

CHAPTER 8

GOVERNMENT PROCUREMENT

ARTICLE 8.1: GENERAL PROVISIONS

1. The Parties recognize that this Chapter will contribute to expand bilateral trading opportunities in each Party's government procurement market.
2. The Parties recognize their shared interest in promoting the effective, reciprocal and progressive opening of government procurement markets. The Parties will endeavor to cooperate bilaterally on procurement matters.

ARTICLE 8.2: SCOPE

1. This Chapter shall apply to any measure of a Party regarding covered procurement.
2. For the purposes of this Chapter, **covered procurement** means a government procurement of goods, services or any combination thereof for governmental purposes:
 - (a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - (b) by any contractual means, including purchase, lease, and rental or hire purchase, with or without an option to buy;
 - (c) for which the value, as estimated in accordance with paragraphs 5 and 6 equals or exceeds the relevant threshold specified by each Party in Annex 8-A at the time of publication of a notice in accordance with Article 8.6;
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage by this Chapter; and subject to the conditions specified in Annex 8-A.
3. This Chapter shall not apply to:
 - (a) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;
 - (b) non-contractual agreements or any form of assistance¹ that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, subsidies, government provision of goods and services to state, regional, or local government entities;

¹ For greater certainty, this Chapter shall not apply to a procurement in furtherance of human feeding programs.

- (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts and related measures;
- (e) procurement conducted:
 - (i) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
 - (ii) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter; and
- (f) procurement for the specific purpose of providing international assistance, including development aid.

4. Where legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons not listed in the Annex 8-A, the provisions of the Article 8. 4 shall equally apply, *mutatis mutandis*.

Valuation of Contracts

5. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;
- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
 - (i) premiums, fees, commissions, and interest; and
 - (ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and
- (c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

6. Where the estimated maximum total value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

ARTICLE 8.3: EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the 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 persons with disabilities, philanthropic institutions, or prison labor.

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

ARTICLE 8.4: GENERAL PRINCIPLES

National Treatment and Non-Discrimination

1. With respect to any measure covered by this Chapter, each Party, including its procuring entities, shall accord to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than that accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the 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. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such

duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Use of Electronic Means

4. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Prohibition of Offsets

5. Subject to the exceptions contained in this Chapter or the annexes pertaining thereto, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a covered procurement.

Rules of Origin

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

Conduct of Procurement

7. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

- (a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
- (b) avoids conflicts of interest; and
- (c) prevents corrupt practices.

ARTICLE 8.5: PUBLICATION OF PROCUREMENT INFORMATION AND MEASURES

Each Party shall promptly publish its procurement laws, regulations, procedures, administrative rulings of general application relating to covered procurements, and any changes or additions to this information, in electronic or paper media that are widely

disseminated and remain accessible to the public, and provide, if so requested by the other Party further information concerning their application.

ARTICLE 8.6: NOTICES

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 8.11, a procuring entity shall publish a notice inviting interested suppliers to submit tenders or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public free of charge for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement in a single point of entry electronic publication that is accessible through the Internet or a comparable network.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact such entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (d) where applicable, the address and any final date for the submission of requests for participation in the procurement; and
- (e) the address and the final date for the submission of tenders.

3. The following information shall be made available through electronic means:

- (a) for recurring contracts, if possible, an estimate of the timing of subsequent notices of intended procurement;
- (b) a description of any options;
- (c) the time-frame for delivery of goods or services or the duration of the contract;
- (d) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements

are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

- (e) where, pursuant to Article 8.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (f) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

4. Each Party shall encourage its procuring entities to publish as early as possible in each Party's fiscal year, a notice regarding their procurement plans for that fiscal year. The notice should, at a minimum, include the subject-matter of the procurement and the planned date of the publication of the notice of the intended procurement according to the legislation of each Party.

ARTICLE 8.7: CONDITIONS FOR PARTICIPATION

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical and financial capacities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall evaluate the financial, commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;
- (b) shall base its evaluation solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;
- (c) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and
- (d) may require prior experience where essential to meet the requirements of the procurement.

3. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;

- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct, acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

ARTICLE 8.8: REGISTRATION AND QUALIFICATION OF SUPPLIERS

Registration Systems and Qualification Procedures

1. Where a Party, including its procuring entities, requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that Party, including its procuring entities, shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and/or qualification procedures.

Selective Tendering

2. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement:

- (a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on such applications; and
- (b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Lists of Suppliers

3. A procuring entity may establish a list of suppliers, provided that the entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. A notice inviting suppliers to apply for inclusion in a list of suppliers, shall include the name and address of that competent or procuring entity and other information necessary to contact the entity and obtain all relevant information and document relating to inclusion in the list. Entities shall make available:

- (a) a description of the goods and services, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of those conditions; and
 - (c) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.
4. A procuring entity shall allow suppliers to apply at any time for inclusion on a list of suppliers and shall include on the list all qualified suppliers within a reasonably short time.
5. Where a supplier that is not included on a list of suppliers submits a request for participation in a procurement based on a list of suppliers and all required documents relating thereto, within the time-period provided for in Article 8.9, a procuring entity shall examine the request if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation, unless, in exceptional cases, due to the complexity of the procurement, that entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

ARTICLE 8.9: TIME PERIODS

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a covered procurement, and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.
2. If a procuring entity that uses selective tendering establishes a final date for the submission of requests for participation, it shall set a reasonable deadline allowing sufficient time for interested suppliers to fulfil the formal requirements for participation in the tender. Under no circumstance shall this time-period be less than 10 days.
3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:
- (a) in the case of open tendering, the notice of intended procurement is published; or
 - (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders whether or not it uses a list of suppliers.
4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice in an electronic medium listed in Annex 8-C, containing the information specified in Article 8.6.4 at least 40 days and not more than 12 months in advance;
 - (b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;
 - (c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable; or
 - (d) a procuring entity procures commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes.
5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:
- (a) the notice of intended procurement is published by electronic means;
 - (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
 - (c) the tenders may be received by electronic means by the procuring entity.
6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

ARTICLE 8.10: INFORMATION ON INTENDED PROCUREMENTS

Tender Documentation

1. A procuring entity shall promptly provide to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.
2. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
 - (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
 - (b) any conditions for participation of suppliers, including any financial guarantees, information, and documents that suppliers are required to submit;

- (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where a procuring entity may hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (e) where there will be a public opening of tenders, the date, time, and place for the opening of tenders, where appropriate, the persons authorized to be present;
- (f) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and
- (g) any dates for the delivery of goods or the supply of services.

3. A procuring entity shall promptly reply to any reasonable request for relevant information made by any interested or participating supplier in the procurement, provided that such information does not give that supplier an advantage over other suppliers and that the request was presented within the corresponding time periods.

4. If the legislation of a Party conducting a tendering procedure allows tenders to be submitted in several languages, one of those languages shall be English.

Technical Specifications

5. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade between the Parties.

6. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

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

7. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

8. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of

describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

9. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

10. For greater certainty, a procuring entity may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Modifications

11. Where, in the course of a procurement, a procuring entity modifies the criteria or technical requirements set out in a notice of intended procurement or tender documentation provided to participating suppliers or amends or reissues a notice or tender documentation according to the legislation of each Party, it shall transmit in writing all such modifications or amended or reissued notice or tender documentation:

- (a) to all the suppliers that are participating at the time of the modification, amendment, or reissuance if the identities of such suppliers are known, and, in all other cases, in the same manner that the original information was transmitted; and
- (b) in adequate time to allow such suppliers to modify and resubmit amended tenders, as appropriate.

ARTICLE 8.11: LIMITED TENDERING

1. Provided that it does not use this provision for the purposes of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering under the following circumstances:

- (a) provided that the requirements of the tender documentation are not substantially modified where:
 - (i) no tenders were submitted or no suppliers requested participation;
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) no suppliers satisfied the conditions for participation; or
 - (iv) the tenders submitted have been collusive;

- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
 - (i) the requirement is for a work of art;
 - (ii) the protection of intellectual property rights or other exclusive rights; or
 - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where:
 - (i) a change of supplier for such additional goods or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
 - (ii) such separation would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring 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. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) where a contract is 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, in particular relating to the publication of a notice of intended procurement; and
 - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;

- (h) where additional construction services that were not included in the initial contract, but fell under the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein; and
 - (i) in the cases established by each Party in Annex 8-A.
- 2. For each contract awarded under paragraph 1, a procuring entity shall maintain records or prepare a written report that includes:
 - (a) the name of the procuring entity;
 - (b) the value and kind of goods or services procured; and
 - (c) a statement indicating the circumstances and conditions described in paragraph 1 that justify the use of limited tendering.

ARTICLE 8.12: ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity may provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

ARTICLE 8.13: NEGOTIATION

- 1. A Party may provide for its procuring entities to conduct negotiations, where:
 - (a) the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 8.6; or
 - (b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
- 2. A procuring entity shall:

- (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
- (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 8.14: TREATMENT OF TENDERS AND AWARDING OF CONTRACTS

Receipt and Opening of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity shall treat all tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.
3. According with the legislation of a Party, a procuring entity shall receive a tender after the time specified for receiving tenders if the delay is due solely to an event unforeseen by the procuring entity.
4. Where a procuring entity provides suppliers with opportunities to correct errors of form, the entity shall provide the same opportunities to all participating suppliers.

Awarding of Contracts

5. A procuring entity shall require that in order to be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
6. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that it has determined to be capable of fulfilling the term of the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
 - (a) the most advantageous tender; or
 - (b) where price is the sole criterion, the lowest price.
7. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
8. A procuring entity may not cancel a covered procurement, or terminate or modify awarded contracts in a manner that circumvents this Chapter.

ARTICLE 8.15: POST-AWARD INFORMATION

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. A procuring entity shall, upon request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

2. After the award of each contract covered by this Chapter, a procuring entity shall as early as possible, according to the time limit established in each Party's legislation publish a notice in the appropriate paper or electronic medium listed in Annex 8-C. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name of the successful supplier;
- (d) the value of the successful tender;
- (e) the date of award or the contract date; and
- (f) the type of procurement method used and in cases where limited tendering was used in accordance with Article 8.11, a description of the circumstances justifying the use of limited tendering, which may be made available in the corresponding files or electronic media.

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) records and reports of tendering procedures and contract awards relating to covered procurement, including the records or reports required under Article 8.11; and
- (b) where the procuring entity conducts procurement entirely by electronic means, data that ensure the appropriate traceability of the conduct of covered procurement.

ARTICLE 8.16: DOMESTIC REVIEW PROCEDURES

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may present a challenge with respect to the obligations of a Party and its entities under this Chapter that may arise in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. 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 challenge became known or reasonably should have become known to the supplier.
3. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that a supplier of a Party submits, in accordance with the Party's law, relating to a covered procurement.
4. Where a body other than an authority referred to in paragraph 3 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.
5. A review body that is not a court shall either be subject to judicial review or have procedures that provide that:
 - (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
 - (b) the participants to the proceedings (hereinafter referred to as the "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
 - (c) the participants shall have the right to be represented and accompanied;
 - (d) the participants shall have access to all proceedings;
 - (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
 - (f) decisions or recommendations relating to supplier challenges shall be provided to interested supplier, within a reasonable time, in writing, with an explanation of the basis for each decision or recommendation.
6. Each Party shall adopt or maintain procedures that provide for:
 - (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The 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. Just cause for not acting shall be provided in writing; and
 - (b) corrective action or compensation for the loss or damages suffered, in accordance with each Party's legislation, in cases where a review body has determined that there has been a breach or a failure as set out in paragraph 1.

ARTICLE 8.17: MICRO, SMALL, AND MEDIUM ENTERPRISES' PARTICIPATION

1. The Parties recognize the importance of the participation of micro, small, and medium-sized enterprises (hereinafter referred to as the "MSMEs") in government procurement and of business alliances between suppliers of each Party, and in particular of MSMEs, including the joint participation in tendering procedures.
2. The Parties shall be able to adopt, develop, maintain or implement measures to promote opportunities on procurement policies for the development of its MSMEs; including preferential rules.

ARTICLE 8.18: COOPERATION AND TECHNICAL ASSISTANCE ON GOVERNMENT PROCUREMENT

1. The Parties agree that it is in their common interest to promote cooperation and technical assistance initiatives on issues related to government procurement.
2. The Parties shall endeavour to cooperate in matters such as:
 - (a) exchange of experiences and information, such as regulatory frameworks and best practices in the fields of sustainable procurement and innovation procurement;
 - (b) capacity building and technical assistance to suppliers with respect to access to the government procurement market;
 - (c) knowledge and technology transfer for procurement entities in order to improve institutional capabilities; and
 - (d) improving processes for electronic procurement.

ARTICLE 8.19: RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 8-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of receipt of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.
2. A Party may otherwise modify its coverage under this Chapter provided that it:
 - (a) notifies the other Party in writing and simultaneously offers in the notification appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification where necessary; and
 - (b) the other Party shall not object in writing within 30 days of receipt of the notification.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party shall object in writing within 30 days of receipt of the notification and may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. Where the Parties concerned have agreed on rectification, minor amendment, adjustment or proposed modification, or where no objection has been made within 30 days of the receipt of the notification, the modifications shall be made in conformity with the provisions of paragraph 5.

5. The Joint Committee of the Agreement shall modify the relevant section of Annex 8-A to reflect any agreed rectification, minor amendment or modification.

ARTICLE 8.20: COMMITTEE ON GOVERNMENT PROCUREMENT

1. The Parties hereby establish a Committee on Government Procurement (hereinafter referred to as the "Committee") comprising representatives of each Party.

2. The Committee shall:

- (a) evaluate the implementation of this Chapter, including its application, and recommend to the Parties the appropriate activities;
- (b) coordinate the cooperation activities;
- (c) evaluate and follow up the activities related to cooperation that the Parties present;
- (d) work as an enquiry point for the purposes of the notifications under Article 8.19; and
- (e) carry out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. The Committee shall meet upon request of a Party or as mutually agreed by the Parties.

4. Meetings may be conducted in person or by any technological means available to the Parties.

ARTICLE 8.21: DEFINITIONS

For the purposes of this Chapter:

conditions for participation means registration, qualification, or other pre-requisites for participation in a procurement;

construction services means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification;

electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders²;

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

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

list of suppliers means a list that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

measure means any law, regulation, procedure, administrative guidance, practice or act of a procuring entity relating to a covered procurement;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offset means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

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

person means a natural person or a juridical person;

procuring entity means an entity covered under a Party's Annex 8-A;

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

selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

services includes construction services, unless otherwise specified;

² The definition of electronic auction shall not apply between Korea and Panama, until it is reviewed and agreed in the Committee.

standard means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

supplier means a person or group of persons that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

- (a) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- (b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.