

DRAFT: Jan. 11, 2005

Proposed Reciprocity Text for Panama FTA Government Procurement Annex

Section B: Sub-Central Level of Government Entities

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

- (a) for procurement of goods and services: US \$477,000; and
- (b) for procurement of construction services: US \$6,725,000.

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

Schedule of Panama

[List of Panamanian Sub-Central Governmental Units]

Notes of Panama

1. A sub-central governmental unit listed above (a "participating unit") may deny the benefits of this section to a supplier of the United States unless it meets one of the applicable conditions set out below.

a. Procurement of Goods:

- (i) The supplier is offering to supply a good of the United States, as determined under Article 9.2(3) of this Chapter [*Rule of Origin*], and has a principal place of business in a state listed in the Schedule of the United States (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 or states if the production or assembly in the participating state or states accounts for 51 percent or more of the value of the good.

b. Procurement of Services Other Than Construction Services:

- (i) If the supplier is offering to supply a service, other than a construction service, 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 or states. A service, other than a construction service, shall be considered to be substantially performed in a participating state or states if the performance of the service in the participating state or states accounts for 51 percent or more of the value of the service.

c. Procurement of Construction Services:

If the supplier is offering to supply construction services, 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.

2. For purposes of paragraph 1, "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.

3. A participating unit shall allow a supplier to self-certify that it meets the conditions set out in paragraph 1. If the unit considers the certification to be erroneous or unsubstantiated, the unit shall, after consultations with the supplier, permit the supplier to challenge that determination in accordance with Article 9.15 of this Chapter (*Domestic Review Procedures*).

Schedule of the United States

[List of States and Their Procuring Entities]

U.S. Notes

1. A procuring entity of a state listed above (a "participating state") may deny the benefits of this section to a supplier of Panama unless it meets one of the applicable conditions set out below.

a. Procurement of Goods:

- (i) The supplier is offering to supply a good of Panama, as determined under Article 9.2(3) of this Chapter (*Rule of Origin*), and has a principal place of business in a sub-central governmental unit listed in the Schedule of Panama (a "participating unit") or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating unit; or

- (ii) The supplier is offering to supply a good that is substantially produced or assembled in one or more participating units. A good shall be considered to be substantially produced or assembled in a participating unit or units if the production or assembly in the participating unit or units accounts for 51 percent or more of the value of the good

b. Procurement of Services Other Than Construction Services:

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

c. Procurement of Construction Services:

If the supplier is offering to supply construction services, the supplier has a principal place of business in a participating unit or is directly or indirectly owned or controlled by an enterprise with a principal place of business in a participating unit.

2. For purposes of paragraph 1, "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.

3. A participating state shall allow a supplier to self-certify that it meets the conditions set out in paragraph 1. If the 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 9.15 of this Chapter (*Domestic Review Procedures*).