be measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics;
- (b) the first adjustment for inflation, to take effect on January 1, 2020, shall be calculated using the period from November 1, 2017 through October 31, 2019;
- (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;
- (d) the United States shall notify the other Party of the adjusted threshold values no later than December 16 of the year before the adjustment takes effect; and
- (e) the inflationary adjustment shall be estimated according to the following formula:

$$T_0 \times (1 + \pi_i) = T_1$$

$T_0$  = threshold value at base period

$\pi_i$  = accumulated U.S. inflation rate for the  $i$ th two year-period

$T_1$  = new threshold value.

## **Section H: Procurement Information**

Publications utilized by the United States for the publication of notices of intended procurement and of post-award notices and the publication annually of information on permanent lists of qualified suppliers in the case of selective tendering procedures:

Federal Business Opportunities (<http://www.fedbizopps.gov>)

Laws, regulations, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Section A (Central Government Entities) are published on the following websites:

US Federal Laws (primarily US Code Titles 10 and 41):

<http://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE>

Federal Acquisition Regulation (FAR): <http://www.acquisition.gov/far/index.html>

Agency Supplemental Regulations:  
[https://www.acquisition.gov/Supplemental\\_Regulations](https://www.acquisition.gov/Supplemental_Regulations)

Federal Register: <https://www.federalregister.gov/>

Federal Government Procurement Policies:  
<http://www.whitehouse.gov/omb/procurement/>

Bid Protest Decisions of Government Accountability Office:  
<http://www.gao.gov/legal/bidprotest.html>

US Civilian Board of Contract Appeals Decisions: <http://www.cbca.gsa.gov/>

Judicial Decisions:

US Court of Federal Claims (jurisdiction includes claims related to government contracts, including bid protests): <http://www.uscfc.uscourts.gov/>

US Court of Appeals for the Federal Circuit (jurisdiction includes appeals from the US Civilian Boards of Contract Appeals): <http://www.cafc.uscourts.gov/>

Laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Section B (Other Entities) are available directly from the listed entities.

## Appendix 13-D-1: Common Classification System Services

**Notes:** 1. The Parties will continue to review outstanding technical issues that may arise from time to time. 2. This common classification system follows the format described below:

Group = one digit Sub-group = two digit Class = four digit

### A - Research and Development

Definition of research and development contracts: Procurement of research and development services include the acquisition of specialized expertise for the purposes of increasing knowledge in science; applying increased scientific knowledge or exploiting the potential of scientific discoveries and improvements in technology to advance the state of art; and systematically using increases in scientific knowledge and advances in state of art to design, develop, test, or evaluate new products or services. R&D Codes: The R&D code is composed of two alphabetic digits. The first digit is always the letter "A" to identify R&D, the second digit is alphabetic "A to Z" to identify the major sub-group.

### Code Descriptions

AA Agriculture  
AB Community Services and Development  
AC Defense Systems  
AD Defense - Other  
AE Economic Growth and Productivity  
AF Education  
AG Energy  
AH Environmental Protection  
AJ General Science and Technology  
AK Housing  
AL Income Security  
AM International Affairs and Cooperation  
AN Medical  
AP Natural Resources  
AQ Social Services  
AR Space  
AS Transportation - Modal  
AT Transportation - General  
AV Mining Activities  
AZ Other Research and Development

## **B - Studies and Analysis - (not R&D)**

Definition of studies and analysis:

Procurement of special studies and analyses are organized, analytic assessments that provide insights for understanding complex issues or improving policy development or decision making. Output obtained in such acquisitions is a formal, structured document including data or other information that form the basis for conclusions or recommendations.

### **B0 Natural Sciences**

B000 Chemical/Biological Studies and Analyses

B001 Endangered Species Studies - Plant and Animal

B002 Animal and Fisheries Studies

B003 Grazing/Range Studies

B004 Natural Resource Studies

B005 Oceanological Studies

B009 Other Natural Sciences Studies

### **B1 Environmental Studies**

B100 Air Quality Analyses

B101 Environmental Studies Development of Environmental Impact Statements and Assessments

B102 Soil Studies

B103 Water Quality Studies

B104 Wildlife Studies

B109 Other Environmental Studies

### **B2 Engineering Studies**

B200 Geological Studies

B201 Geophysical Studies

B202 Geotechnical Studies

B203 Scientific Data Studies

B204 Seismological Studies

B205 Building Technology Studies

B206 Energy Studies

B207 Technology Studies

B208 Housing and Community Development Studies (incl. Urban/Town Planning Studies)

B219 Other Engineering Studies

B3 Administrative Support Studies

B300 Cost Benefit Analyses

B301 Data Analyses (other than scientific)

B302 Feasibility Studies (non-construction)

B303 Mathematical/Statistical Analyses

B304 Regulatory Studies

B305 Intelligence Studies

B306 Defense Studies

B307 Security Studies (Physical and Personal)

B308 Accounting/Financial Management Studies

B309 Trade Issue Studies

B310 Foreign Policy/National Security Policy Studies

B311 Organization/Administrative/Personnel Studies

B312 Mobilization/Preparedness Studies

B313 Manpower Studies

B314 Acquisition Policy/Procedures Studies

B329 Other Administrative Support Studies

B4 Space Studies

B400 Aeronautic/Space Studies

B5 Social Studies and Humanities

B500 Archeological/Paleontological Studies

B501 Historical Studies

B502 Recreation Studies

B503 Medical and Health Studies

B504 Educational Studies and Analyses

B505 Elderly/Handicapped Studies

B506 Economic Studies

B507 Legal Studies

B509 Other Studies and Analyses

## **C - Architect and Engineering Services**

C1 - Architect and Engineering Services - Related To Construction

C11 Building and Facility Structures

C111 Administrative and Service Buildings

C112 Airfield, Communication and Missile Facilities

C113 Educational Buildings

C114 Hospital Buildings

C115 Industrial Buildings

C116 Residential Buildings

C117 Warehouse Buildings

C118 Research and Development Facilities

C119 Other Buildings

C12 Non-Building Structures

C121 Conservation and Development

C122 Highways, Roads, Streets, Bridges and Railways

C123 Electric Power Generation (EPG)

C124 Utilities

C129 Other Non-Building Structures

C130 Restoration

C2 - Architect and Engineering Services - Not Related to Construction

C211 Architect - Engineer Services (incl. landscaping, interior layout and designing)

C212 Engineering Drafting Services

C213 A&E Inspection Services

C214 A&E Management Engineering Services

C215 A&E Production Engineering Services (incl. Design and Control and Building Programming)

C216 Marine Architect and Engineering Services

C219 Other Architect and Engineering Services



## **D - Information Processing and Related Telecommunications Services**

- D301 ADP Facility Operation and Maintenance Services
- D302 ADP Systems Development Services
- D303 ADP Data Entry Services
- D304 ADP Telecommunications and Transmission Services
- D305 ADP Teleprocessing and Timesharing Services
- D306 ADP Systems Analysis Services
- D307 Automated Information System Design and Integration Services
- D308 Programming Services
- D309 Information and Data Broadcasting or Data Distribution Services
- D310 ADP Backup and Security Services
- D311 ADP Data Conversion Services
- D312 ADP Optical Scanning Services
- D313 Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services
- D314 ADP System Acquisition Support Services (Includes preparation of statement of work, benchmarks, specifications, etc.)
- D315 Digitizing Services (Includes cartographic and geographic information)
- D316 Telecommunications Network Management Services
- D317 Automated News Services, Data Services, or Other Information Services. Buying data (the electronic equivalent of books, periodicals, newspapers, etc.)
- D399 Other ADP and Telecommunications Services (incl. data storage on tapes, Compact Disk (CD), etc.)

## **E - Environmental Services**

- E101 Air Quality Support Services
- E102 Industrial Investigation Surveys and Technical Support Related to Air Pollution
- E103 Water Quality Support Services
- E104 Industrial Investigation Surveys and Technical Support Related to Water Pollution
- E106 Toxic Substances Support Services
- E107 Hazardous Substance Analysis
- E108 Hazardous Substance Removal, Cleanup, and Disposal Services and Operational Support

- E109 Leaking Underground Storage Tank Support Services
- E110 Industrial Investigations, Surveys and Technical Support for Multiple Pollutants
- E111 Oil Spill Response including Cleanup, Removal, Disposal and Operational Support
- E199 Other Environmental Services

**F - Natural Resources Services**

F0 Agriculture and Forestry Services

- F001 Forest/Range Fire Suppression/Presuppression Services (incl. Water Bombing)
- F002 Forest/Range Fire Rehabilitation Services (non-construction)
- F003 Forest Tree Planting Services
- F004 Land Treatment Practices Services (plowing/clearing, etc.)
- F005 Range Seeding Services (ground equipment)
- F006 Crop Services (incl. Seed Collection and Production Services)
- F007 Seedling Production/Transplanting Services
- F008 Tree Breeding Services (incl. ornamental shrub)
- F009 Tree Thinning Services
- F010 Other Range/Forest Improvements Services (non-construction)
- F011 Pesticides /Insecticides Support Services

F02 Animal Care / Control Services

- F020 Other Wildlife Management Services
- F021 Veterinary/Animal Care Services (incl. Livestock Services)
- F029 Other Animal Care/Control Services

F03 Fisheries and Ocean Services

- F030 Fisheries Resources Management Services
- F031 Fish Hatchery Services

F04 Mining

F040 Surface Mining Reclamation Services (non-construction)

F041 Well Drilling

F042 Other Services Incidental to Mining Except Those Listed  
in F040 and F041

F05 Other Natural Resources Services

F050 Recreation Site Maintenance Services (non-construction)

F051 Survey Line Clearing Services

F059 Other Natural Resources and Conservation Services

## **G - Health and Social Services**

G0 Health Services

G001 Health Care

G002 Internal Medicine

G003 Surgery

G004 Pathology

G009 Other Health Services

G 1 Social Services

G100 Care of Remains and/or Funeral Services

G101 Chaplain Services

G102 Recreational Services (incl. Entertainment Services)

G103 Social Rehabilitation Services

G104 Geriatric Services

G199 Other Social Services

## **H - Quality Control, Testing, Inspection and Technical Representative Services**

HO Technical Representative Services

H1 Quality Control Services

H2 Equipment and Materials Testing

H3 Inspection Services (incl. commercial testing and

Laboratory Services, Except Medical/Dental)

H9 Other Quality Control, Testing, Inspection and Technical  
Representative Services

**J - Maintenance, Repair, Modification, Rebuilding and Installation of  
Goods/Equipment**

JO Maintenance, Repair, Modification, Rebuilding and  
Installation of Goods/Equipment; includes as examples:  
1. Textile Finishing, Dying and Printing  
2. Welding services not related to Construction.  
(see CPC 5155 for Construction Welding)

J998 Non-nuclear Ship Repair (including overhauls and  
conversions)

**K - Custodial Operations and Related Services**

K0 Personal Care Services (incl. services such as Barber and  
Beauty Shop, Shoe Repairs and Tailoring etc.)

K1 Custodial Services

K100 Custodial - Janitorial Services

K101 Fire Protection Services

K102 Food Services

K103 Fueling and Other Petroleum Services - Excluding  
Storage

K104 Trash/Garbage Collection Services - Including Portable  
Sanitation Services

K105 Guard Services

K106 Insect and Rodent Control Services

K107 Landscaping/Groundskeeping Services

K108 Laundry and Dry Cleaning Services

K109 Surveillance Services

K110 Solid Fuel Handling Services

K111 Carpet Cleaning

K112 Interior Landscaping

K113 Snow Removal/Salt Service (also spreading aggregate or  
other snow meltings material)

K114 Waste Treatment and Storage

K115 Preparation and Disposal of Excess and Surplus Property

K116 Other Salvage Services  
K199 Other Custodial and Related Services

**L - Financial and Related Services**

L000 Government Life Insurance Programs  
L001 Government Health Insurance Programs  
L002 Other Government Insurance Programs  
L003 Non-Government Insurance Programs  
L004 Other Insurance Services  
L005 Credit Reporting Services  
L006 Banking Services  
L007 Debt Collection Services  
L008 Coin Minting  
L009 Banknote Printing  
L099 Other Financial Services

**M - Operation of Government - Owned Facilities**

M110 Administrative Facilities and Service Buildings  
M120 Airfield, Communications, and Missile Facilities  
M130 Educational Buildings  
M140 Hospital Buildings  
M150 Industrial Buildings  
M160 Residential Buildings  
M170 Warehouse Buildings  
M180 Research and Development Facilities  
M190 Other Buildings  
M210 Conservation and Development Facilities  
M220 Highways, Roads, Streets, Bridges and Railways  
M230 Electric Power Generation (EPG) Facilities  
M240 Utilities  
M290 Other Non-Building Facilities

**R - Professional, Administrative and Management Support Services**

R0 Professional Services  
  
R001 Specifications Development Services  
R002 Technology Sharing/Utilization Services  
R003 Legal Services

R004 Certifications and Accreditations for products and institutions other than Educational Institutions  
R005 Technical Assistance  
R006 Technical Writing Services  
R007 Systems Engineering Services  
R008 Engineering and Technical Services (incl. Mechanical, Electrical, Chemical, Electronic Engineering)  
R009 Accounting Services  
R010 Auditing Services  
R011 Ongoing Audit Operations Support  
R012 Patent and Trade Mark Services  
R013 Real Property Appraisals Services  
R014 Operations Research Studies / Quantitative Analysis Studies  
R015 Simulation  
R016 Personal Services Contracts  
R019 Other Professional Services

R1 Administrative and Management Support Services

R100 Intelligence Services  
R101 Expert Witness  
R102 Weather Reporting/Observation Services  
R103 Courier and Messenger Services  
R104 Transcription Services  
R105 Mailing and Distribution Services (Excluding Post Office Services)  
R106 Post Office Services  
R107 Library Services  
R108 Word Processing/Typing Services  
R109 Translation and Interpreting Services (Including Sign Language)  
R110 Stenographic Services  
R111 Personal Property Management Services  
R112 Information Retrieval (non-automated)  
R113 Data Collection Services  
R114 Logistics Support Services  
R115 Contract, Procurement, and Acquisition Support Services  
R116 Court Reporting Services  
R117 Paper Shredding Services

R118 Real Estate Brokerage Services  
R119 Industrial Hygienics  
R120 Policy Review/Development Services  
R121 Program Evaluation Studies  
R122 Program Management/Support Services  
R123 Program Review/Development Services  
R199 Other Administrative and Management Support Services

R2 Personnel Recruitment

R200 Military Personnel Recruitment  
R201 Civilian Personnel Recruitment (incl. Services of  
Employment Agencies)

**S - Utilities**

S000 Gas Services  
S001 Electric Services  
S002 Telephone and/or Communications Services (incl.  
Telegraph, Telex and Cablevision Service)  
S003 Water Services  
S099 Other Utilities

**T - Communications, Photographic, Mapping, Printing and Publication Services**

T000 Communications Studies  
T001 Market Research and Public Opinion Services (Formerly  
Telephone and Field Interview Services incl. Focus  
testing, Syndicated and attitude Surveys)  
T002 Communications Services (incl. exhibit Services)  
T003 Advertising Services  
T004 Public Relations Services (incl. Writing Services, Event  
Planning and Management, Media Relations, Radio and  
TV Analysis, Press Services)  
T005 Arts/Graphics Services  
T006 Cartography Services  
T007 Charting Services  
T008 Film Processing Services  
T009 Film/Video Tape Production Services  
T010 Microfiche Services  
T011 Photogrammetry Services

T012 Aerial Photographic Services  
T013 General Photographic Services - Still  
T014 Print/Binding Services  
T015 Reproduction Services  
T016 Topography Services  
T017 General Photographic Services - Motion  
T018 Audio/Visual Services  
T019 Land Surveys, Cadastral Services (non-construction)  
T099 Other Communication, Photographic, Mapping, Printing  
and Publication Services

### **U - Educational and Training Services**

U001 Lectures For Training  
U002 Personnel Testing  
U003 Reserve Training (Military)  
U004 Scientific and Management Education  
U005 Tuition, Registration, and Membership Fees  
U006 Vocational/Technical  
U007 Faculty Salaries for Schools Overseas  
U008 Training/Curriculum Development  
U009 Informatics Training  
U010 Certifications and Accreditations for Educational  
Institutions  
U099 Other Education and Training Services

### **V - Transportation, Travel and Relocation Services**

V0 Land Transport Services  
  
V000 Motor Pool Operations  
V001 Motor Freight  
V002 Rail Freight  
V003 Motor Charter for Things  
V004 Rail Charter for Things  
V005 Motor Passenger Service  
V006 Rail Passenger Service  
V007 Passenger Motor Charter Service  
V008 Passenger Rail Charter Service  
V009 Ambulance Service



V010 Taxicab Services

V011 Security Vehicle Service

V1 Water Transport Services

V100 Vessel Freight

V101 Marine Charter for Things

V102 Marine Passenger Service

V103 Passenger Marine Charter Service

V2 Air Transport Services

V200 Air Freight

V201 Air Charter for Things

V202 Air Passenger Service

V203 Passenger Air Charter Service

V204 Specialty air Services including Aerial Fertilization,  
Spraying and Seeding

V3 Space Transportation and Launch Services

V4 Other Transport Services

V401 Other Transportation Travel and Relocation Services

V402 Other Cargo and Freight Services

V403 Other Vehicle Charter for Transportation of Things

V5 Supporting and Auxiliary Transport Services

V500 Stevedoring

V501 Vessel Towing Service

V502 Relocation Services

V503 Travel Agent Services

V504 Packing/Crating Services

V505 Warehousing and Storage Services

V506 Salvage of Marine Vessels

V507 Salvage of Aircraft

V508 Navigational Aid and Pilotage Services

**W - Lease and Rental of Equipment**

WO Lease or Rental of Equipment