CHAPTER FOURTEEN

GOVERNMENT PROCUREMENT

Article 1401: Scope and Coverage

Application of Chapter

1.# This Chapter applies to any measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1401.1:

(a) by any contractual means, including purchase and rental or lease, with or without an option to buy;

(b) for which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1401.1; and

(c) subject to the terms of Annex 1401.1.

2. This Chapter does not apply to:

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

(b) government provision of goods or services to persons or to sub-national governments;

(c) purchases for the direct purpose of providing foreign assistance;

(d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(e) 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. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

(i) the incurring of public indebtedness, or

(ii) public debt management;

(f) hiring of government employees and related employment measures; or

(g) procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

3. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

4. Where a procuring entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

Valuation

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

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i)# premiums, fees, commissions, and interest, and

(ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

Article 1402: Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which 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. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

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

Article 1403: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party of such goods or services, treatment no less favourable than the most favourable treatment the Party accords to domestic goods, services and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, a Party 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.

Conduct of Procurement

3. A procuring entity shall conduct procurement covered by this Chapter in a transparent and impartial manner that:

(a)# is consistent with this Chapter;

(b)# avoids conflicts of interest; and

(c)# prevents corrupt practices.

Tendering Procedures

4. A procuring entity shall use open tendering except where subparagraphs 6 through 9 of Article 1406 or Article 1409 apply.

Rules of Origin

5. With regard to the procurement of goods covered by this Chapter, each Party shall apply the rules of origin that it applies in the normal course of trade to those goods.

Offsets

6. A Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement covered by this Chapter.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 do 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 procurement covered by this Chapter.

Article 1404: Publication of Procurement Information

Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, 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.

Article 1405: Publication of Notices

Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice inviting suppliers to submit tenders ("notice of intended procurement"), or where appropriate, a notice inviting applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities for procurements covered by this Chapter.

2. Each notice of intended procurement shall include:

(a) a description of the procurement, including the nature, and where known, the quantity of the goods or services to be procured;

(b) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(c) a list of conditions for participation of suppliers;

(d) 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 applicable;

(e) the address and time limits for the submission of tenders or applications for participation**;**

(f) the time-frame for delivery of the goods or services to be procured or the duration of the contract;

(g) where, pursuant to Article 1406, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(h) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 1406: Conditions for Participation

General Requirements

1. Where a Party, including its procuring entities, requires suppliers to satisfy registration, qualification or any other requirements or conditions for participation in a separate process in order to participate in a procurement covered by this Chapter, the procuring entity shall publish a notice inviting suppliers to apply for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the procuring entity to evaluate and make its determination based on such applications.

2. A procuring entity shall limit any conditions for participation in a procurement covered by this Chapter 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.

3. 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 a Party; and

(b)# may require relevant prior experience where essential to meet the requirements of the procurement.

4. 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 its notices or tender documentation.

5. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities, shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

Multi-use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) where published by electronic means, made available continuously.

7. The notice provided for in paragraph 6 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 and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the use of the list; and

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

8. 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.

Selective Tendering

9. Where a Party’s law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:

(a)# publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

(b)# allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity Decisions

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

11. Where a procuring entity rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list, ceases to recognize 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.

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

(a) bankruptcy;

(b) false declarations; or

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.

13. Procuring entities of each Party shall not adopt or maintain 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.

Article 1407: 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 between the Parties.

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

(a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

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 covered by this Chapter from a person that may have a commercial interest in the procurement.

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

Tender Documentation

6. 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, 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 with the conditions for participation;

(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 there will be a public opening of tenders, the date, time, and place for the opening of tenders; and

(e) any other terms or conditions relevant to the evaluation of tenders.

7. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Modifications

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

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, where such suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and submit amended tenders, as appropriate.

Article 1408: Time Limits for the Submission of Tenders

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

Deadlines

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

3. A procuring entity may reduce by five days the time limit established under paragraph 2 for the submission of tenders, 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 procuring entity accepts tenders by electronic means.

4. A procuring entity may establish a time limit of less than 40 days for the submission of tenders provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

(a) the procuring entity published a separate notice containing the information specified in paragraph 3 of Article 1405 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders, or, where applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

(b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;

(c) the procuring entity procures commercial goods or services; or

(d) a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2, or where applicable, paragraph 3.

Article 1409: Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 1405, 1406, 1407, 1408 and 1410 in any of the following circumstances:

(a) where the requirements of the tender documentation are not substantially modified and:

(i) no tenders were submitted or no suppliers applied to participate in a procurement covered by this Chapter,

(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 and services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;

(d) for goods purchased on a commodity market;

(e) 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;

(f) insofar as it is strictly necessary 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;

(g) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement, and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;

(h) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and

(i) 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.

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 1410: 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 treat tenders in confidence until at least the opening of the tenders.

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 entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for award, a tender must be submitted in writing by a supplier that satisfies the conditions for participation and must, at the time of opening, comply with the essential requirements of the notices and tender documentation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

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

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers participating in the procurement of the entity's contract award decisions and, on request, shall do so in writing. Subject to Article 1411, 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

8. Not later than 72 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes, at a minimum, the following information about the contract:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award;

(d) the name and address of the successful supplier;

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to paragraph 1 of Article 1409, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in paragraph 2 of Article 1409, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 1411: Disclosure of Information

Provision of Information to a Party

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 that information shall not disclose it to any supplier, except after consultation with, and consent 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, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

3. A Party, including its procuring entities, authorities and review bodies, are not required under this Chapter to release confidential information 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 1412: Domestic Review Procedures

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. 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 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 suppliers ("challenge") arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.

3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be timely, effective, transparent, non-discriminatory and 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 in the challenge shall:

(i) have the right to be heard prior to a decision of the review body being made on the challenge,

(ii) have the right to be represented and accompanied,

(iii) have access to all challenge proceedings, and

(iv) have the right to request that the proceedings take place in public and that witnesses may be presented;

and

(c) decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

4. 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 to the supplier or reasonably should have become known to the supplier.

5. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take 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 for taking interim measures 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.

6. Each Party shall ensure that a supplier’s submission of a challenge will not prejudice the supplier’s participation in ongoing or future procurements.

7. Where a body other than an authority referred to in paragraph 2 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.

Article 1413: Modifications and Rectifications to Coverage

1. Where a Party modifies its coverage of procurement under this Chapter, the Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), a Party need not provide compensatory adjustments where:

(a) the modification in question is a minor amendment or rectification of a purely formal nature; or

(b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If the other Party does not agree that:

(a) an adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or

(c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),

it must object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Chapter Twenty-One (Dispute Settlement).

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, they shall give effect to the agreement by modifying forthwith the relevant Annex.

Article 1414: Committee on Procurement

The Parties hereby establish a Committee on Procurement to address matters related to the implementation of this chapter with a view to maximizing access to government procurement.

Article 1415: Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that contains different procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party, the Parties shall enter into negotiations with a view to harmonizing this Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided under this Chapter, including with respect to sub-federal government procurement, on the request of either Party, the Parties may agree to enter into negotiations with a view to achieving an equivalent level of market access under this Chapter as is contained in the other international agreement.

Article 1416: Information Technology

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 procuring entities, while respecting the principles of transparency and non-discrimination.

Article 1417: Definitions

For purposes of this Chapter:

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

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

construction services means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

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 where the procuring entity contacts a supplier or suppliers of its choice;

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;

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;

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

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 use in the production or supply of goods or services for commercial sale or resale;

procuring entity means an entity listed in Annex 1401.1-1 or 1401.1-2;

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;

services includes construction services, unless otherwise specified;

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

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

technical specification means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision, or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.