

CHAPTER FOURTEEN GOVERNMENT PROCUREMENT

ARTICLE 14.1: SCOPE OF APPLICATION

1. This Chapter shall apply to any measure of a Party regarding covered procurement.
2. For purposes of this Chapter, **covered procurement** means a government procurement of goods, services, or any combination thereof:
 - (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; rental or hire purchase, with or without an option to buy; and build-operate-transfer contracts and public works concessions contracts;
 - (c) for which the value, as estimated in accordance with paragraphs 5 and 6, equals or exceeds the relevant threshold specified in Annex 14-A at the time of publication of a notice in accordance with Article 14.5;
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage by this Chapter or Annex 14-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 assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and subsidies;
 - (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. For greater certainty, this Chapter shall not apply to procurement of banking, financial, or specialized services related to the following activities:
 - (i) the incurring of public indebtedness; or
 - (ii) public debt management;
 - (d) public employment contracts and related measures;

- (e) procurement conducted 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 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;
- (f) procurement for the direct purpose of providing foreign assistance; and
- (g) purchases for a procuring entity from another procuring entity.

4. Where a procuring entity, in the context of covered procurement, requires persons not listed in Annex 14-A to procure in accordance with particular requirements, Article 14.3 shall apply *mutatis mutandis* to such requirements.

Valuation

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

- (a) neither divide a procurement into separate procurements nor select or 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, interest and other revenue streams that may be provided for in the procurements; 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 on the maximum total 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 14.2: 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 14.3: 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 immediately and unconditionally 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 favorable 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.

Use of Electronic Means

3. 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.

Measures Not Specific to Procurement

4. 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.

Prohibition of Offsets

5. With regard to covered procurement, 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 purposes of covered procurement, each Party shall apply to covered procurement of goods or services imported from or supplied from the other Party the rules of origin that it applies in the normal course of trade to those 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 14.4: INFORMATION ON THE PROCUREMENT SYSTEM

1. Each Party shall promptly publish its procurement laws, regulations, procedures, policy guidelines, judicial decisions, and administrative rulings of general application, relating to covered procurement, and any change or addition thereof, in an electronic or paper medium that is widely disseminated and remains accessible to the public.

2. Each Party shall promptly reply to any request from the other Party for an explanation of any matter relating to its procurement laws, regulations, procedures, policy guidelines, judicial decisions, and administrative rulings of general application.

ARTICLE 14.5: PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 14.10, 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 by electronic means in a single point of entry 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 the procuring 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 time-frame for delivery of goods or services or the duration of the contract;
- (d) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (e) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (f) the address and the final date for the submission of tenders;
- (g) 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;
- (h) where, pursuant to Article 14.7, 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
- (i) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish, prior to or as early as possible in each 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.

ARTICLE 14.6: 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 abilities 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 or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

ARTICLE 14.7: 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 with time to prepare and submit applications and to enable 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, the tender documentation a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Multi-Use Lists

3. A procuring entity may establish a multi-use list, provided that the entity annually publishes or otherwise makes available continuously in an electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

- (a) a description of the goods or services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (d) 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; and

- (e) an indication that the list may be used for procurement covered by this Chapter.

4. A procuring entity shall allow suppliers to apply for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

ARTICLE 14.8: TIME-PERIOD

1. A procuring entity shall provide suppliers with sufficient time to submit applications to participate in a procurement, and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not 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 multi-use list.

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 Section K of Annex 14-A, containing the information specified in Article 14.5.3 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; or
- (c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.

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 can 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.

7. Notwithstanding any other time-period in this Article, where a procuring entity purchases commercial goods or services, it may reduce the time-period for tendering set out in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period set out in paragraph 3 to not less than 10 days.

8. Where a procuring entity in Annex 14-A has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

ARTICLE 14.9: INFORMATION ON INTENDED PROCUREMENT

Tender Documentation

1. A procuring entity shall promptly provide, upon request, 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 the procuring entity will 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 and, 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, such as whether on paper or by 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 by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.
4. If, in tendering procedures, a procuring entity 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 trade between the Parties.
6. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
- (a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - (b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the entity's program requirements or would impose a greater burden than the use of a recognized national standard.
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, prior to the award of a contract, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all the suppliers that are participating at the time of the modification, amendment, or re-issuance, 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 re-submit amended tenders, as appropriate.

ARTICLE 14.10: LIMITED TENDERING

1. Provided that it does not use this provision for the purpose 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 and may choose not to apply Articles 14.5, 14.6, 14.7, 14.8, 14.9.1 through 14.9.4, 14.11, and 14.12 only under any of 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 patents, copyrights, 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 a change of supplier for such additional goods or services:
 - (i) 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) 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. When such a contract has been fulfilled, subsequent procurements of goods or services shall be subject to a procedure consistent with this Chapter;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;
- (h) 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; or
- (i) where additional construction services, which were not included in the initial contract but were within the objectives of the original tender documentation have, due to unforeseen circumstances, become necessary to complete the construction services described therein. In such cases, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract.

2. For each contract awarded under paragraph 1, a procuring entity shall 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 justified the use of limited tendering.

ARTICLE 14.11: ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall 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 14.12: 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. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
4. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity 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 the entity has determined to be capable of fulfilling the terms of the contract and that, 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 procurement, or terminate or modify awarded contracts in a manner that circumvents this Chapter.

ARTICLE 14.13: POST-AWARD INFORMATION

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions. 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. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section K of Annex 14-A. 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 and address 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 14.10, a description of the circumstances

justifying the use of limited tendering.

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

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 14.10; and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

ARTICLE 14.14: 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 challenge:

- (a) a breach of the Chapter; or
- (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the laws of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

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 challenge became known or reasonably should have become known to the supplier.

4. 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 timely, effective, transparent, and non-discriminatory manner, a challenge that a supplier of a Party submits, in accordance with the Party's law relating to a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 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.

6. Each Party shall ensure that a review body that is not a court shall have its decision 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 “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 by the review body relating to supplier challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. 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) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 14.15: RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may make a rectification of a purely formal nature to its coverage under this Chapter, or a minor amendment to its Schedules in Annex 14-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the 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:

- (a) it notifies the other Party in writing and simultaneously offers acceptable 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 does not object in writing within 30 days of the 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 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.

ARTICLE 14.16: MICRO, SMALL, AND MEDIUM ENTERPRISES' PARTICIPATION

1. The Parties recognize the importance of the participation of micro, small, and medium-sized enterprises (SMEs) in government procurement.

2. The Parties also recognize the importance of business alliances between suppliers of each Party, and in particular of SMEs, including the joint participation in tendering procedures.

3. The Parties shall endeavor to work jointly towards exchanging information and facilitating access of SMEs to government procurement procedures, methods, and contracting requirements, focusing on their special needs.

ARTICLE 14.17: COOPERATION

1. The Parties recognize the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for SMEs.

2. The Parties shall endeavor to cooperate in matters such as:

- (a) exchange of experiences and information, such as regulatory frameworks, best practices, and statistics;
- (b) development and use of electronic communications in government procurement systems;
- (c) capacity building and technical assistance to suppliers with respect to access to the government procurement market; and
- (d) institutional strengthening for the fulfillment of this Chapter, including training of government personnel.

ARTICLE 14.18: 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; and
 - (d) consider further negotiations aimed at broadening the coverage of this Chapter.
3. The Committee shall meet upon request of a Party or as mutually agreed by the Parties. The meetings may also be held, as necessary, via telephone, video conference, or other means as mutually agreed by the Parties.

ARTICLE 14.19: FURTHER NEGOTIATIONS

In a case that a Party offers, after the entry into force of this Agreement, to a non-Party additional advantages with regard to its government procurement market access coverage agreed under this Chapter, it shall agree, upon request of the other Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

ARTICLE 14.20: DEFINITIONS

For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier’s execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

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

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 tenders;

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;

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

multi-use list means a list of suppliers 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;

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 14-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;

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 labeling 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; 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 labeling requirements, as they apply to a good or service.