

CHAPTER 7
GOVERNMENT PROCUREMENT

ARTICLE 7.1

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 specific commitments set out in Annex XIII (Covered Entities); 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;
- (c) for which the value, as estimated in accordance with paragraphs 3 and 4, as appropriate, equals or exceeds the relevant threshold specified in Appendices 1 to 3 to Annex XIII (Covered Entities);
- (d) that is conducted by a procuring entity; and
- (e) subject to the conditions specified in Annex XIII (Covered Entities) and XIV (General Notes).

2. This Chapter does not apply to:

- (a) non-contractual agreements or any form of assistance that a Party, including a government enterprise, provides, including co-operative agreements, grants, loans, subsidies, equity infusions, guarantees, and fiscal incentives;

- (b) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt¹, including loans and government bonds, notes and other securities;
- (c) procurement funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;
- (d) contracts awarded pursuant to:
 - (i) an international agreement and intended for the joint implementation or exploitation of a project by the contracting parties; or
 - (ii) an international agreement relating to the stationing of troops;
- (e) public employment contracts and related employment measures; or
- (f) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon.

3. 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 use a particular method for estimating the value of a procurement for the purpose of avoiding the application of this Chapter;
- (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum 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.

¹

For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialised services related to the incurring of public indebtedness or public debt management.

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

5. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures or contractual means, provided that they are consistent with this Chapter.

ARTICLE 7.2

Exceptions to the Chapter

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 defense 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 or a disguised restriction to 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 labour.

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

ARTICLE 7.3

Definitions

For the purposes of this Chapter:

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

- (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) “in writing or written” means any worded, numbered expression, or other symbols that can be read, reproduced and later communicated. It may include, electronically transmitted and stored information;
- (d) “measure” means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (e) “procurement” means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;
- (f) “procuring entity” means an entity covered under Appendices 1 to 3 to Annex XIII (Covered Entities);
- (g) “qualified supplier” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- (h) “services” including construction services, unless otherwise specified;
- (i) “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 goods, services, processes, or production methods;
- (j) “supplier” means a person or group of persons that provides or could provide goods or services to a procuring entity; and
- (k) “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 goods or services.

ARTICLE 7.4

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 any other 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, a Party, including its procuring entities, shall not:
 - (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
 - (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.
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.

ARTICLE 7.5

Information Technology

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 inter-operable 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 7.6

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 as specified in Articles 7.18 (Tendering Procedures) to 7.20 (Limited Tendering);
- (b) avoids conflicts of interest; and
- (c) prevents corrupt practices.

ARTICLE 7.7

Rules of Origin

Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

ARTICLE 7.8

Offsets

1. 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 procurement.

2. For the purposes of this Chapter, “offsets” 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.

ARTICLE 7.9

Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in the appropriate publications referred to in Appendix 2 to Annex XIV (General Notes), including officially designated electronic media.

2. Each Party shall, on request, provide to another Party an explanation relating to such information.

ARTICLE 7.10

Publication of Notices

1. For each covered procurement, a procuring entity shall publish a notice inviting suppliers to submit tenders, or where appropriate, applications for participation for that procurement (hereinafter referred to as “the notice of intended procurement”), except in the circumstances referred to in paragraph 2 of Article 7.20 (Limited Tendering). The notice shall be published in the electronic or paper media listed in Appendix 2 to Annex XIV (General Notes), and each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

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

- (a) a description of the intended procurement;
- (b) the procurement method;
- (c) any conditions that suppliers must fulfil to participate in the procurement;
- (d) the name of the entity issuing the notice;
- (e) the address and contact where suppliers may obtain all documents relating to the procurement;

- (f) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (g) the address and the final date for the submission of tenders;
- (h) the dates for delivery of the goods or services to be procured or the duration of the contract; and
- (i) an indication that the procurement is covered by this Chapter.

3. Procuring entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Appendix 2 to Annex XIV (General Notes).

4. Each Party shall encourage its procuring entities to publish in an electronic medium listed in Appendix 2 to Annex XIV (General Notes), as early as possible in the fiscal year, information regarding the entities' future procurement plans. Such notices should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

ARTICLE 7.11

Conditions for Participation

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

- (a) shall limit such conditions 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 and evaluate those capacities and abilities 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 determination solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;
- (c) may 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 the given Party;

- (d) may require relevant prior experience where essential to meet the requirements of the procurement; and
 - (e) allow all domestic suppliers and suppliers of another Party that satisfy the conditions for participation to be recognised as qualified suppliers and to participate in 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 7.12

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. Procuring entities shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.
3. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognise a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation.

ARTICLE 7.13

Multi-Use Lists

1. A procuring entity may establish or maintain a list of suppliers that satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once (hereinafter referred to as “the multi-use list”), provided that a notice inviting interested suppliers to apply for inclusion in the list is published in the appropriate medium listed in Appendix 2 to Annex XIV (General Notes).

2. The notice provided for in paragraph 1 shall include:

- (a) a description of the goods or services, or categories thereof, for which the multi-use list may be used;
- (b) any deadlines for submission of applications for inclusion in the list;
- (c) 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 the conditions;
- (d) the name and address of the procuring entity and any other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (e) 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
- (f) an indication that the list may be used for procurement covered by this Chapter.

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

ARTICLE 7.14

Tender Documentation

1. A procuring entity shall provide 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 pursuant to Article 7.10 (Publication of Notices), 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 a list of information and documents that suppliers are required to submit in connection therewith;
- (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 conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the receipt of information by electronic means;
- (e) where the procuring entity will hold an electronic auction pursuant to Article 7.21 (Electronic Auctions), the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time, and place for the opening and, where appropriate, the persons authorised to be present;
- (g) 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
- (h) any dates for the delivery of goods or the supply of services or the duration of the contract.

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.

ARTICLE 7.15

Technical Specifications

1. 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 among the Parties.

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

- (a) establish 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. A procuring entity may 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, words such as “or equivalent” are also included in the tender documentation.

4. 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.

5. For greater certainty, the Parties understand that 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 7.16

Modifications of the Tender Documentation and Technical Specifications

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 re-issues 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 suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information was transmitted; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 7.17

Time Limits

A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement, and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Each Party shall apply time limits according to the conditions specified in Appendix 3 to Annex XIV (General Notes).

ARTICLE 7.18

Tendering Procedures

1. Procuring entities shall award their public contracts by open, selective or limited tendering procedures according to their national legislation in compliance with this Chapter and in a non-discriminatory manner.
2. For the purposes of this Chapter:
 - (a) “open tendering” means a procurement method whereby all interested suppliers may submit a tender. The Parties understand that open tendering procedures include modalities such as framework agreement and reverse auction according to their respective legislation;

- (b) “selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender; and
- (c) “limited tendering” means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice.

ARTICLE 7.19

Selective Tendering

1. Where a procuring entity intends to use selective tendering, the entity shall:
 - (a) include in the notice of intended procurement at least the information specified in subparagraphs 2 (a), (b), (c), (d), (e), (f) and (i) of Article 7.10 (Publication of Notices) and invite suppliers to submit a request for participation; and
 - (b) provide, by the commencement of the time-period for tendering, at least the information in subparagraphs 2 (g) and (h) of Article 7.10 (Publication of Notices) to the qualified suppliers that it notifies as specified in paragraph 2 of Appendix 3 to Annex XIV (General Notes).
2. A procuring entity shall recognise as qualified suppliers such domestic suppliers and suppliers of another Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, procuring entities shall ensure that those documents are made available at the same time to all selected qualified suppliers.
4. Procuring entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions set out in Article 7.10 (Publication of Notices).

ARTICLE 7.20

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 another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 7.10 (Publication of Notices), 7.11 (Conditions for Participation), 7.14 (Tender Documentation), 7.15 (Technical Specifications), 7.16 (Modifications of the Tender Documentation and Technical Specifications), 7.17 (Time Limits), 7.21 (Electronic Auctions), 7.22 (Negotiations), 7.23 (Opening of Tenders) and 7.24 (Contract Awards) only 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 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;
- (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 inter-changeability or inter-operability 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 cannot be obtained in time using an open or selective tendering procedure;
- (e) for purchases made on a commodity market;
- (f) where a procuring entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
- (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, public auction 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 pursuant to Article 7.10 (Publication of Notices); 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 7.21

Electronic Auctions

1. 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.
2. For the purposes of this Chapter, “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.

ARTICLE 7.22

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations:
 - (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement pursuant to Article 7.10 (Publication of Notices); or
 - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Procuring entities shall not, in the course of negotiations, discriminate between participating suppliers.
3. An 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 notices 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 7.23

Opening of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. It also shall treat tenders in confidence until at least the opening of the tenders.

2. 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 7.24

Contract Awards

1. A procuring entity shall require that, in order to be considered for an award, a tender shall be submitted:

- (a) in writing and shall, at the time of opening, comply with the essential requirements specified in the notices and tender documentation; and
- (b) by a supplier that satisfies any 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 the entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation, or 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 can comply with the conditions of participation and is capable of fulfilling the terms of the contract.

4. A procuring entity may not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

ARTICLE 7.25

Transparency in Procurement Information

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions and, on request, shall do so in writing. Subject to Article 7.26 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons for not selecting that supplier's tender and the relative advantages of the successful supplier's tender.

2. No later than 72 days after an award, a procuring entity shall publish in a paper or electronic medium listed in Annex XIV (General Notes), a notice that includes at least the following information about the contract:

- (a) name and address of the procuring entity;
- (b) description of the goods or services procured;
- (c) date of award;
- (d) name and address of the successful supplier;
- (e) contract value; and
- (f) procurement method used and, in cases where a procedure has been used pursuant to Article 7.20 (Limited Tendering), a description of the circumstances justifying the use of such procedure.

3. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurement, including the reports provided for in paragraph 2 of Article 7.20 (Limited Tendering), and shall retain such reports and records for a period of at least three years after the award of a contract.

ARTICLE 7.26

Disclosure of Information

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

2. No Party, procuring entity or review authority may disclose information that the person providing it has designated as confidential in accordance with domestic law, except with the authorisation of such person.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may 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 release:

- (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 7.27

Domestic Review Procedures for Supplier Challenges

1. In the event of a complaint by a supplier of a Party regarding an alleged breach of this Chapter in the context of covered procurement, each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.

2. 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 alleged breaches of this Chapter arising in the context of covered procurements in which the supplier has, or has had, an interest.

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 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, and to make appropriate findings and recommendations.

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. 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 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 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 of this Chapter or, where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure by a procuring entity to comply with a Party's measures implementing this Chapter, 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 7.28

Modifications and Rectifications 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 XIII (Covered Entities), provided that it notifies the other Parties in writing and no other Party objects in writing within 30 days following the date of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Parties.
2. A Party may otherwise modify its coverage under this Chapter provided that:
 - (a) it notifies the other Parties in writing and offers at the same time acceptable compensatory adjustments to maintain a level of coverage comparable to that existing prior to the modification, except where provided for in paragraph 3; and
 - (b) no Party objects in writing within 30 days following the date of the notification.
3. A Party need not provide compensatory adjustments when the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. When 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 7.29

Small and Medium Enterprises Participation

1. The Parties recognise the importance of the participation of small and medium enterprises (hereinafter referred to as "SMEs") in government procurement. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular of SMEs.
2. The Parties agree to work jointly towards exchanging information and facilitating SMEs access to government procurement procedures, methods and contracting requirements, focused on SMEs special needs.

ARTICLE 7.30

Co-operation

1. The Parties recognise the importance of co-operation 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. According to Chapter 10 (Co-operation) the Parties shall endeavour to co-operate in matters such as:
 - (a) development and use of electronic communications in government procurement systems; and
 - (b) exchange of experiences and information, such as regulatory frameworks, best practices and statistics.

ARTICLE 7.31

Further Negotiations

In case a Party offers, in the future, a third party additional advantages 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 under this Chapter on a reciprocal basis.