

CHAPTER 16
GOVERNMENT PROCUREMENT

Article 16.1
Definitions

For the purposes of this Chapter:

“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;

“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 Prov.);

“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 requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade, or similar action to encourage local development or to improve a Party's balance-of-payments accounts;

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

“procuring entity” means an entity listed in Annex 16A (Government Procurement Schedules);

“qualified supplier” means a supplier that a procuring entity recognises 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 provided in this Chapter;

“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;

“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 labelling requirements, as they apply to a good or service.

Article 16.2

Scope

Application of Chapter

1. This Chapter shall apply to any measure regarding covered procurement.
2. For the purposes of this Chapter, covered procurement means government procurement:
 - (a) of goods, services, or any combination thereof as specified in each Party's Schedule to Annex 16A (Government Procurement Schedules);
 - (b) by any contractual means, including: purchase, lease, and rental or hire purchase, with or without an option to buy;

- (c) for which the value, as estimated in accordance with paragraphs 6 to 8, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 16A (Government Procurement Schedules) at the time of publication of a notice in accordance with Article 16.6 (Notices);
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage under this Agreement.
3. Unless otherwise provided in a Party's Schedule to Annex 16A (Government Procurement Schedules), this Chapter shall not apply to:
- (a) the 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) 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 debt, including loans and government bonds, notes, and other securities;
 - (d) public employment contracts; or
 - (e) procurement conducted:
 - (i) for the specific purpose of providing international assistance including development aid;
 - (ii) 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
 - (iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.
4. Each Party shall specify the following information in its Schedule to Annex 16A (Government Procurement Schedules):
- (a) in Section A, the central government entities whose procurement is covered by this Chapter;

- (b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;
 - (c) in Section C, all other entities whose procurement is covered by this Chapter;
 - (d) in Section D, the goods covered by this Chapter;
 - (e) in Section E, the services, other than construction services, covered by this Chapter;
 - (f) in Section F, the construction services covered by this Chapter;
 - (g) in Section G, any General Notes; and
 - (h) in Section H, the publication of information required under Article 16.5 (Information on the Procurement System).
5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's Schedule to Annex 16A (Government Procurement Schedules) to procure in accordance with particular requirements, Article 16.4 (General Principles) shall apply *mutatis mutandis* to those requirements.

Valuation

6. 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; and
 - (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
 - (i) premiums, fees, commissions, and interest; and
 - (ii) where the procurement provides for the possibility of options, the total value of such options.
7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (“recurring contracts”), the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
 - (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.
8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:
- (a) in the case of a fixed-term contract:
 - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
 - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
 - (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
 - (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

Article 16.3 General 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 international trade, nothing in this Chapter shall be construed to prevent a Party from imposing 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.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health, and measures necessary to mitigate climate change.

Article 16.4 General Principles

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 the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords 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 the 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, a procuring entity shall use electronic means:
 - (a) for the publication of notices; and
 - (b) to the widest extent practicable for information exchange and communication, the publication of tender documentation and the submission of tenders.
4. When conducting covered procurement by electronic means, a procuring entity shall:
 - (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of procurement

- 5. 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.

Rules of origin

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

Offsets

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

Measures not specific to procurement

- 8. 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; and other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Article 16.5
Information on the Procurement System

- 1. Each Party shall:
 - (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation, and procedure regarding covered

- procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.
2. Each Party shall list in Section H of its Schedule to Annex 16A (Government Procurement Schedules):
 - (a) the electronic or paper media in which the Party publishes the information described in paragraph 1;
 - (b) the electronic media in which the Party publishes the notices required by Article 16.6 (Notices), paragraph 8 of Article 16.8 (Qualification of Suppliers), and paragraph 2 of Article 16.17 (Transparency of Procurement Information); and
 - (c) the electronic media where the Party publishes its procurement data pursuant to paragraph 4 of Article 16.17 (Transparency of Procurement Information).
 3. Each Party shall promptly notify the other Party of any modification to the Party's information listed in Section H of its Schedule to Annex 16A (Government Procurement Schedules).

Article 16.6 **Notices**

Electronic publication of procurement notices

1. Notices of intended procurement and notices of planned procurement shall be directly accessible by electronic means, free of charge, through a single point of access, as listed in Section H of each Party's Schedule to Annex 16A (Government Procurement Schedules).

Notice of intended procurement

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the electronic medium listed in Annex 16A (Government Procurement Schedules), except in the circumstances described in Article 16.14 (Limited Tendering). The notice shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.
3. Unless 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) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the timeframe for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which a tender or a request for participation may be submitted, if it may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) 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 those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and
- (k) where, pursuant to Article 16.8 (Qualification of Suppliers), 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.

Notice of planned procurement

4. Procuring entities are encouraged to publish in the electronic medium listed in Annex 16A (Government Procurement Schedules), as early as possible in each fiscal year, a notice regarding their future procurement plans (“notice of planned procurement”). 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 Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) 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 16.7 Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
2. In establishing the conditions for participation, a procuring entity:
 - (a) 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 the Party or that the supplier has prior work experience in the territory of that Party; and
 - (b) may require relevant prior experience where essential to meet the requirements of the procurement.
3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:
 - (a) 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; and
 - (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.
4. 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;
- (f) failure to pay taxes; or
- (g) human rights violations by the supplier or in the supplier's supply chain.

Article 16.8

Qualification of Suppliers

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 with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.
3. If a Party or a procuring entity maintains a supplier registration system, it shall:
 - (a) ensure that interested suppliers have access to information on the registration system through electronic means and that interested suppliers may request registration at any time; and
 - (b) if a request by a supplier is made, inform the supplier within a reasonable period of time of the decision with respect to this request and if the request is rejected this decision must be duly motivated.
4. Each Party shall ensure that:
 - (a) its procuring entities make efforts to minimise differences in their qualification procedures; and
 - (b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

Selective tendering

5. 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 3(a), 3(b), 3(f), 3(g), 3(j), and 3(k) of Article 16.6 (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 3(c), 3(d), 3(e), 3(h), and 3(i) of Article 16.6 (Notices) to the qualified suppliers that it notifies as specified in subparagraph 3(b) of Article 16.12 (Time Periods).
6. A procuring entity 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.
7. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 6.

Multi-use lists

8. A Party, including its procuring entities, may establish or maintain a multi-use list, provided that it makes continuously available in the electronic medium listed in Annex 16A (Government Procurement Schedules) a notice inviting interested suppliers to apply for inclusion on the list.
9. The notice provided for in paragraph 8 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 that a supplier satisfies 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; and
 - (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.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.
11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents within the time period provided for in paragraph 2 of Article 16.12 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Section B and Section C entities

12. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:
 - (a) the notice is published in accordance with paragraph 8 and includes the information as required under paragraph 9, as much of the information required under paragraph 3 of Article 16.6 (Notices) as is available, and a statement that it constitutes a notice of intended procurement, or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
 - (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 3 of Article 16.6 (Notices), to the extent such information is available.
13. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 12 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on procuring entity decisions

14. 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 the procuring entity's decision with respect to the request or application.
15. 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, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 16.9

Technical Specifications and Tender Documentation

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.
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; 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 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 those 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 specification to promote the conservation of natural resources or protect the environment.

Tender documentation

7. 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 in the notice of intended procurement, that 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 with the conditions for participation;
 - (c) all evaluation criteria the entity will apply 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 submission of information by electronic means;
 - (e) 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;
 - (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.
8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and

the realistic time required for production, de-stocking, and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics, and terms of delivery.
10. A procuring entity shall promptly:
 - (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
 - (b) provide, on request, the tender documentation to any interested supplier; and
 - (c) 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.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement 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 reissued notice or tender documentation:
 - (a) to all suppliers that are participating at the time of the modification or amendment or reissuance, where those suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
 - (b) in adequate time to allow those suppliers to modify and resubmit amended tenders, as appropriate.

Preliminary market research and engagement

12. For greater certainty, a procuring entity may, prior to publication of a notice of intended procurement, conduct market research and engagement with suppliers with a view to informing and developing technical specifications and other tender documentation for a particular procurement or informing suppliers of its procurement plans and requirements. A procuring entity shall take appropriate steps to ensure that suppliers participating in such market research or engagement do not gain an unfair advantage over other interested suppliers.

Article 16.10
Environmental, Social, and Labour Considerations

A Party, including its procuring entities, may:

- (a) take into account environmental, social, and labour considerations at any stage of a procurement, provided they are non-discriminatory and are indicated in the notice of intended procurement or tender documentation; and
- (b) take appropriate measures to ensure compliance with its environmental, social, and labour law, international obligations, including under Chapter 22 (Environment) and Chapter 23 (Trade and Labour), and standards of conduct, ethics, and integrity, provided they are non-discriminatory.

Article 16.11
Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in procurement.
2. The Parties shall:
 - (a) upon request, provide information on the measures designed to assist, promote, encourage, or facilitate participation by SMEs in government procurement covered by this Chapter; and
 - (b) cooperate and share best practice in relation to measures to facilitate participation by SMEs in government procurement covered by this Chapter.
3. Each Party shall endeavour to facilitate participation by SMEs in covered procurement, and shall to the extent possible and appropriate:
 - (a) seek opportunities to simplify administrative processes;
 - (b) make all tender documentation available free of charge;
 - (c) require prompt payment, including in subcontracting; and
 - (d) consider the size, design, and structure of the procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs.

Article 16.12 Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:
 - (a) the nature and complexity of the procurement;
 - (b) the extent of subcontracting anticipated; and
 - (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

Deadlines

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 after 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 no less than 10 days.
3. Except as provided for in paragraphs 4, 5, 7, and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days after 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 established in accordance with paragraph 3 to no less than 10 days where:
 - (a) the procuring entity has published a notice of planned procurement as described in paragraph 4 of Article 16.6 (Notices) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

- (i) a description of the procurement;
 - (ii) the approximate final dates for the submission of tenders or requests for participation;
 - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
 - (iv) the address from which documents relating to the procurement may be obtained; and
 - (v) as much of the information that is required for the notice of intended procurement under paragraph 3 of Article 16.6 (Notices), as is available;
- (b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.
5. A procuring entity may reduce the time period for tendering established in accordance with 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 entity accepts tenders by electronic means.
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 established in accordance with paragraph 3 to less than 10 days after the date on which the notice of intended procurement is published.
7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to no 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 established in accordance with paragraph 3 to no less than 10 days.

8. Where a procuring entity covered under Section B or Section C of a Party's Schedule to Annex 16A (Government Procurement Schedules) 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 16.13 Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:
 - (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 16.6 (Notices); or
 - (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
 - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
 - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 16.14 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 16.6 (Notices) to Article 16.8 (Qualification of Suppliers), paragraphs 7 to 11 of Article 16.9 (Technical Specifications and Tender Documentation), Article 16.12 (Time Periods), Article 16.13 (Negotiation), Article 16.15 (Electronic Auctions), and Article 16.16 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

- (a) 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,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;
- (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.

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 16.15 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 16.16
Treatment of Tenders and Awarding of Contracts

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 a supplier 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

4. 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.
5. 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.
6. 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.
7. A procuring entity shall not use options, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

Article 16.17
Transparency of Procurement Information

Information provided to suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 16.19 (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.

Publication of award information

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 electronic medium listed in Annex 16A (Government Procurement Schedules) and 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, including a classification code of the goods or services procured, such as the CPC Prov.;
 - (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 in accordance with Article 16.14 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

Maintenance of documentation, reports, and electronic traceability

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 16.14 (Limited Tendering); and

- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Access to procurement data

- 4. Each Party shall ensure that data on the notices concerning awarded contracts under paragraph 2 is available to the public, electronically, in a form permitting analysis, including the export or download of that data into an accessible and manipulable format. Each Party shall list in Section H of its Schedule to Annex 16A (Government Procurement Schedules) the electronic medium to access the relevant data and information.
- 5. The data described in paragraph 4 shall:
 - (a) for awarded contracts covered by this Chapter, include the information in paragraph 2; and
 - (b) be updated at least annually.

Article 16.18
Ensuring Integrity in Procurement Practices

- 1. Each Party shall ensure that criminal or administrative measures exist that can address corruption, fraud, and other illegal acts in its procurement.
- 2. These measures may include procedures to render ineligible for, or exclude from, participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in corrupt, fraudulent, or other illegal acts. When applying such procedures, each Party, including its procuring entities:
 - (a) may consider the seriousness of the supplier's acts or omissions and any remedial measures or mitigating factors; and
 - (b) shall provide a supplier of the other Party directly implicated:
 - (i) reasonable opportunity to present facts and arguments in support of its position prior to the decision to render ineligible for, or exclude from, participation being made; and
 - (ii) notice that such a decision has been made and the reasons for the decision.
- 3. Each Party shall ensure that it has in place policies or procedures to address potential conflicts of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may put in place policies or procedures that require successful suppliers to maintain and enforce appropriate measures, such as internal controls, business ethics, and compliance programmes, for preventing and detecting corruption, fraud, and other illegal acts.

Article 16.19 Disclosure of Information

Provision of information

1. On request of the other Party, a Party shall provide promptly 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. In cases where release of the 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.

Non-disclosure of information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.
3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information 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 16.20 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 this Chapter; or

- (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a 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 conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The procuring 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 after 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 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 (“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 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 16.21
Modifications and Rectifications of Annex

1. A Party may modify or rectify its Schedule to Annex 16A (Government Procurement Schedules) in accordance with paragraphs 3 to 11.
2. The Parties recognise the importance of maintaining accurate and up-to-date information in their Schedules to Annex 16A (Government Procurement Schedules).

Notification of proposed modification

3. A Party shall notify any proposed modification or rectification (collectively referred to as a “modification”) to its Schedule to Annex 16A (Government Procurement Schedules) in writing to the other Party, through the contact point designated under Article 30.5 (Contact Points – Institutional Provisions).
4. The notification of proposed modification shall contain:
 - (a) for any proposed withdrawal of an entity on the grounds that government control or influence over the entity's covered

procurement has been effectively eliminated, evidence of such elimination; or

- (b) for any other proposed modification, information as to the likely consequences of the change for the coverage provided for in this Chapter.

- 5. The Party may include the offer of compensatory adjustment pursuant to paragraph 6 in its notification of proposed modification.

Compensatory adjustments

- 6. Subject to paragraphs 7 and 8, a Party shall provide appropriate compensatory adjustments for a change in coverage, if necessary, to maintain a level of coverage comparable to the coverage that existed prior to the modification.

- 7. A Party shall not be required to provide compensatory adjustments to the other Party if the proposed modification:

- (a) covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

- (b) is negligible in its effect, including rectifications of a purely formal nature and minor modifications to its Schedule to Annex 16A (Government Procurement Schedules), such as:

- (i) changes in the name of a procuring entity;

- (ii) the merger of one or more procuring entities listed within a Section of a Party's Schedule to Annex 16A (Government Procurement Schedules);

- (iii) the separation of a procuring entity listed in a Party's Schedule to Annex 16A (Government Procurement Schedules) into two or more procuring entities that are all added to the procuring entities listed in the same Section of the Annex; or

- (iv) changes in website references.

- 8. The Parties may agree another form of resolution as an alternative to compensatory adjustments.

Objection to notification

- 9. If the other Party disputes that:

- (a) compensatory adjustments pursuant to paragraph 6 are adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification; or
- (b) the modification is a change provided for in subparagraph 7(a) or 7(b),

it shall notify the modifying Party of its objection in writing within 45 days of receipt of the notification of proposed modification referred to in paragraphs 3 and 4 or shall be deemed to have agreed to the proposed modification, and compensatory adjustments if provided, including for the purposes of Chapter 31 (Dispute Settlement).

- 10. Where a Party submits an objection pursuant to paragraph 9, it shall set out, as may apply, the reasons why it believes:
 - (a) the modification is not a change provided for in subparagraph 7(a) or 7(b) and describe the effect of the proposed modification on the coverage provided for in the Chapter; and
 - (b) a compensatory adjustment pursuant to paragraph 6 is not adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification.
- 11. The Joint Committee shall adopt a modification to the Schedule to Annex 16A (Government Procurement Schedules), in accordance with subparagraph 2(g) of Article 30.2 (Functions of the Joint Committee – Institutional Provisions) to reflect any agreed modification or rectification pursuant to paragraph 9, or the conclusion of dispute settlement proceedings.

Article 16.22
Government Procurement Working Group

- 1. The Government Procurement Working Group established under Article 30.10 (Working Groups – Institutional Provisions) shall be composed of government representatives of each Party.
- 2. The Government Procurement Working Group shall meet by agreement of the Parties, and may meet virtually, to address matters related to the implementation and operation of this Chapter, such as:
 - (a) considering matters regarding government procurement that are referred to it by a Party;
 - (b) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party;

- (c) experience and best practices, including on the use and adoption of information technology in conducting procurement and of measures to promote environmental, social, and labour considerations in government procurement;
- (d) facilitation of participation by SMEs in covered procurement, as provided for in Article 16.11 (Facilitation of Participation by SMEs); and
- (e) facilitation of participation by women in government procurement to the extent possible, acknowledging the objectives in Chapter 25 (Trade and Gender Equality).

Article 16.23 Further Negotiations

1. The Parties shall enter into negotiations on market access with a view to making improvements to coverage of sub-central and other entities as soon as possible following New Zealand local authorities, State Services, or State Sector entities being either:
 - (a) covered by New Zealand in another international trade agreement; or
 - (b) required to follow the New Zealand *Government Procurement Rules*¹ in the future,

unless as at the date this Agreement enters into force, that entity was required to follow the New Zealand *Government Procurement Rules*.
2. For greater certainty, the obligation in paragraph 1 shall not apply if the entity is in one of the following categories that are required to follow the New Zealand *Government Procurement Rules* on the date of entry into force of this Agreement: Crown Agents, Autonomous Crown Entities, Independent Crown Entities, Crown Entity companies² and Public Finance Act schedule 4A Companies,³ or local authorities in respect of procurement related to transport projects funded in whole or in part by the New Zealand Transport Agency.

¹ The New Zealand *Government Procurement Rules* are New Zealand's primary instrument for regulating government procurement. A Whole of Government Direction granted on 22 April 2014 under section 107 of the *Crown Entities Act 2004* required certain classes of entities to follow the *Government Procurement Rules*.

² As defined in sections 7a and 7b of the *Crown Entities Act 2004* but excluding Crown Research Institutes.

³ As listed in schedule 4A of the *Public Finance Act 1989*.