

**CHAPTER *Kbis***  
**GOVERNMENT PROCUREMENT**

**Article *Kbis-01: Scope and Coverage***

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by an entity listed in Annex *Kbis-01*:

- (a) by any contractual means, including purchase and rental or lease, with or without an option to buy; and
- (b) subject to the terms of Annex *Kbis-01*.

2. This Chapter does not apply to:

- (a) non-contractual agreements or any form of assistance provided by a Party or a state enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to a regional or local level of government, and purchases for the direct purpose of providing foreign assistance;
- (b) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;
- (c) hiring of government employees and related employment measures;
- (d) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; and
- (e) procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

3. Where an entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

4. No entity may prepare, design, or otherwise structure or divide, in any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.

5. In calculating the value of a contract for the purpose of ascertaining whether the procurement is covered by this Chapter, an entity shall include the maximum total estimated value of the procurement over its entire duration, taking into account all options, premiums,

fees, commissions, interest and other revenue streams or other forms of remuneration provided for in such contracts.

6. Nothing in this Chapter shall prevent either Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

## **Article Kbis-02: General Principles**

### **National Treatment and Non-Discrimination**

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party of such goods and services, treatment no less favourable than the most favourable treatment the Party accords to its own goods, services, and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, neither Party may:

- (a) treat a locally established supplier less favourably 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 goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

### **Measures Not Specific to Procurement**

3. Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties and charges or other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

### **Offsets**

4. An entity shall not consider, seek, or impose offsets at any stage of a procurement.

## **Article Kbis-03: Publication of Procurement Measures**

Consistent with Article L-02 (Publication), each Party shall promptly publish:

- (a) its measures of general application specifically governing procurement covered by this Chapter; and

- (b) any changes in such measures in the same manner as the original publication.

#### **Article Kbis-04: Publication of Notice of Intended Procurement**

1. For each procurement covered by this Chapter, an entity shall publish in advance a notice inviting interested suppliers to submit tenders for that procurement (“notice of intended procurement”). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.
2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.

#### **Article Kbis-05: Time Limits for the Tendering Process**

1. An entity shall prescribe time limits for the tendering process that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. An entity shall provide no less than 30 days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.
2. Notwithstanding paragraph 1, entities may establish a time limit of less than 30 days, but in no case less than 10 days, in the following circumstances:
  - (a) where the entity has published a notice containing the information specified in Article Kbis-04(2) at least 30 days and not more than 12 months in advance;
  - (b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;
  - (c) where an entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or
  - (d) where an unforeseeable state of urgency duly substantiated by the entity renders impracticable the time limits specified in paragraph 1.

**Article Kbis-06: Information on Intended Procurements**

1. An entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the entity will consider in awarding the contract, including all cost factors, technical requirements and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.
2. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.
3. Where an entity, prior to the award of a contract, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:
  - (a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and
  - (b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

**Article Kbis-07: Technical Specifications**

1. An entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. Any technical specification prescribed by an entity shall be, where appropriate:
  - (a) specified in terms of performance requirements rather than design or descriptive characteristics; and
  - (b) based on international standards, where applicable, otherwise on national technical regulations, recognized national standards, or building codes.
3. An entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

4. An 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 that procurement.

#### **Article Kbis-08: Conditions for Participation**

1. Where an entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation (“conditions for participation”) in a separate process in order to participate in a procurement, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.

2. Each entity shall:

- (a) limit any conditions for participation in a procurement to those that are essential to ensure that the potential supplier has the legal, technical, and financial capacity to fulfill the requirements and technical specifications of the procurement;
- (b) base qualification decisions solely on the conditions for participation that it has specified in advance in notices or tender documentation; and
- (c) recognize as qualified all suppliers of the other Party that meet the requisite conditions for participation in a procurement covered by this Chapter.

3. Entities may establish publicly available lists of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list in order to participate in a procurement, and a supplier that has not yet qualified applies to be included on the list, the entity shall promptly start the qualification procedures for the supplier and shall allow the supplier to participate in the procurement, provided there is sufficient time to complete the procedures within the time period established for tendering.

4. No entity may 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 an entity of that Party or that the supplier has prior work experience in the territory of that Party. An entity shall judge a supplier’s financial and technical capacities on the basis of its global business activities including both its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the entity.

5. An entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for

qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation of the reasons for its decision.

6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

#### **Article Kbis-09: Tendering Procedures**

1. Entities may award contracts by means other than open tendering procedures, provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers in the following circumstances, where applicable:

- (a) in the absence of tenders in response to an open tendering procedure, or where tenders submitted have resulted from collusion under domestic law, or do not conform to the essential requirements in the tender documentation provided in a prior invitation to tender, including any conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
- (b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (d) for goods purchased on a commodity market;
- (e) where an entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to Articles Kbis-2 through Kbis-8 and Article Kbis-17;
- (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for

additional construction services may not exceed 50 percent of the amount of the initial contract;

- (g) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of an open tendering procedure;
  - (h) in the case of a contract awarded to a winner of a design contest provided that:
    - i. the contest has been organized in a manner that is consistent with the principles of this Chapter; and
    - ii. the participants are judged by an independent jury with a view to a design contract being awarded to a winner;
  - (i) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; or
  - (j) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers.
2. An entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open tendering procedures, as provided in paragraph 1.

#### **Article Kbis-10: Awarding of Contracts**

1. An entity shall require that in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted:
- (a) conform to the essential requirements of the tender documentation; and
  - (b) be submitted by a supplier that has satisfied the conditions for participation that the entity has provided to all participating suppliers.
2. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

## **Article Kbis-11: Information on Awards**

### *Information Provided to Suppliers*

1. Subject to Article Kbis-15, an entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, an entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender the entity selected.

### *Publication of Award Information*

2. After awarding a contract covered by this Chapter, an entity shall promptly publish a notice that includes at least the following information about the award:

- a) the name of the entity;
- b) a description of the goods or services procured;
- c) the name of the winning supplier;
- d) the value of the contract award; and
- e) where the entity has not used open tendering procedures, an indication of the circumstances justifying the procedures used.

### *Maintenance of Records*

3. An entity shall maintain records and reports relating to tendering procedures and contract awards covered by this Chapter, including the records and reports provided for in Article Kbis-09(2), for a period of at least three years.

## **Article Kbis-12: Ensuring Integrity in Procurement Practices**

Each Party shall ensure that criminal or administrative penalties exist to address corruption in its government procurement, and that the Party and its entities have in place policies and procedures to eliminate any potential conflict of interest on the part of those engaged in or having influence over a procurement.



## **Article Kbis-13: Domestic Review of Supplier Challenges**

### *Consultations between the Procuring Entity and Supplier*

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement in which they have, or have had, an interest. Where appropriate, a Party may encourage suppliers to seek clarification from its entities with a view to facilitating the resolution of any such complaints.

### *Independent Review Authorities*

2. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review complaints of suppliers arising in the context of a procurement covered by this Chapter in which it has or has had an interest.

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

4. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied.

5. Notwithstanding other review procedures provided for or developed by each of the Parties, each Party shall ensure that any authority it establishes or designates under paragraph 2 shall have procedures which shall be in writing and made generally available. Such procedures shall be timely, effective, transparent and non-discriminatory and shall provide that:

- a) the procuring entity respond in writing to the complaint and disclose all relevant documents to the review body;
- b) the participants to the proceedings have the right to legal representation, and to be heard prior to a decision of the review body being made on the complaint;
- c) the participants to the proceedings have access to all proceedings; and

d) the findings and recommendations relating to supplier complaints be provided in a timely fashion, in writing, with an explanation of their basis.

6. Each party shall ensure that a supplier's submission of a complaint will not prejudice the supplier's participation in ongoing or future procurements.

#### **Article Kbis-14: Modifications and Rectifications**

1. Where a Party modifies its coverage under this Chapter, the Party shall

- (a) notify the other Party in writing; and
- (b) propose appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding paragraph 1(b), a Party need not provide compensatory adjustments where the Parties agree that:

- (a) the modification in question is a minor amendment or rectification of a purely formal nature; or
- (b) the proposed modification covers an entity over which a Party has effectively eliminated its control or influence.

3. If the other Party does not agree to the compensatory adjustments proposed under paragraph 1(b), or that the modification is a minor amendment or rectification of a purely formal nature, or that government control or influence has been effectively eliminated from the entity in question, the other Party must object in writing within 30 days of receipt of the notification or be deemed to have agreed.

4. Where a Party has raised its objection in writing within the time periods prescribed in paragraph 3 and considers that:

- (a) an adjustment proposed under paragraph 1(b) is not adequate to maintain a comparable level of mutually agreed coverage;
- (b) the proposed modification is not a minor amendment or a rectification under paragraph 2(a); or
- (c) the proposed modification covers an entity over which a Party has not effectively eliminated its control or influence under paragraph 2(b),

the Party may have recourse to dispute settlement procedures under Chapter N (Institutional Arrangements and Dispute Settlement Procedures).

5. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, the Commission shall give effect to the agreement by modifying forthwith the relevant Section of Annex Kbis-01.

#### **Article Kbis-15: Non-Disclosure of Information**

1. The Parties, their entities, and their review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall be construed as requiring a Party or its entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

#### **Article Kbis-16: Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

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

**Article Kbis-17: Public Information**

1. In order to facilitate access to information on commercial opportunities under this Chapter, each Party shall ensure that electronic databases that provide current information on all procurements covered by this Chapter that are conducted by entities listed in Annex Kbis-01, including information that can be disaggregated by detailed categories of goods and services, are made available to interested suppliers of the other Party, through the Internet or a comparable computer-based telecommunications network. Each Party shall, on request of the other Party, provide information on:

- (a) the classification system used to disaggregate information on procurement of different goods and services in such databases; and
- (b) the procedures for obtaining access to such databases.

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement through the Internet or a comparable electronic network that is widely disseminated and readily accessible to the public. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities.

3. Each Party shall encourage its entities to publish, as early as possible in the fiscal year, information regarding the entity's procurement plans.

**Article Kbis-18: Committee on Procurement**

The Parties hereby establish a Committee on Procurement to address matters such as increasing the understanding of their respective government procurement systems, with a view to maximizing access to government procurement.

**Article Kbis-19: Further Negotiations**

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that revises procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party the Parties shall enter into negotiations with a view to harmonising the current Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided through this Chapter, including with respect to sub-federal government procurement, either Party may request that the Parties enter into negotiations with a view to achieving an

equivalent level of market access through this Chapter as is contained in the other international agreement.

### **Article Kbis-20: Definitions**

For purposes of this Chapter:

**construction services** means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

**entity** means an entity listed in Annex Kbis-01;

**in writing** or **written** means any expression of information in words, numbers, or other symbols, including electronic expressions, that can be read, reproduced, and stored;

**international standard** means a standard that has been developed in conformity with the document *Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.7, 28 November 2000, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement)*, issued by the WTO Committee on Technical Barriers to Trade;

**offsets** means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

**procurement** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

**procurement official** means a person who performs procurement functions;

**publish** means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;

**supplier** means a person that provides or could provide goods or services to an entity;

**technical specification** means a specification that lays down the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to

be procured or their related operating methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements, as they apply to a good, process, service or production or operating method.

**Annex Kbis-01.1-1****Central Level Entities****Schedule of Canada:*****Thresholds:***

Cdn \$ 84,000 - Goods covered in Annex Kbis-01.1-3

Cdn \$ 84,000 - Services covered in Annex Kbis-01.1-4

Cdn \$ 9,400,000 - Construction Services covered in Annex Kbis-01.1-5

1. Atlantic Canada Opportunities Agency
2. Canada Border Services Agency
3. Canada Employment Insurance Commission
4. Canada Industrial Relations Board
5. Canada Revenue Agency
6. Canada School of Public Service
7. Canadian Centre for Occupational Health and Safety Board
8. Canadian Food Inspection Agency
9. Canadian Human Rights Commission
10. Canadian Institutes of Health Research
11. Canadian Intergovernmental Conference Secretariat
12. Canadian International Development Agency (on its own account)
13. Canadian International Trade Tribunal
14. Canadian Nuclear Safety Commission
15. Canadian Radio-television and Telecommunications Commission
16. Canadian Transportation Accident Investigation and Safety Board
17. Canadian Transportation Agency
18. Copyright Board
19. Correctional Service of Canada
20. Courts Administration Service
21. Department of Agriculture and Agri-Food
22. Department of Canadian Heritage
23. Department of Citizenship and Immigration
24. Department of Finance
25. Department of Fisheries and Oceans
26. Department of Foreign Affairs and International Trade
27. Department of Health
28. Department of Human Resources and Skills Development
29. Department of Indian Affairs and Northern Development
30. Department of Industry
31. Department of Justice
32. Department of National Defence
33. Department of Natural Resources

34. Department of Public Safety and Emergency Preparedness
35. Department of Public Works and Government Services (on its own account)
36. Department of the Environment
37. Department of Transport
38. Department of Veterans Affairs
39. Department of Western Economic Diversification
40. Director of Soldier Settlement
41. Director, The Veterans' Land Act
42. Economic Development Agency of Canada for the Regions of Quebec
43. Hazardous Materials Information Review Commission
44. Immigration and Refugee Board
45. Library and Archives Canada
46. Municipal Development and Loan Board
47. National Battlefields Commission
48. National Energy Board
49. National Farm Products Council
50. National Parole Board
51. National Research Council of Canada
52. Natural Sciences and Engineering Research Council of Canada
53. Northern Pipeline Agency
54. Office of the Auditor General
55. Office of the Chief Electoral Officer
56. Office of the Commissioner for Federal Judicial Affairs
57. Office of the Commissioner of Official Languages
58. Office of the Coordinator, Status of Women
59. Office of the Governor General's Secretary
60. Office of the Superintendent of Financial Institutions
61. Offices of the Information and Privacy Commissioners of Canada
62. Parks Canada Agency
63. Patented Medicine Prices Review Board
64. Privy Council Office
65. Public Health Agency of Canada
66. Public Service Commission
67. Public Service Human Resources Management Agency of Canada
68. Public Service Labour Relations Board
69. Registry of the Competition Tribunal
70. Royal Canadian Mounted Police
71. Royal Canadian Mounted Police External Review Committee
72. Royal Canadian Mounted Police Public Complaints Commission
73. Social Sciences and Humanities Research Council
74. Statistics Canada
75. Statute Revision Commission
76. Supreme Court of Canada
77. Transportation Appeal Tribunal of Canada
78. Treasury Board Secretariat



**Note to Annex *Kbis-01.1-1***

The General Notes apply to this Annex.

**Schedule of Chile:****Thresholds:**

CLP 33,599,963 - Goods covered in Annex *Kbis-01.1-3*

CLP 33,599,963 - Services covered in Annex *Kbis-01.1-4*

CLP 4,373,536,606 - Construction Services covered in Annex *Kbis-01.1-5*

1. Presidencia de la República
2. Ministerio de Interior
3. Ministerio de Relaciones Exteriores
4. Ministerio de Defensa Nacional
5. Ministerio de Hacienda
6. Ministerio Secretaría General de la Presidencia
7. Ministerio Secretaría General de Gobierno
8. Ministerio de Economía, Fomento y Reconstrucción
9. Ministerio de Minería
10. Ministerio de Planificación
11. Ministerio de Educación
12. Ministerio de Justicia
13. Ministerio de Trabajo y Previsión Social
14. Ministerio de Obras Públicas
15. Ministerio de Transporte y Telecomunicaciones
16. Ministerio de Salud
17. Ministerio de Vivienda y Urbanismo
18. Ministerio de Bienes Nacionales
19. Ministerio de Agricultura

**Gobiernos Regionales**

Intendencia I Región de Tarapacá

Gobernación de Iquique

Gobernación de Tamarugal

Intendencia II Región de Antofagasta

Gobernación de Antofagasta

Gobernación de El Loa

Gobernación de Tocopilla

Intendencia III Región de Atacama  
Gobernación de Chañaral  
Gobernación de Copiapó  
Gobernación de Huasco

Intendencia IV Región de Coquimbo  
Gobernación de El Elqui  
Gobernación de Limarí  
Gobernación de Choapa

Intendencia V Región de Valparaíso  
Gobernación de Petorca  
Gobernación de Valparaíso  
Gobernación de San Felipe de Aconcagua  
Gobernación de Los Andes  
Gobernación de Quillota  
Gobernación de San Antonio  
Gobernación de Isla de Pascua

Intendencia VI Región del Libertador Bernardo O'Higgins  
Gobernación de Cachapoal  
Gobernación de Colchagua  
Gobernación de Cardenal Caro

Intendencia VII Región del Maule  
Gobernación de Curicó  
Gobernación de Talca  
Gobernación de Linares  
Gobernación de Cauquenes

Intendencia VIII Región del Bío Bío  
Gobernación de Ñuble  
Gobernación de Bío-Bío  
Gobernación de Concepción  
Gobernación de Arauco

Intendencia IX Región de la Araucanía  
Gobernación de Malleco  
Gobernación de Cautín

Intendencia X Región de los Lagos  
Gobernación de Osorno  
Gobernación de Llanquihue

Gobernación de Chiloé  
Gobernación de Palena

Intendencia XI Región de Aysén del General Carlos Ibáñez del Campo  
Gobernación de Coihaique  
Gobernación de Aysén  
Gobernación de General Carrera  
Gobernación de Capitán Prat

Intendencia XII Región de Magallanes y de la Antártica Chilena  
Gobernación de Ultima Esperanza  
Gobernación de Magallanes  
Gobernación de Tierra del Fuego  
Gobernación de Antártica Chilena

Intendencia Región Metropolitana  
Gobernación de Chacabuco  
Gobernación de Cordillera  
Gobernación de Maipo  
Gobernación de Talagante  
Gobernación de Melipilla  
Gobernación de Santiago

Intendencia XIV Región de los Ríos  
Gobernación de Valdivia  
Gobernación de Ranco

Intendencia XV Región de Arica y Parinacota  
Gobernación de Arica  
Gobernación de Parinacota

**Annex *Kbis*-01.1-2**

**Other Covered Entities**

**Schedule of Canada:**

***Thresholds:***

Cdn \$ 420,000 - Goods covered in Annex *Kbis*-01.1-3

Cdn \$ 420,000 - Services covered in Annex *Kbis*-01.1-4

Cdn \$ 13,400,000 - Construction Services covered in Annex *Kbis*-01.1-5

1. Canada Post Corporation
2. National Capital Commission
3. Royal Canadian Mint
4. Via Rail Canada Inc.
5. Canadian Museum of Civilization
6. Canadian Museum of Nature
7. National Gallery of Canada
8. National Museum of Science and Technology
9. Defence Construction (1951) Ltd.
10. Canadian Tourism Commission

***Notes to Annex *Kbis*-01.1-2***

1. The General Notes apply to this Annex.
2. For greater certainty, Article *Kbis*-15(1) applies to procurements by Via Rail Canada Inc. and the Royal Canadian Mint, respecting the protection of the commercial confidentiality of information provided.
3. This Chapter does not apply to procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender.

**Schedule of Chile:**

***Thresholds:***

CLP 167,999,297 - Goods covered in Annex *Kbis*-01.1-3

CLP 167,999,297 - Services covered in Annex *Kbis*-01.1-4

CLP 5,980,244,385 - Construction Services covered in Annex *Kbis*-01.1-5

1. Empresa Portuaria Arica
2. Empresa Portuaria Iquique
3. Empresa Portuaria Antofagasta
4. Empresa Portuaria Coquimbo
5. Empresa Portuaria Valparaíso
6. Empresa Portuaria San Antonio
7. Empresa Portuaria San Vicente-Talcahuano
8. Empresa Portuaria Puerto Montt
9. Empresa Portuaria Chacabuco
10. Empresa Portuaria Austral
11. Aeropuertos de propiedad del Estado, dependientes de la Dirección de Aeronáutica Civil

### **Annex Kbis-01.1-3**

#### **Goods**

#### **Schedule of Canada:**

##### **Section A - General Provisions**

1. All goods are covered subject to paragraph 2.
2. With respect to Canada, for procurement by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard, only the goods listed in Section B are included in the coverage of this Chapter, subject to the application of Article Kbis-16(1).

##### **Section B - List of Certain Goods**

(Numbers refer to the [Federal Supply Classification](#).)

22. Railway equipment

23. Motor vehicles, trailers and cycles (except buses in 2310; and, except 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 and air conditioning equipment
- 42. Fire fighting, rescue and safety equipment (except 4220: Marine lifesaving and diving equipment; and 4230: Decontaminating and impregnating equipment)
- 43. Pumps and compressors
- 44. Furnace, steam plant, drying equipment and nuclear reactors
- 45. Plumbing, heating and sanitation 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 and signal systems
- 65. Medical, dental and veterinary equipment and supplies
- 66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components; and 6665: Hazard detecting instruments and apparatus)
- 67. Photographic equipment
- 68. Chemicals and chemical products
- 69. Training aids and devices
- 70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010: Automatic Data Processing Equipment (ADPE) configurations)
- 71. Furniture
- 72. Household and commercial furnishings and appliances
- 73. Food preparation and serving equipment
- 74. Office machines, text processing system 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 hometype 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

99. Miscellaneous

*Note to Annex Kbis-01.1-3*

The General Notes apply to this Annex.

**Schedule of Chile:**

This Chapter applies to all goods procured by the entities listed in Annex Kbis-01.1-1 and Annex Kbis-01.1-2.

**Annex Kbis-01.1-4**

**Services**

**Schedule of Canada:**

**Section A - General Provisions**

1. Coverage includes all services that are procured by the entities in Annex Kbis-01.1-1 and Annex Kbis-01.1-2, subject to paragraph 3 and Section B.
2. Services are identified in accordance with the [Common Classification System](#).
3. Annex Kbis-01.1-5 applies to contracts for construction services.

**Section B - Excluded Coverage**



## **Services Exclusions by Major Service Category**

### **PART 1 - Annex *Kbis*-01.1-1 and Annex *Kbis*-01.1-2**

The following services are excluded for entities listed in Annex *Kbis*-01.1-1 and Annex *Kbis*-01.1-2:

#### **A. Research and Development**

All classes

#### **B. Special Studies and Analysis - not R&D**

B002 Animal and Fisheries Studies

B003 Grazing and Range Studies

B400 Aeronautic/Space Studies

B503 Medical and Health Studies

B507 Legal Studies (Except Advisory Services on Foreign Law)

#### **C. Architecture and Engineering Services**

C112 Airfield, Communication and Missile Facilities

C216 Marine Architect and Engineering Services

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

D304 ADP Telecommunications and Transmission Services, except those classified as “enhanced or value-added services.” Enhanced or value added services means those telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer’s transmitted information;
- (b) provide a customer with additional, different or restructured information, or
- (c) involve customer interaction with stored information.

For 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. This provision only extends to providers of enhanced or value-added services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

D305 ADP Teleprocessing and Timesharing Services

**F. Natural Resources and Conservation Services**

F004 Land Treatment Practices Services (plowing/clearing, etc)

F005 Range Seeding Services (ground equipment)

F006 Crop Services inc. Seed Collection/Production Services

F011 Pesticides/Insecticides Support Services (except forestry and logging)

F021 Veterinary/Animal Care Services (inc. livestock services)

F029 Other Animal Care /Control Services

F030 Fisheries Resources Management Services

F031 Fish Hatchery Services

F050 Recreation Site Maintenance Services (non-construction)

F059 Other Natural Resource and Conservation Services

**G. Health and Social Services**

All classes

**H. Quality Control, Testing and Inspection and Technical Representative Services**

Services for the departments and functions listed in Annex *Kbis-01.1-6* – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support equipment) and FSC 74 - (Office machines, text processing systems and visible record equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

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

Services for the departments and functions listed in Annex *Kbis-01.1-6* – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support

equipment) and FSC 74 - (Office machines, text processing systems and visible record equipment)

FSC 58(Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

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

J998 Non-nuclear Ship Repair

**K. Custodial Operations and Related Services**

K0 Personal Care Services

K105 Guard Services

K109 Surveillance Services

K115 Preparation and Disposal of Excess and Surplus Property

**L. Financial and Related Services**

All classes

**M. Operation of Government Owned Facilities**

All facilities operated by:  
The Department of National Defence  
The Department of Transport  
The Department of Natural Resources

and for all Departments: M180 and M140

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

R003 Legal Services (Except Advisory Services on Foreign Law)

R004 Certifications and accreditations for products and institutions other than Educational Institutions

R007 Systems Engineering Services<sup>1</sup>

R012 Patent and Trade Mark Services

- R101 Expert Witness
- R102 Weather Reporting/Observation Services
- R104 Transcription Services
- R106 Post Office Services
- R109 Translation and Interpreting Services (inc. sign language)
- R114 Logistics Support Services<sup>2</sup>
- R116 Court Reporting Services
- R117 Paper Shredding Services
- R201 Civilian Personnel Recruitment (inc. Services of Employment Agencies)

**S. Utilities**

All classes

**T. Communications, Photographic, Mapping, Printing and Publications Services**

All classes

**U. Education and Training Services**

- U010 Certifications and accreditations for Educational Institutions

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

All classes (except V502 Hotel and similar accommodation services only and V503 Travel Agent Services (not including Tour Guides))

**W. Lease or Rental of Equipment**

Services for the departments and functions listed in Annex *Kbis*-01.1-6 – General Notes, Note 1 (e) to this schedule respecting FSC 36 – (Special Industry Machinery), FSC 70 – (Automatic Data Processing Equipment, software supplies and support equipment) and FSC 74 - (Office machines, text processing systems and visible record equipment)

FSC 58 (Communications, Detection, and Coherent Radiation Equipment)

Services with reference to transportation equipment

**PART 2** - Annex *Kbis-01.1-2*

The following services are excluded for entities listed in Annex *Kbis-01.1-2* only:

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

D309 Information and Data Broadcasting or Data Distribution Services

D316 Telecommunications Network Management Services

D317 Automated News Service, Data Services, or Other Information Services. Buying data, the electronic equivalent of books, periodicals, newspapers, etc.

D399 Other ADP and Telecommunications Services

**F. Natural Resources and Conservation Services**

F007 Seedling Production/Transplanting Services

F010 Other Range/Forest Improvements Services

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

R113 Data Collection Services

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

V502 Hotel and similar accommodation services only

***Notes to Annex Kbis-01.1-4***

1. All services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to coverage by this Chapter (*Annex Kbis-01.1-3*), will be exempt from the disciplines of the Chapter.

2. All services purchased in support of military forces located overseas will be exempt from coverage by this Chapter.

3. The General Notes apply to this Annex.

### **Schedule of Chile**

This Chapter applies to all services procured by the entities listed in Annex *Kbis-01.1-1* and Annex *Kbis-01.1-2*, except the following:

#### **Financial Services**

All classes

### **Annex *Kbis-01.1-5***

#### **Construction Services**

#### **Schedule of Canada:**

#### **Section A - General Provisions**

1. Coverage includes all construction services set out in the Common Classification System, except those listed in Section B, that are procured by the entities listed in Annex *Kbis-01.1-1* and Annex *Kbis-01.1-2*.
2. [The Common Classification System.](#)

#### **Section B - Excluded Coverage**

##### **Services Exclusions by Major Service Category**

The following services contracts are excluded:

1. Dredging
2. Construction contracts tendered by or on behalf of the Department of Transport
3. For CPC 5115 mining of oil and gas which is classified under CCS F042

#### ***Note to Annex *Kbis-01.1-5****

The General Notes apply to this Annex.

### **Schedule of Chile:**

This Chapter applies to all construction services procured by the entities listed in Annex *Kbis-01.1-1* and Annex *Kbis-01.1-2*.

### **Annex *Kbis-01.1-6***

#### **General Notes**

### **Schedule of Canada:**

1. This Chapter does not apply to procurements in respect of:
  - (a) shipbuilding and repair;
  - (b) urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
  - (c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
  - (d) set-asides for small and minority businesses;
  - (e)
    - i. the Department of Transport;
    - ii. the Department of Fisheries and Oceans;
    - iii. the Canadian Food Inspection Agency in respect of the administration and enforcement of the Fish Inspection Act;
    - iv. the Department of Canadian Heritage in respect of those functions that were formerly the responsibility of the Department of Communications;
    - v. the Department of Industry in respect of telecommunications, except in relation to (a) the planning and coordination of telecommunication services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting; and
    - vi. the Department of Public Works and Government Services in respect of the Government Telecommunications Agency;

respecting Federal Supply Classification (FSC) 70 - (automatic data processing equipment, software supplies and support equipment), FSC 74 - (office machines, text processing systems and visible record equipment) and FSC 36 - (special industry machinery);
  - (f) and agricultural products made in furtherance of agricultural support programs or human feeding programs.

2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
3. Pursuant to Article *Kbis*-16, national security exceptions include oil purchases related to any strategic reserve requirements.
4. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.
5. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award.

#### **Schedule of Chile:**

This Chapter does not apply to procurements in respect of financial services.

#### **Annex *Kbis*-01.1-7**

#### **Threshold Adjustment Formulas**

1. The thresholds referred to in Annexes *Kbis*-01.1-1, *Kbis*-01.1-2 and *Kbis*-01.1-8, except the threshold for construction services in Annex *Kbis*-01.1-1, shall be adjusted in accordance with Annex 1001.1c of the North American Free Trade Agreement.
2. The threshold for construction services in Annex *Kbis*-01.1-1 shall be adjusted;
  - (a) for Canada, in accordance with the formula in the World Trade Organization Agreement on Government Procurement, GPA/1, Annex 3; and
  - (b) for Chile, in accordance with the formula in Chapter 9, Section G, paragraph 3 of the U.S.-Chile Free Trade Agreement.
3. The Parties agree that the thresholds shall be fixed for two calendar years and the first threshold adjustment will take place effective 1 January, 2008.
4. Where a major change in a national currency of either Party during a year were to create a significant problem with regard to the application of the Chapter, the Parties shall consult as to whether an interim adjustment is appropriate.



5. In the event that:
- (a) Canada withdraws from the North American Free Trade Agreement pursuant to Article 2205 of that Agreement, or the World Trade Organization Agreement on Government Procurement pursuant to Article XXIV of that Agreement; or
  - (b) Chile withdraws from the U.S.-Chile Free Trade Agreement pursuant to Article 24.4 of that Agreement; or
  - (c) the North American Free Trade Agreement, or the World Trade Organization Agreement on Government Procurement, or the U.S.-Chile Free Trade Agreement are terminated; or
  - (d) a threshold adjustment formula referenced in paragraphs 1 or 2 is altered;

the Committee on Procurement shall agree on a suitable alternate threshold adjustment formula.

6. The Committee shall recommend to the Commission any modification of, or addition to Annex *Kbis-01.1-7*.

### **Annex *Kbis-01.1-8***

#### **Extended Transparency Commitments**

The provisions of Article *Kbis-03*; Article *Kbis-04*; the first sentence of Article *Kbis-05(1)*; Article *Kbis-06(1)* and (3); Article *Kbis-08(1)*, (2)(b), and (5); Article *Kbis-10(1)* and (2); Article *Kbis-15* and Article *Kbis-16* apply where:

- (a) the entity uses an open tendering process; and
- (b) the procurement is for goods, services and construction services in excess of CDN \$124,000 for Canada and CLP 54,902,025 for Chile, for entities listed in Annex *Kbis-01.1-1* and is otherwise excluded by Annexes *Kbis-01.1-3* (Goods), *Kbis-01.1-4* (Services), and *Kbis-01.1-5* (Construction Services).