

5. *Does NAFTA Chapter 11 affect municipalities' ability to use P3s for government procurement?*

Private-public partnerships where governments contract for goods or services constitute government procurement. Certain provisions of Chapter 11, i.e., Article 1102 (National Treatment) and Article 1106 (Performance Requirements), do not apply to government procurement. This means that no level of government is required by Chapter 11 to provide foreign investors national treatment in government procurement, nor are they prevented from requesting local preference requirements in the procurement of goods or services through a public-private partnership.

Contracts establishing a public-private partnership normally would specify the operational requirements and standards to be met by the contractor, including provision for termination. NAFTA does not extend to protect investors from mere claims of breach of contract. For greater certainty, municipalities should seek legal advice concerning contracts with NAFTA investors.

It also should be noted that government procurement of goods and services by Canadian provinces and territories, regional governments and municipalities is not covered by or subject to international trade agreements.

Municipal measures would also need to be considered in the context of the *Agreement on Internal Trade (AIT)* and any obligations that might apply to the activities of municipalities. For more information on the AIT and its provisions, please consult: <http://www.ait-aci.ca>

Only the federal government has made specific commitments to national treatment and non-discrimination