

## Annex 9.1

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

1. This Chapter applies to the entities of the central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

- (a) for procurement of goods and services: US\$64,786; and
- (b) for procurement of construction services:
  - (i) US\$7,407,000; or
  - (ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US\$7,407,000, as adjusted in accordance with Section I of this Annex, or US\$8,000,000.

2. The monetary thresholds set out in subparagraphs (a) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

#### **Schedule of Colombia**

##### **Executive Branch**

1. *Departamento Administrativo de la Presidencia de la República*
2. *Ministerio del Interior y de Justicia*
3. *Ministerio de Relaciones Exteriores*
4. *Ministerio de Hacienda y Crédito Público*
5. *Ministerio de Defensa Nacional (Note 2)*
6. *Ministerio de Agricultura y Desarrollo Rural (Note 3)*
7. *Ministerio de Protección Social (Note 4)*
8. *Ministerio de Minas y Energía (Note 5)*
9. *Ministerio de Comercio, Industria y Turismo*
10. *Ministerio de Educación Nacional*
11. *Ministerio de Ambiente, Vivienda y Desarrollo Territorial*
12. *Ministerio de Comunicaciones*
13. *Ministerio del Transporte (Note 6)*
14. *Ministerio de Cultura*
15. *Departamento Nacional de Planeación*
16. *Departamento Administrativo de Seguridad*
17. *Departamento Administrativo de la Función Pública*
18. *Departamento Administrativo Nacional de Estadísticas*
19. *Departamento Administrativo Nacional de Economía Solidaria*

### **Legislative Branch**

20. *Senado de la República*
21. *Cámara de Representantes*

### **Judicial Branch**

22. *Consejo Superior de la Judicatura*
23. *Fiscalía General de la Nación*

### **Control Agencies**

24. *Contraloría General de la República*
25. *Auditoría General de la República*
26. *Procuraduría General de la Nación*
27. *Defensoría del Pueblo*

### **Electoral Organization**

28. *Registraduría Nacional del Estado Civil* (Note 7)

### **Notes to Schedule of Colombia**

1. Unless otherwise specified herein, this Chapter applies to the “superintendencias”, “unidades administrativas especiales”, and “establecimientos públicos” of the entities listed in Colombia’s Schedule in this Section.
2. *Ministerio de Defensa Nacional*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification 1.0 (CPC version 1.0) for the *Comando General de las Fuerzas Armadas, Ejército Nacional, Armada Nacional, Fuerza Aérea Colombiana*, and the *Policía Nacional*.
3. *Ministerio de Agricultura y Desarrollo Rural*: This Chapter does not cover the procurement of food, agricultural raw materials or inputs, and live animals related to agricultural support programs and food assistance.
4. *Ministerio de Protección Social*: This Chapter does not cover the procurement by the *Instituto Colombiano de Bienestar Familiar* (ICBF) of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programs.
5. *Ministerio de Minas y Energía*: This Chapter does not cover the procurement of nuclear materials and technology by the *Instituto Colombiano de Geología y Minería* (INGEOMINAS).
6. *Ministerio del Transporte*: This Chapter does not cover procurement by the *Unidad Administrativa Especial de Aeronáutica Civil* (AEROCIVIL).
7. *Registraduría Nacional del Estado Civil*: This Chapter does not cover procurement for the

preparation and conduct of elections.

### **Schedule of the United States**

1. Advisory Commission on Intergovernmental Relations
2. Africa Development Foundation
3. Alaska Natural Gas Transportation System
4. American Battle Monuments Commission
5. Appalachian Regional Commission
6. Broadcasting Board of Governors
7. Commission of Fine Arts
8. Commission on Civil Rights
9. Commodity Futures Trading Commission
10. Consumer Product Safety Commission
11. Corporation for National and Community Service
12. Delaware River Basin Commission
13. Department of Agriculture (Note 2)
14. Department of Commerce (Note 3)
15. Department of Defense (Note 4)
16. Department of Education
17. Department of Energy (Note 5)
18. Department of Health and Human Services
19. Department of Homeland Security (Note 6)
20. Department of Housing and Urban Development
21. Department of the Interior, including the Bureau of Reclamation
22. Department of Justice
23. Department of Labor
24. Department of State
25. Department of Transportation (Note 7)
26. Department of the Treasury
27. Department of Veterans Affairs
28. Environmental Protection Agency
29. Equal Employment Opportunity Commission
30. Executive Office of the President
31. Export-Import Bank of the United States
32. Farm Credit Administration
33. Federal Communications Commission
34. Federal Crop Insurance Corporation
35. Federal Deposit Insurance Corporation
36. Federal Election Commission
37. Federal Home Loan Mortgage Corporation
38. Federal Housing Finance Board
39. Federal Maritime Commission
40. Federal Mediation and Conciliation Service
41. Federal Mine Safety and Health Review Commission

42. Federal Prison Industries, Inc.
43. Federal Reserve System
44. Federal Retirement Thrift Investment Board
45. Federal Trade Commission
46. General Services Administration (Note 8)
47. Government National Mortgage Association
48. Holocaust Memorial Council
49. Inter-American Foundation
50. Merit Systems Protection Board
51. National Aeronautics and Space Administration (NASA)
52. National Archives and Records Administration
53. National Capital Planning Commission
54. National Commission on Libraries and Information Science
55. National Council on Disability
56. National Credit Union Administration
57. National Foundation on the Arts and the Humanities
58. National Labor Relations Board
59. National Mediation Board
60. National Science Foundation
61. National Transportation Safety Board
62. Nuclear Regulatory Commission
63. Occupational Safety and Health Review Commission
64. Office of Government Ethics
65. Office of the Nuclear Waste Negotiator
66. Office of Personnel Management
67. Office of Special Counsel
68. Office of Thrift Supervision
69. Overseas Private Investment Corporation
70. Peace Corps
71. Railroad Retirement Board
72. Securities and Exchange Commission
73. Selective Service System
74. Small Business Administration
75. Smithsonian Institution
76. Susquehanna River Basin Commission
77. United States Agency for International Development
78. United States International Trade Commission

### **Notes to United States Schedule**

1. Unless otherwise specified herein, this Chapter applies to all agencies subordinate to the entities listed in the United States' Schedule in this Section.
2. Department of Agriculture: This Chapter does not cover the procurement of agricultural goods made in furtherance of agricultural support programs or human feeding programs.

3. Department of Commerce: This Chapter does not cover shipbuilding activities of the U.S. National Oceanic and Atmospheric Administration (NOAA).

4. Department of Defense:

(a) This Chapter does not cover the procurement of the goods listed below (for complete listing of U.S. Federal Supply Classification, see <http://www.fedbizopps.gov/classCodes1.html>):

- (i)
  - FSC 11 Nuclear Ordnance
  - FSC 18 Space Vehicles
  - 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, Shoes, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstuffs, flagpoles and flagstaff trucks)
  - FSC 84 Clothing, Individual Equipment, and Insignia (all elements other than sub-class 8460 - luggage)
  - FSC 89 Subsistence (all elements other than sub-class 8975- tobacco products)

(ii) “Specialty metals,” defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by the Department of Defense: (1) manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys; and

- (b) The goods in the following FSC categories are not generally covered by this Chapter due to application of Article 22.2 (Essential Security):

FSC 10	Weapons
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aircraft and Airframe Structural Components
FSC 16	Aircraft Components and Accessories
FSC 17	Aircraft Launching, Landing, and Ground Handling 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
FSC 59	Electrical and Electronic Equipment Components
FSC 95	Metal Bars, Sheets, and Shapes

5. Department of Energy: This Chapter does not cover national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act or oil purchases related to the Strategic Petroleum Reserve.

6. Department of Homeland Security:

- (a) This Chapter does not cover procurement by the Transportation Security Administration.
- (b) The national security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard.

7. Department of Transportation: This Chapter does not cover procurement by the Federal Aviation Administration.

8. General Services Administration: This Chapter does not cover procurement of the goods in the following FSC categories:

FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 7340	Cutlery and Flatware

### **Section B: Sub-Central Level of Government Entities**

1. This Chapter applies to the entities of the sub-central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

- (a) for procurement of goods and services, US\$ 526,000; and
- (b) for procurement of construction services:
  - (i) US\$ 7,407,000; or
  - (ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US\$7,407,000, as adjusted in accordance with Section I of this Annex, or US\$8,000,000.

The monetary thresholds set out in subparagraphs (a) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

2. Within two years after the entry into force of this Agreement, the Parties shall consider and, if appropriate, address any issues that have arisen with regard to the implementation of the denial of benefits provisions in each Party's Schedule to this Section (paragraph 2 and 3 of the Schedule of Colombia and paragraphs 7 and 8 of the Schedule of the United States).

3. For purposes of this Section:

- (a) "participating state" means a state listed in the Schedule of the United States;
- (b) "participating *Gobernación*" means a *Gobernación* listed in the Schedule of Colombia; and
- (c) "principal place of business" means the headquarters or main office of an enterprise, or any other place where the enterprise's business is managed, conducted, or operated.

4. This Chapter covers procurement only by those entities listed in this Schedule.

#### **Schedule of Colombia**

1. *Gobernación del Departamento de Amazonas*
2. *Gobernación del Departamento de Antioquia*
3. *Gobernación del Departamento de Arauca*
4. *Gobernación del Departamento de Atlántico*
5. *Gobernación del Departamento de Bolívar*
6. *Gobernación del Departamento de Boyacá*
7. *Gobernación del Departamento de Caldas*
8. *Gobernación del Departamento de Caquetá*
9. *Gobernación del Departamento de Casanare*
10. *Gobernación del Departamento de Cauca*
11. *Gobernación del Departamento de César*
12. *Gobernación del Departamento de Choco*
13. *Gobernación del Departamento de Córdoba*

14. *Gobernación del Departamento de Cundinamarca*
15. *Gobernación del Departamento de Guainía*
16. *Gobernación del Departamento de Guaviare*
17. *Gobernación del Departamento de Huila*
18. *Gobernación del Departamento de La Guajira*
19. *Gobernación del Departamento de Magdalena*
20. *Gobernación del Departamento de Meta*
21. *Gobernación del Departamento de Nariño*
22. *Gobernación del Departamento de Norte de Santander*
23. *Gobernación del Departamento de Putumayo*
24. *Gobernación del Departamento de Quindío*
25. *Gobernación del Departamento de Risaralda*
26. *Gobernación del Departamento de San Andrés y Providencia*
27. *Gobernación del Departamento de Santander*
28. *Gobernación del Departamento de Sucre*
29. *Gobernación del Departamento de Tolima*
30. *Gobernación del Departamento de Valle*
31. *Gobernación del Departamento de Vaupés*
32. *Gobernación del Departamento de Vichada*

#### **Notes to the Schedule of Colombia**

1. This Chapter does not cover:
  - (a) Procurements of food, agricultural raw materials/inputs, and live animals related to agricultural support programs and food assistance;
  - (b) Procurements of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programs; or
  - (c) Procurements made by a covered entity on behalf of a non-covered entity at a different level of government.
2. A participating *Gobernación* may deny the benefits of this Section to a supplier of the United States unless the supplier meets one or more of the conditions set out in subparagraphs (a) through (c).
  - a. Procurement of Goods:
    - (i) The supplier is offering to supply a good of the United States, as determined under Article 9.2.4 of this Chapter, and has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or
    - (ii) The supplier is offering to supply a good that is substantially produced or



assembled in one or more participating states. A good shall be considered to be substantially produced or assembled in a participating state(s) if the production or assembly in the participating state(s) accounts for 51 percent or more of the value of the good.

b. Procurement of Services Other Than Construction Services:

- (i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state; or
- (ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating state(s). A service, other than a construction service, shall be considered to be substantially performed in a participating state(s) if the performance of the service in the participating state(s) accounts for 51 percent or more of the value of the service.

c. Procurement of Construction Services: The supplier is offering to supply construction services, and the supplier has a principal place of business in a participating state or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating state.

3. A participating *Gobernación* shall allow a supplier to self-certify that it meets one or more of the conditions set out in paragraph 2. If the participating *Gobernación* considers the certification to be erroneous or unsubstantiated, it shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.11 of this Chapter.

### **Schedule of the United States**

#### Arkansas

Executive branch agencies, including universities

For the entities listed for Arkansas, this Chapter does not cover procurement by the Office of Fish and Game or of construction services.

#### Colorado

Executive branch agencies

#### Florida\*

Executive branch agencies

#### Illinois\*

Department of Central Management Services

### Mississippi

Department of Finance and Administration

For the entity listed for Mississippi, this Chapter does not cover the procurement of services.

### New York\*

State agencies

State university system

Public authorities and public benefit corporations

1. For the entities listed for New York, this Chapter does not cover procurement by public authorities and public benefit corporations with multi-state mandates.
2. For the entities listed for New York, this Chapter does not cover the procurement of transit cars, buses, or related equipment.

### Puerto Rico

Department of State

Department of Justice

Department of the Treasury

Department of Economic Development and Commerce

Department of Labor and Human Resources

Department of Natural and Environmental Resources

Department of Consumer Affairs

Department of Sports and Recreation

For the entities listed for Puerto Rico, this Chapter does not cover the procurement of construction services.

### Texas

Texas Building and Procurement Commission

For the entity listed for Texas, this Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; or (3) rubberized asphalt paving made from scrap tires by a Texas facility.

### Utah

Executive branch agencies

### **Notes to the Schedule of the United States**

1. For the states marked by an asterisk (\*), indicating pre-existing restrictions, this Chapter does not cover the procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.
2. This Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.
3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.

4. This Chapter does not cover any procurement made by a covered entity on behalf of a non-covered entity at a different level of government.
5. This Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.
6. This Chapter does not apply to the procurement of printing services.
7. A procuring entity of a participating state may deny the benefits of this Section to a supplier of Colombia unless it meets one or more of the conditions set out in subparagraphs (a) through (c).
  - a. Procurement of Goods:
    - (i) The supplier is offering to supply a good of Colombia, as determined under Article 9.2.4 of this Chapter, and has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*; or
    - (ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating *Gobernación*. A good shall be considered to be substantially produced or assembled in a participating *Gobernación(s)* if the production or assembly in the participating *Gobernación(s)* accounts for 51 percent or more of the value of the good.
  - b. Procurement of Services Other Than Construction Services:
    - (i) The supplier is offering to supply a service, other than a construction service, and the supplier has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*; or
    - (ii) The supplier is offering to supply a service, other than a construction service, that is substantially performed within a participating *Gobernación(s)*. A service, other than a construction service, shall be considered to be substantially performed in a participating *Gobernación(s)* if the performance of the service in the participating *Gobernación(s)* accounts for 51 percent or more of the value of the service.
  - c. Procurement of Construction Services: The supplier is offering to supply construction services, and the supplier has a principal place of business in a participating *Gobernación* or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating *Gobernación*.
8. A procuring entity of a participating state shall allow a supplier to self-certify that it meets the

conditions set out in paragraph 7. If the procuring entity of a participating state considers the certification to be erroneous or unsubstantiated, the state shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.11 of this Chapter.

### **Section C: Other Covered Entities**

1. This Chapter applies to the other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraphs 9 and 10 of Article 9.1, to equal or exceed:

- (a) for procurement of goods and services:
  - (i) by List A entities, US\$250,000 or
  - (ii) by List B entities, US\$593,000; and
- (b) for procurement of construction services by List A and List B entities:
  - (i) US\$ 7,407,000; or
  - (ii) for Colombia, during the three-year period following the date of entry into force of this Agreement, the higher of US\$7,407,000, as adjusted in accordance with Section I of this Annex, or US\$8,000,000.

The monetary thresholds set out in subparagraphs (a)(ii) and (b)(i) shall be adjusted in accordance with Section I of this Annex.

2. Unless otherwise specified herein, this Chapter covers only the entities listed in this Section.

#### **Schedule of Colombia**

##### **List A**

1. *Agencia Logistica de las Fuerzas Militares (Note 1)*
2. *Fondo Rotatorio de la Policía Nacional (Note 1)*
3. *Fondo Rotatorio del Departamento Administrativo de Seguridad (Note 1)*
4. *Instituto de Casas Fiscales del Ejercito*
5. *Dirección de Impuestos y Aduanas Nacionales (DIAN)*
6. *Instituto Colombiano del Deporte (COLDEPORTES)*
7. *Instituto Colombiano Para el Desarrollo de la Ciencia y la Tecnología Francisco José de Caldas (COLCIENCIAS)*
8. *Instituto Colombiano para el Fomento de la Educación Superior (ICFES)*
9. *Instituto Nacional Penitenciario y Carcelario (INPEC)*
10. *Servicio Nacional de Aprendizaje (SENA)*

11. *Comisión de Regulación de Energía y Gas (CREG)*
12. *Unidad de Planeación Minero Energética (UPME)*
13. *Administración Postal Nacional (ADPOSTAL)*
14. *Caja de Previsión Social de Comunicaciones (CAPRECOM)*
15. *Caja Nacional de Previsión Social (CAJANAL)*
16. *Empresa Territorial para la Salud (ETESA)*
17. *Imprenta Nacional de Colombia*
18. *Industria Militar (INDUMIL)*
19. *Instituto de Seguros Sociales (ISS)*
20. *Radio Televisión Nacional de Colombia (RTVC)*
21. *Servicio Aéreo a Territorios Nacionales (SATENA)*
22. *Empresa Colombiana de Petroleos, S.A. (ECOPETROL)* (Notes 2 through 6)

### **Notes to Schedule of Colombia**

1. *Agencia Logística de las Fuerzas Militares, Fondo Rotatorio de la Policía Nacional, and Fondo Rotatorio del Departamento Administrativo de Seguridad*: This Chapter does not cover procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 by the entities listed for the *Comando General de las Fuerzas Armadas, Ejército Nacional, Armada Nacional, Fuerza Aérea Colombiana, and the Policía Nacional.*

2. *Empresa Colombiana de Petroleos, S.A. (ECOPETROL)*: ECOPETROL shall apply the procedures in this Chapter or equivalent procedures in the conduct of its procurement. This Chapter does not cover the procurement of the following services:

- |     |           |   |
|-----|-----------|---|
| (a) | CPC 632   | Food serving services   |
| (b) | CPC 642   | Road transport services   |
| (c) | CPC 852   | Investigation and surveillance services   |
| (d) | CPC 82211 | Financial auditing services   |
| (e) | CPC 712   | Investment banking services   |
| (f) | CPC 713   | Insurance and pension services (excluding reinsurance services), except compulsory social security services |
| (g) | CPC 715   | Services auxiliary to financial intermediation other than to insurance and pensions                         |

3. The minimum 40-day time period set out in Article 9.5.2 shall not apply to ECOPETROL. ECOPETROL shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. However, ECOPETROL shall in no case provide for less than ten business days from the date on which the notice of intended procurement is published to the final date for the submission of tenders.

4. For greater certainty, Article 9.7.1(c) does not preclude ECOPETROL's requirement of relevant prior experience as a condition for participation in a procurement where essential to meet the requirements of the procurement.

5. Notwithstanding Article 9.8.1(c), ECOPETROL may use limited tendering in accordance with Article 9.8 for additional deliveries of a good or service that is intended either as a replacement part, extension, or continuing service for existing equipment, software, services or installations, where a change in the good or service would compel ECOPETROL to procure a good or a service that does not meet requirements of interchangeability with existing equipment, software, services, or installations.

6. When, under Colombian Law, ECOPETROL:

- (a) is no longer subject to the requirements of the government procurement law of Colombia (the *Estatuto de Contratación Pública* or any successor law), and
- (b) is required to conduct its procurement under private law, in a transparent manner, and in accordance with commercial considerations,

Colombia shall notify the United States and provide relevant documentation verifying that ECOPETROL meets the conditions set out in subparagraphs (a) and (b). Colombia shall also certify that ECOPETROL will comply with the conditions for a Special Covered Entity. Unless the United States notifies Colombia of any concern regarding the documentation within 30 days of its receipt, the Parties shall modify the relevant sections of the Annex to move ECOPETROL from Section C to Section D.

#### **Schedule of the United States**

##### **List A:**

- 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

##### **List B:**

Rural Utilities Service (Note 1)

#### **Notes to Schedule of the United States**

- 1. The Rural Utilities Service shall:
  - (a) waive federal buy national requirements imposed as conditions of funding for all power generation projects; and
  - (b) apply procurement procedures equivalent to the procedures in the WTO Agreement on Government Procurement and national treatment to funded projects exceeding the thresholds specified above.

For greater certainty, this Chapter does not apply to any other aspect of procurement by the Rural Utilities Service, including any restrictions the Rural Utilities Service places on financing for telecommunications projects.

2. With respect to procurement by entities listed in this Section, this Chapter does not apply to restrictions attached to Federal funds for airport projects.

#### **Section D: Special Covered Entities**

1. For purposes of this Chapter, a Special Covered Entity is an entity of the Government of Colombia that:

- (a) is not subject to the requirements of the government procurement law of Colombia (the *Estatuto de Contratación Pública* or any successor law); and
- (b) conducts its procurement under private law, in a transparent manner, in accordance with commercial considerations, and without any control or influence by the Government of Colombia.<sup>1</sup>

2. This Section applies to the following Special Covered Entities of the Government of Colombia:

- (a) *Interconexion Electrica S.A. (ISA)*
- (b) ISAGEN
- (c) *Colombia Telecomunicaciones*

#### **Notes**

1. The only provisions of this Chapter that apply to the Special Covered Entities listed in this Section are paragraphs 1 and 2 of Article 9.2.

#### **Section E: Goods**

This Chapter applies to all goods procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections and the General Notes.

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<sup>1</sup> For greater certainty, appointment of any member of the Board of Directors of an entity by the President of Colombia or by another Colombian government official or entity, ownership of a majority or all of the shares of an entity by the Government of Colombia, or auditing requirements related to the entity, do not constitute “control or influence by the Government of Colombia” with respect to the entity’s procurement.

## Section F: Services

This Chapter applies to all services procured by the entities listed in Sections A through D, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section, except for the services excluded in the Schedules of each Party.

### Schedule of Colombia

This Chapter does not cover the procurement of the following services, as elaborated in the Central Product Classification Version 1.0. (For complete listing of Central Product Classification Version 1.0, see <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=3>):

1. Research and Development Services  
*Division 81            Research and development services*  
*Group 835            Scientific and other technical services*  
*Data processing (8596) and trade fair and exhibition organization (8597), required for carrying out scientific and technological activities*
  
2. Engineering and Architectural Services  
*Class 8321            Architectural services.*  
*Class 8334            Engineering design services*  
*Class 8335            Engineering services during the construction and installation phase*
  
3. Utilities  
*Division 69            Electricity distribution services; gas and water distribution services through mains*  
*Division 94            Sewer and refuse disposal, sanitation, and other environmental protection services*  
*Basic telecommunication services ( not including value-added telecommunication services)*
  
4. Social Services  
*Division 91            Public administration and other services for the general public; compulsory social security services*  
*Division 92            Education services*  
*Group 931            Human health services*
  
5. Printing Services
  
6. Production of television programs  
*Subclass 96121    Motion picture, video and television program production services*

### Schedule of the United States

This Chapter does not cover the procurement of the following services, as elaborated in the Common Classification System (For complete listing of Common Classification System, see



<http://www.sice.oas.org/trade/nafta/chap-105.asp>.):

**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

**Notes to the Schedule of the United States**

1. This Chapter does not cover the procurement of any service purchased in support of military forces overseas.

**Section G: Construction Services**

This Chapter applies to all construction services procured by the entities listed in Sections A

through D, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section.

### **Schedule of Colombia**

Notwithstanding any other provision of this Chapter, a procuring entity of Colombia, in a procurement of construction services for the construction, maintenance, or rehabilitation of roads and highways, may apply a condition relating to the hiring of local personnel in rural areas in order to promote employment and improve living conditions in such areas.

### **Schedule of the United States**

This Chapter does not cover the procurement of dredging services.

## **Section H: General Notes**

Unless otherwise specified herein, the following General Notes in each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

### **Schedule of Colombia**

1. This Chapter does not apply to the procurements of goods or services by a Colombian entity from another Colombian entity.
2. This Chapter does not apply to the renting or acquisition of real estate.
3. This Chapter does not apply to set-asides of procurements below \$125,000 on behalf of Micro, Small and Medium-sized Companies (MIPYMES). The set-asides include any form of preference, such as the exclusive right to provide a good or a service and measures conducive to facilitate the transfer of technology and sub-contracting.
4. This Chapter does not apply to procurements under programs of reintegration to civil life as a result of peace processes, to aid to persons displaced due to violence, to support those living in conflict zones, and general programs resulting from the resolution of the armed conflict.
5. This Chapter does not apply to procurements by the missions of the foreign service of the Republic of Colombia exclusively for their operation and management.
6. This Chapter does not apply to the procurement of goods required to conduct research and development services.

## Schedule of the United States

1. This Chapter does not apply to set asides on behalf of small or minority businesses. Set-asides include any form of preference, such as the exclusive right to provide a good or service and price preferences.
2. Where a contract is to be awarded by an entity that is not listed in Section A, B or C, this Chapter shall not be construed to cover any good or service component of that contract.
3. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

### Section I: Threshold Adjustment Formula

1. The thresholds shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2008.
2. With regard to the threshold for procurement of goods and services in Section A, the United States shall calculate the U.S. dollar value for each threshold every two years, based on the U.S. inflation rate measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics, using the two-year period that ends on October 31 in the year prior to the adjustment taking effect, and using 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  $i^{\text{th}}$  two-year period

$T_1$  = new threshold value

3. The thresholds for procurement of goods and services by entities in Section B and List B entities in Section C and for procurement of construction services in Sections A through C are conversions into U.S. dollars of the thresholds listed in the U.S. Appendix 1 to the World Trade Organization Agreement on Government Procurement, which are set out in Special Drawing Rights (SDRs) and listed below. Every two years, the United States shall calculate adjustments of these thresholds for purposes of paragraph 1 based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs, published by the IMF in its monthly "International Financial Statistics," for the two-year period preceding October 1 or November 1 of the year before the adjusted thresholds are to take effect:

- (a) 355,000 SDRs for goods and services for Section B entities;
- (b) 400,000 SDRs for goods and services for Section C, List B entities, paragraph 1(a)(ii);  
and

- (c) 5 million SDRs for construction services for Section A, B, and C entities.
- 4. The United States shall notify Colombia of the adjusted threshold values in December of the year before the adjusted thresholds take effect.
- 5. Colombia shall:
  - (a) convert the adjusted threshold values notified by the United States under paragraph 3 into Colombian pesos based on the official conversion rate of its central bank, using the average of the daily values of its currency in terms of the U.S. dollar over the two-year period ending September 30 of the year in which the United States notifies the adjusted threshold; and
  - (b) promptly notify the United States of the value in its currency of the adjusted thresholds.
- 6. The Parties shall consult if any major change in a national currency vis-à-vis the other currency creates a significant problem with regard to the application of this Chapter.