

CHAPTER 6

GOVERNMENT PROCUREMENT

ARTICLE 6.1

Scope and Coverage

1. This Chapter applies to any measure of a Party regarding covered procurement. For the purposes of this Chapter, “covered procurement” means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
 - (i) as specified in each Party's Appendices to Annex XVII (Government Procurement); and
 - (ii) 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 public works concessions;
- (c) for which the value, as estimated in accordance with the rules specified in Appendix 9 to Annex XVII (Government Procurement) equals or exceeds the relevant threshold specified in Appendices 1 to 3 to Annex XVII (Government Procurement) at the time of publication of a notice in accordance with Article 6.10 (Notices);
- (d) by a procuring entity; and
- (e) which is not otherwise excluded pursuant to paragraph 2 or Annex XVII (Government Procurement).

2. This Chapter shall not apply to:

- (a) acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
- (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- (c) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or

services related to sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;¹³

- (d) public employment contracts and related measures;
 - (e) procurement conducted:
 - (i) for the specific purpose of providing international assistance, including development aid;
 - (ii) under a particular procedure or condition of an agreement relating to:
 - (aa) the stationing of troops; or
 - (bb) the joint implementation of a project by the signatory countries to such agreement;
 - (iii) under a particular procedure or condition:
 - (aa) of an international organisation; or
 - (bb) funded by international grants, loans or other assistance;
- where the applicable procedure or condition would be inconsistent with this Chapter.

ARTICLE 6.2

Definitions

For the purposes of this Chapter:

- (a) “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;
- (b) “construction service” means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional. Central Product Classification (CPC);
- (c) “days” means calendar days;

¹³ It is understood that this Chapter shall not apply to procurement of banking, financial, or specialised services related to the following activities:

- (a) the incurring of public indebtedness; or
- (b) public debt management.

- (d) “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;
- (e) “in writing or written” means any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information;
- (f) “limited tendering” means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (g) “measure” means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (h) “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;
- (i) “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;
- (j) “notice of planned procurement” means a notice published by a procuring entity regarding its future procurement plans;
- (k) “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 actions or requirements;
- (l) “open tendering” means a procurement method where all interested suppliers may submit a tender;
- (m) “person” means a natural person or a juridical person;
- (n) “procuring entity” means an entity covered under Appendices 1 to 3 to Annex XVII (Government Procurement);
- (o) “qualified supplier” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- (p) “selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (q) “services” includes construction services, unless otherwise specified;
- (r) “standard” means a document approved by a recognised 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;

- (s) “supplier” means a person or group of persons that provides or could provide goods or services;
- (t) “technical specification” means a tendering requirement that:
 - (i) 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
 - (ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.
- (u) “public works concessions” means a contract of the same type as construction services contracts, except for the fact that the remuneration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with a payment; and
- (v) “conditions for participation” means any registration, qualification or other pre-requisites for participation in a procurement.

ARTICLE 6.3

Security and General Exceptions

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

2. 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 imposing maintaining or enforcing 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 labour.

3. Subparagraph 2(b) includes environmental measures such as measures for the conservation of natural resources, necessary to protect human, animal, or plant life or health.

ARTICLE 6.4

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of another Party and to the suppliers of another Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, no Party, including its procuring entities, shall:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

ARTICLE 6.5

Use of Electronic Means

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. 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.

ARTICLE 6.6

Conduct of Procurement

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 6.7

Rules of Origin

For the purposes of covered procurement, a Party may not apply rules of origin to goods or services imported from or supplied by another Party which are different from the rules of origin the Party applies at the same time in the normal course of trade to imports and supplies of the same goods and services from the same Party.

ARTICLE 6.8

Offsets

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

ARTICLE 6.9

Information on the Procurement System

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public.
2. Each Party shall, on request, provide to another Party an explanation relating to such information.

ARTICLE 6.10

Notices

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances referred to in Article 6.19 (Limited Tendering). The notice shall be published in the electronic or paper medium listed in Appendix 7 to Annex XVII (Government Procurement). Such medium shall be widely disseminated and the notice shall remain accessible, at least, until expiration of the time period indicated in the notice. The notice shall:

- (a) for procuring entities covered under Appendix 1 to Annex XVII (Government Procurement), be accessible by electronic means free of charge through a single point of access; and
- (b) for procuring entities covered under Appendices 2 or 3 to Annex XVII (Government Procurement), where accessibly by electronic means, be provided, at least through links in a gateway electronic site that is accessible free of charge.

2. Parties, including such procuring entities covered under Appendices 2 or 3 to Annex XVII (Government Procurement), are encouraged to publish their notices by electronic means free of charge through a single point of access.

3. Except as otherwise provided in this Chapter, each notice of intended procurement shall include the information specified in Appendix 10 to Annex XVII (Government Procurement).

4. Each Party shall encourage its procuring entities to publish in the medium listed in Appendix 7 to Annex XVII (Government Procurement), as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice of planned procurement should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Appendices 2 or 3 to Annex XVII (Government Procurement) may use a notice of planned procurement as a notice of intended procurement, provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 6.11

Conditions for Participation

1. In establishing the conditions for participation and assessing whether a supplier satisfies such conditions, a Party, including its procuring entities:

- (a) shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement;
- (b) shall evaluate the financial capacity and the 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;
- (c) shall base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;
- (d) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and
- (e) may require relevant prior experience where essential to meet the requirements of the procurement.

2. 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 upon the commercial integrity of the supplier; or
- (f) failure to pay taxes.

ARTICLE 6.12

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.

3. Where a procuring entity intends to use selective tendering, it shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

ARTICLE 6.13

Information on Procuring Entity Decisions

1. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of its decision with respect to the request.

2. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, that entity shall promptly inform the supplier and, upon request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

ARTICLE 6.14

Multi-Use Lists

1. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually in the appropriate medium listed in Appendix 7 to Annex XVII (Government Procurement), and where published by electronic means, made available continuously in the electronic medium listed in Appendix 7 to Annex XVII (Government Procurement). Where a multi-use list will be valid for three years or less, a procuring entity may publish the notice only once, at the beginning of the period of validity of the list.

2. The notice provided for in paragraph 1 shall include the information specified in paragraph 3 of Appendix 10 to Annex XVII (Government Procurement).

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

4. A procuring entity may use a notice inviting suppliers to apply for inclusion in a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 1 and includes the information required under paragraph 3 of Appendix 10 to Annex XVII (Government Procurement) and as much of the information required by paragraph 1 of Appendix 10 to Annex XVII (Government Procurement) as is available, and contains a statement that it constitutes a notice of intended procurement;

- (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all relevant information required under paragraph 1 of Appendix 10 to Annex XVII (Government Procurement) to the extent that such information is available; and
- (c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 3 may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for participation.

ARTICLE 6.15

Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided for in the notice of intended procurement, such documentation shall include a complete description of the information specified in Appendix 10 to Annex XVII (Government Procurement).
2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the Parties. The procuring entities shall also 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.

ARTICLE 6.16

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification nor prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
 - (a) set out 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 or otherwise, on national technical regulations, recognised national standards or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider

tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.

4. A procuring entity shall not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or 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.

5. 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.

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

ARTICLE 6.17

Modifications of the Tender Documentation and Technical Specifications

Where, prior to the award of a contract, a procuring entity modifies the criteria or 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, amended or re-issued notice or tender documentation:

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

ARTICLE 6.18

Time-Periods

A procuring entity shall, consistent with its own reasonable needs, provide suppliers sufficient time to prepare and submit requests for participation and respond to tenders, taking into account in particular the nature and complexity of the procurement. Each Party shall apply time periods according to the conditions specified in Appendix 8 to Annex XVII (Government Procurement). Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

ARTICLE 6.19

Limited Tendering

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 another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 6.10 (Notices), 6.11 (Conditions for Participation), 6.12 (Registration Systems and Qualification Procedures), 6.14 (Multi-Use Lists), 6.15 (Tender Documentation), 6.18 (Time-Periods), 6.20 (Electronic Auctions), 6.21 (Negotiations), 6.22 (Treatment of Tenders) and 6.23 (Awarding of Contracts) only under the following circumstances:

- (a) where:
 - (i) no tenders were submitted, or no supplier 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

provided that the requirements of the tender documentation are not substantially modified;

- (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 as in the case of the procurement of *intuitu personae* services;
- (c) for additional deliveries by the original supplier of goods and services that were not included in the initial procurement where a change of supplier for such additional goods and 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 to the procuring entity;

- (d) in so far as 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 an open or selective tendering procedure;
- (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) 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; or
- (h) where a contract is awarded to a winner of a design contest provided that:
 - (i) the contest has been organised 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.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 6.20

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 6.21

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations where:
 - (a) the entity has indicated such intent in the notice of intended procurement pursuant to Article 6.10 (Notices); 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 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 or tender documentation; and
 - (b) if applicable, where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 6.22

Treatment 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 and the confidentiality of tenders.
2. 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.
3. 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 entity shall provide the same opportunity to all participating suppliers.

ARTICLE 6.23

Awarding of Contracts

1. To be considered for 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.
2. 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 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.
3. 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.
4. A procuring entity shall not use option clauses, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations of this Chapter.

ARTICLE 6.24

Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on request, shall do so in writing. Subject to Article 6.25 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.
2. No later than 72 days from the award of each contract, a procuring entity shall publish in a paper or electronic medium listed in Appendix 7 to Annex XVII (Government Procurement), a notice that includes at least the following information about the contract:
 - (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 or the highest and lowest offers taken into account in the award of the contract;
 - (e) the date of award; and

- (f) the type of procurement method used, and in cases where limited tendering was used pursuant to Article 6.19 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

3. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time.

4. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports provided for in Article 6.19 (Limited Tendering), and the data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

ARTICLE 6.25

Disclosure of Information

1. Upon request of another Party, a Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender.

2. Where the release of such information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide information to a particular supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where disclosure:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

ARTICLE 6.26

Domestic Review Procedures for Supplier Challenges

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure according to the due process principle through which a supplier may challenge:

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

arising 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. 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 shall encourage that entity and the supplier to seek resolution of the complaint through consultations.

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 ten 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 establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of 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 either have its decisions 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 ("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) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include 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 the 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 of this Chapter 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 6.27

Modifications and Rectifications to Coverage

1. Where a Party modifies its coverage of procurement under this Chapter, that Party shall:
- (a) notify the other Parties in writing; and
 - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing prior to the modification.
2. Notwithstanding subparagraph 1(b), a Party does not need to provide compensatory adjustments where:
- (a) the modification in question is a minor amendment or rectification of a purely formal nature; or
 - (b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.
3. If a Party does not agree that:
- (a) the adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

- (b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or
- (c) the proposed modification covers an entity over which another Party has effectively eliminated its control or influence under subparagraph 2(b);

that Party must object in writing within 45 days following the date of circulation of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification.

4. If a Party objects to the proposed modification under subparagraph 2(b), that Party may request further information or explanation 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 6.28

Further Negotiations

In case a Party offers in the future to a non-party additional benefits with regard to its respective government procurement market access coverage agreed under this Chapter, it shall agree, upon request of another Party, to enter into negotiations with a view to extending coverage on a reciprocal and mutually beneficial basis.