

## Chapter Nine

### Government Procurement

#### Article 9.1: Scope and Coverage

##### *Application of Chapter*

1. This Chapter applies to any measure of a Party regarding covered procurement.
2. For purposes of this Chapter, covered procurement means a procurement of goods, services, or both:
  - (a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;
  - (b) for which the value, as estimated in accordance with paragraphs 9 and 10, as appropriate, equals or exceeds the relevant threshold in Annex 9.1;
  - (c) that is conducted by a procuring entity; and
  - (d) that is not excluded from coverage.
3. For greater certainty relating to the procurement of digital products as defined in Article 15.8 (Definitions):
  - (a) covered procurement includes the procurement of digital products; and
  - (b) no provision of Chapter Fifteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.
4. This Chapter does not apply to:
  - (a) non-contractual agreements or any form of assistance that a Party, including a government 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 regional or local level 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) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; or
- (f) hiring of government employees and related employment measures.

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

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

6. The provisions of this Chapter shall apply only between the United States and each of the other Parties to this Agreement. Five years after this Agreement enters into force for at least the United States and two other Parties, the Parties shall consult to review the application of this Chapter and determine whether it should continue to be applied on a bilateral basis.

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

#### *Compliance*

8. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

#### *Valuation*

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

- (a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;
- (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the

contract, and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

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

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

## **Article 9.2: General Principles**

### *National Treatment and Non-Discrimination*

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

2. With respect to any measure covered by this Chapter, a Party may not:

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

### *Tendering Procedures*

3. A procuring entity shall use an open tendering procedure for covered procurement, except where Articles 9.7.3 through 9.7.5 and 9.8 apply.

### *Rules of Origin*

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

### *Offsets*

5. A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders, or in the award of contracts, before or in the course of a covered procurement.

### *Measures Not Specific to Procurement*

6. Paragraphs 1 and 2 shall not apply to measures respecting 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, or measures affecting trade in services, other than measures specifically governing covered procurements.

### **Article 9.3: Publication of Procurement Information**

1. Each Party shall promptly publish the following information relating to a covered procurement, and any modifications or additions to this information, in an electronic or paper medium that is widely disseminated and readily accessible to the public:

- (a) laws, regulations, and procedures; and
- (b) judicial decisions and administrative rulings of general application.

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

### **Article 9.4: Publication of Notices**

#### *Notice of Intended Procurement*

1. For each covered procurement, except in the circumstances described in Article 9.8, a procuring entity shall publish a notice inviting interested suppliers to submit tenders (“notice of intended procurement”) or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement in a single point of entry electronic publication that is accessible through the Internet or a comparable network.

2. A procuring entity shall include the following information in each notice of intended procurement:

- (a) the name and address of the procuring entity and any other information necessary to contact the entity and obtain all relevant documents relating to the procurement and, if applicable, the sum payable for the tender documentation;
- (b) a description of the procurement, including the nature and, where known, quantity of the goods or services to be procured, and any conditions for participation;
- (c) the time frame for delivery of goods or services or the duration of the contract;
- (d) the procurement method that will be used and whether it will involve negotiations;
- (e) the address and the time limit for the submission of tenders and, where appropriate, any time limit for the submission of an application for participation in a procurement; and
- (f) 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. Where the notice is published in accordance with Article 9.5.4(a), a procuring entity may apply Article 9.5.4(a) for the purpose of establishing shorter time limits for tendering.

#### **Article 9.5: Time Limits**

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

2. Except as provided for in paragraphs 3, 4, and 5, a procuring entity shall establish that the final date for the submission of tenders shall be not less than 40 days:

- (a) from the date on which the notice of intended procurement is published; or
- (b) where the procuring entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.

3. A procuring entity may reduce the time limit for submission of tenders by up to 10 days where the entity publishes a notice of intended procurement in accordance with Article 9.4 in an electronic medium and concurrently provides the tender documentation in an electronic medium.

4. A procuring entity may establish a time limit for tendering that is less than 40 days, or 30 days where the entity has complied with paragraph 3, 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, including a notice of planned procurement under Article 9.4.3 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 appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;
- (b) the procuring entity procures commercial goods or services; or
- (c) a state of unforeseen urgency, duly substantiated by the procuring entity, renders impracticable the time limits specified in paragraph 2 or, where applicable, paragraph 3.

5. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement also applies where:

- (a) as a result of the need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limits for qualification or tendering procedures; or
- (b) in the case of negotiations, the negotiations are concluded and suppliers may submit new tenders.

## **Article 9.6: Information on Intended Procurements**

### *Tender Documentation*

1. A procuring entity shall promptly provide, on request, to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature, scope, and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled,

including any technical specifications, conformity certification, plans, drawings, or instructional materials;

- (b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;
- (c) all criteria to be considered in the awarding of the contract and, except where price is the determinative factor, 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.

2. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a covered procurement, 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.

#### *Technical Specifications*

3. A procuring entity may not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating an unnecessary obstacle to trade between the Parties.

4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

- (a) specify the technical specification, wherever appropriate, in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the entity's program requirements or would impose a greater burden than the use of a recognized national standard.

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

6. A procuring entity may 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 any person that may have a commercial interest in the procurement.

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

- (a) to promote the conservation of natural resources and the environment; or
- (b) to require a supplier to comply with generally applicable laws regarding
  - (i) fundamental principles and rights at work;
  - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the territory in which the good is produced or the service is performed.

### *Modifications*

8. Where, in the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, it shall transmit all such modifications in writing:

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

## **Article 9.7: Conditions for Participation**

### *General Requirements*

1. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:

- (a) limit such conditions to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

- (b) assess the commercial, technical, and financial abilities of a supplier on the basis of the supplier's global business activities, including its activity in the territory of the Party of the supplier as well as its activity, if any, in the territory of the Party of the procuring entity;
  - (c) not make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity of the Party of the procuring entity or that the supplier has prior work experience in the territory of the Party;
  - (d) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that have been specified in advance in notices or tender documentation; and
  - (e) allow all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation to participate in the procurement.
2. A procuring entity may exclude a supplier from a procurement on grounds such as:
- (a) bankruptcy; or
  - (b) false declarations.

*Multi-use Lists*

3. A procuring entity may establish a multi-use list provided that the entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:
- (a) a description of the goods or services that may be procured using the list;
  - (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 any other information necessary to contact the entity and obtain all relevant documents relating to the list;
  - (d) any deadlines for submission of applications for inclusion on the list; and
  - (e) an indication that the list may be used for procurement covered by this Chapter.
4. A procuring entity that maintains a multi-use list shall:

- (a) include on the list, within a reasonably short time following submission of an application, any supplier that satisfies the conditions for participation; and
- (b) where an entity uses the multi-use list in any intended procurement, invite all suppliers on the multi-use list to submit tenders.

### *Selective Tendering*

5. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement:

- (a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers 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, 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's Decisions*

6. Where a supplier applies for participation in a covered procurement, a procuring entity shall promptly advise such supplier of the entity's decision with respect to the supplier's application.

7. Where a procuring entity:

- (a) rejects an application for participation in a procurement conducted using the procedures described in paragraph 5;
- (b) rejects a request for inclusion on a list referred to in paragraph 3; or
- (c) ceases to recognize a supplier as having satisfied the conditions for participation,

the entity shall promptly inform the supplier and, on request, promptly provide the supplier with a written explanation of the reasons for the entity's decision.

## **Article 9.8: Limited Tendering**

1. Provided that a procuring entity does not use this provision to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7, 9.9.1, and 9.9.3 through 9.9.7 in any of the following circumstances:

- (a) where, in response to a prior notice or invitation to participate,
  - (i) no tenders were submitted,
  - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation, or
  - (iii) no suppliers satisfied the conditions for participation,and the entity does not substantially modify the essential requirements of the procurement;
- (b) where a good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:
  - (i) the requirement is for a work of art,
  - (ii) protection of patents, copyrights, or other exclusive rights, or proprietary information, or
  - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries of goods or services by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the procuring entity to procure goods or services that do not meet requirements of interchangeability with existing equipment, software, services, or installations;
- (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. For greater certainty, when such a

contract has been fulfilled, subsequent procurements of the goods or services shall be subject to Articles 9.4 through 9.7 and 9.9;

- (f) in so far as is strictly necessary, where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time under procedures consistent with Articles 9.4 through 9.7 and the use of such procedures would result in serious injury to the procuring entity or the relevant Party; or
- (g) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. In such cases, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract.

2. For each contract awarded under paragraph 1, a procuring entity shall prepare and, on request, submit to the other Party a written report that includes:

- (a) the name of the procuring entity;
- (b) the value and kind of goods or services procured; and
- (c) a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of a procedure other than open or selective tendering procedures.

## **Article 9.9: Treatment of Tenders and Awarding of Contracts**

### *Receipt and Opening of Tenders*

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.
3. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

### *Awarding of Contracts*

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

- (a) in writing and, at the time of opening, must conform to the essential requirements and evaluation criteria specified in the notices and tender documentation; and
- (b) by a supplier that satisfies any 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 satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the lowest price or the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation.

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

### *Information Provided to Suppliers*

7. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

### *Publication of Award Information*

8. Not later than 60 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 least 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 Article 9.8.1, 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 covered procurements, including the reports provided for in Article 9.8.2, and shall retain such reports and records for a period of at least three years after the award of a contract.

#### **Article 9.10: Ensuring Integrity in Procurement Practices**

Further to Article 19.9 (Anti-Corruption Measures), each Party shall establish or maintain procedures to declare ineligible for 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 fraudulent or other illegal actions in relation to procurement. On the request of a Party, the Party receiving the request shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

#### **Article 9.11: Domestic Review of Supplier Challenges**

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its procuring entities to receive and review challenges that suppliers submit relating to the application by a procuring entity of a Party's measures implementing this Chapter, and to make appropriate findings and recommendations. In the event that a body other than such an authority initially reviews a supplier's 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 that is the subject of the challenge.
2. Each Party shall ensure that a supplier may invoke the review procedure without jeopardizing its participation in ongoing or future procurement activities by the Party's procuring entities.
3. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with measures implementing this Chapter. Such interim measures may include the suspension of the award of a contract or the performance of a contract that has already been awarded.
4. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

5. Each Party shall ensure that its review procedures are conducted in accordance with the following:
- (a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than 10 days from the time when the basis of the complaint became known, or reasonably should have become known, to the supplier;
  - (b) a procuring entity shall respond in writing to a supplier's complaint and disclose all relevant documents to the review authority;
  - (c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and
  - (d) the review authority shall provide its decision on a supplier's challenge in a timely fashion, in writing, with an explanation of the basis for the decision.

#### **Article 9.12: Modifications and Rectifications to Coverage**

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 9.1, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.
2. A Party may otherwise modify its coverage under this Chapter provided that the Party:
- (a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and
  - (b) offers, within 30 days of the notification, acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, where necessary.
3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Commission shall modify Annex 9.1 to reflect any agreed rectification, minor amendment, or modification.<sup>1</sup>

### **Article 9.13: Disclosure of Information**

#### *Provision of Information to a Party*

1. On request, a Party shall provide to the requesting Party information on the tender and evaluation procedures used in the conduct of a procurement sufficient to determine whether a particular procurement was conducted fairly, impartially, and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

#### *Non-Disclosure of Information*

2. No Party, procuring entity or review authority, referred to in Article 9.11, may disclose information that the person providing it has designated as confidential, in accordance with domestic law, except with the authorization of such person.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide information disclosure of which would:

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

### **Article 9.14: Exceptions**

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade, 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;

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<sup>1</sup> For purposes of this Article, the Commission shall comprise the Parties that have agreed to the rectification, minor amendment, or modification.

- (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 handicapped persons, of philanthropic institutions, or of prison labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

#### **Article 9.15: Committee on Procurement**

The Parties hereby establish a Committee on Procurement comprising representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation of this Chapter, such as:

- (a) cooperation relating to the development and use of electronic communications in government procurement systems, including developments that may allow procuring entities to reduce the time limits for tendering set out in Article 9.5.2;
- (b) exchange of statistics and other information to assist the Parties in monitoring the implementation and operation of this Chapter;
- (c) consideration of further negotiations aimed at broadening the coverage of this Chapter; and
- (d) efforts to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities, especially for small business suppliers. To that end, a Party may ask the other Party to provide trade-related technical assistance, including training of government personnel or interested suppliers on specific elements of that Party's government procurement system, in coordination with the Committee on Trade Capacity Building, as appropriate.

#### **Article 9.16: Definitions**

For purposes of this Chapter:

**build-operate-transfer contract** and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring

entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

**commercial goods and services** means goods and services of a type of goods and services that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

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

**in writing** and **written** mean any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information;

**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;

**offsets** means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts;

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

**procurement official** means any person who performs procurement functions;

**procuring entity** means an entity listed in Annex 9.1;

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

**services** includes construction services, unless otherwise specified;

**supplier** means a person that provides or could provide goods or services to a procuring entity; and

**technical specification** means a tendering requirement that:

- (a) sets out the characteristics of:

- (i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or
  - (ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or
- (b) addresses terminology, symbols, packaging, marking, or labeling requirements, as they apply to a good or service.