

CHAPTER SIXTEEN

GOVERNMENT PROCUREMENT

Article 16.01: Definitions

For the purposes of this Chapter:

commercial good or service means a good or service 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 a registration, qualification or other prerequisites for participation in a procurement;

construction service means a contractual arrangement for the realization by any means of civil or building works paid for:

- (a) directly by the Party; or
- (b) for a specified period of time, through any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of those works, for the duration of the contract;

in writing or **written** means a 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 or a tender;

offsets means a 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 or 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 a good or service for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of a good or service for commercial sale or resale;

procuring entity means an entity listed in Annexes 1 and 2 of Canada and Panama's schedules to this Chapter;

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

service includes a construction service, unless otherwise specified;

standard means a document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for a good or service, 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 that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that:

- (a) lays down the characteristics of a good or service 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 16.02: Scope and Coverage

Application of Chapter

1. This Chapter applies to a measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex I to Canada or Panama Schedule to this Chapter:

- (a) by a 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 I to Canada or Panama Schedule to this Chapter; and
- (c) subject to the terms of Annex I to Canada or Panama Schedule to this Chapter.

2. This Chapter does not apply to:

- (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- (b) a non-contractual agreement or form of assistance that a Party, including a state enterprise, provides, including a grant, loan, equity infusion, fiscal incentive, subsidy, guarantee or cooperative agreement;

- (c) government provision of a good or service to a person or to a sub-national government;
- (d) a purchase for the direct purpose of providing foreign assistance;
- (e) a purchase funded by an international grant, loan or other assistance if the provision of that assistance is subject to conditions inconsistent with this Chapter;
- (f) the procurement or acquisition of a fiscal agency or depository service, liquidation and management service for regulated financial institutions, or a service related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities; this Chapter does not apply to procurement of a banking, financial or specialized service related to:
 - (i) the incurring of public indebtedness, or
 - (ii) public debt management;
- (g) the hiring of a government employee or related employment measure;
- (h) a procurement made by an entity or state enterprise from another entity or state enterprise of that Party; or
- (i) a purchase made under exceptionally advantageous conditions that only arise in the very short term in the case of an unusual disposal such as one arising from liquidation, receivership or bankruptcy, but not for a routine purchase from a regular supplier.

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

4. If a procuring entity awards a contract that is not covered by this Chapter, this Chapter does not cover a 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:

- (a) shall not divide a procurement into separate procurements or 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) shall 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) the estimated maximum total value of the procurement, inclusive of optional purchases, if the procurement provides for the possibility of option clauses; and
- (c) shall base its calculation of the total maximum value of the procurement over its entire duration, if 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.

Article 16.03: Security and General Exceptions

1. Nothing in this Chapter prevents a Party from taking action or not disclosing information that it considers necessary for the protection of its essential security interests relating to procurement:

- (a) of arms, ammunition or war materials;
- (b) indispensable for national security; or
- (c) for national defence purposes.

2. Provided that a measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties if the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter prevents a Party from adopting or maintaining a measure:

- (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 paragraph 2(b) includes an environmental measure necessary to protect human, animal or plant life or health.

Article 16.04: General Principles

National Treatment and Non-Discrimination

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

2. With respect to a 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 good or service offered by that supplier for a particular procurement is a good or service 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 Articles 16.07(6) through 16.07(9) or Article 16.10 apply.

Rules of Origin

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

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:

- (a) a customs duty or other charge referred to in paragraphs (a) through (d) of the definition of “customs duty” in Article 1.01, or the method of levying that duty or charge;

- (b) another import regulation or formality; or
- (c) a measure affecting trade in a service, other than a measure governing procurement covered by this Chapter.

Article 16.05: Publication of Procurement Information

1. Each Party shall:
 - (a) promptly publish a law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and a modification of those measures, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
 - (b) on request of the other Party, provide it with an explanation of a measure that must be published under paragraph (a).
2. Article 20.02 (Transparency – Publication) does not apply to a measure that must be published under paragraph (a).

Article 16.06: 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, or a notice inviting applications to participate in the procurement. The procuring entity shall publish that notice 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 must include:
- (a) a description of the procurement, including the nature and, if known, the quantity of the good or service 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 relevant documents relating to the procurement as well as 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 good or service to be procured or the duration of the contract;
 - (g) if, under Article 16.07, 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. The Parties shall encourage procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. These notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

Article 16.07: Conditions for Participation

General Requirements

1. Where a procuring entity requires a supplier to satisfy a registration, qualification or other requirement 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 to provide the procuring entity with sufficient time to evaluate and make its determination based on those applications.
2. A procuring entity shall limit 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 capacity and the commercial and technical ability 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 a contract by a procuring entity of a Party; and
 - (b) may require relevant prior experience if essential to meet the requirements of the procurement.
4. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:
 - (a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities inside and outside the territory of the Party of the procuring entity; and
 - (b) 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 procuring entity 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 referred to in paragraph 6 must include:

- (a) a description of the good or service, or category 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 that a supplier satisfies those conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the procuring entity and to obtain relevant documents relating to the list;
- (d) the period of validity of the list, the means for its renewal or termination, or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination 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. If a procuring entity intends to use selective tendering, the procuring entity shall:
 - (a) publish a notice inviting suppliers to apply for participation in the procurement giving sufficient time for interested suppliers to prepare and submit applications and for the procuring entity to evaluate and make its determinations based on those 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 in the notice of intended procurement or, if publicly available, in the tender documentation, the procuring entity has stated a limitation on the number of suppliers that will be permitted to tender and the criteria for this limitation.

Information on Procuring Entity Decisions

10. A procuring entity shall promptly inform a 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. If a procuring entity:
 - (a) rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list,
 - (b) ceases to recognize a supplier as qualified, or
 - (c) removes a supplier from a multi-use list,

the procuring 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. If there is supporting evidence, a procuring entity may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations; or
- (c) significant or persistent deficiencies in performance of a substantive requirement or of an obligation under a prior contract.

13. A procuring entity of a Party shall not adopt or maintain a registration system or qualification procedure with the purpose or the effect of creating an unnecessary obstacle to the participation of a supplier of the other Party in its procurement.

Article 16.08: Technical Specifications and Tender Documentation

Technical Specifications

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

2. In prescribing the technical specifications for a good or service 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 an international standard, if it exists; otherwise, on a national technical regulation, recognized national standard or building code.

3. A procuring entity shall not prescribe a technical specification requiring or referring 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 requirement provided that, in those cases, the procuring 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 a technical specification for a specific procurement covered by this Chapter from a person that may have a commercial interest in the procurement.

5. A procuring entity may, in accordance with this Article, prepare, adopt or apply a technical specification 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, that documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specification, conformity assessment certification, plan, drawing or instructional material;
- (b) any condition for participation of a supplier, 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 the relative importance of that criteria, except where price is the sole criterion;

- (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 a reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the procuring 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. If, 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 that modified, 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 those 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 those suppliers to modify and submit amended tenders, as appropriate.

Article 16.09: 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 is not 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 procuring 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 5 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, but not less than 10 days before the final date for the submission of tenders, if:

- (a) the procuring entity published a separate notice containing the information specified in Article 16.06(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, if applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

- (b) there is a second or subsequent publication of notices for procurement of a recurring nature;
- (c) the procuring entity procures a commercial good or service; or
- (d) a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2 or, if applicable, paragraph 3.

Article 16.10: 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 of its choice and may choose not to apply Articles 16.06, 16.07, 16.08, 16.09 and 16.11 only under the following circumstances, if:

- (a) 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) the procurement can be carried out only by a particular supplier and a reasonable alternative or substitute does not exist because:
 - (i) the requirement is for a work of art,

- (ii) a good or service being procured is protected by a patent, copyright or another exclusive right, or
 - (iii) of the absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of a good or service that was not included in the initial procurement, a change of supplier for that additional good or service:
 - (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) the good is purchased on a commodity market;
- (e) 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 is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time using open tendering or selective tendering;

- (g) 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) a procuring entity needs to procure a consulting service 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) an additional construction service that was not included in the initial contract but that is within the objectives of the original tender documentation has become necessary, due to unforeseeable circumstances, to complete the construction service described in the original tender documentation; however the total value of all contracts awarded for additional services may not exceed 50% of the total amount of the initial contract.

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 good or service procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 16.11: 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. If 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 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 procuring 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 16.12, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Within 72 days of an award, a procuring entity shall publish in electronic or paper form in an officially designated publication, a notice including 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, when a procedure has been used pursuant to Article 16.10(1), a description of the circumstances justifying the use of that 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 Article 16.10(2), and shall retain such reports and records for a period of at least 3 years after the award of a contract.

Article 16.12: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall promptly provide 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 a supplier without the 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, administrative authorities and judicial authorities, is not required under this Chapter to release confidential information if the 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 16.13: Domestic Review Procedures

1. For the purposes of this Article, “challenge” means a challenge by a supplier arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.

2. Each Party shall ensure that its procuring entities give impartial and timely consideration to a complaint from a supplier regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest. Each Party shall encourage suppliers to seek clarification from its procuring entities through discussions with a view to facilitating the resolution of a complaint.

3. 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.

4. Each Party shall ensure that an authority it establishes or designates under paragraph 3 has written procedures that are generally available. Each Party shall ensure that those procedures are 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 have:
 - (i) the right to be heard prior to the review body making a decision on the challenge,
 - (ii) the right to be represented and accompanied,
 - (iii) access to all challenge proceedings, and
 - (iv) the right to request that the proceedings take place in public and that witnesses may be presented;
- (c) a decision or recommendation relating to a challenge be provided in a timely manner, in writing and with an explanation of the basis for the decision or recommendation; and

- (d) each supplier be allowed a sufficient period of time to prepare and submit a challenge, which must be at least 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 3 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Those interim measures may result in a 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. If 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 16.14: Modifications and Rectifications to Coverage

1. A Party may modify an Annex to this Chapter.
2. When a Party modifies an Annex to 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.

3. Notwithstanding paragraph 2(b), a Party need not provide compensatory adjustments if:

- (a) the modification in question is a minor adjustment 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.

4. If the other Party disputes that:

- (a) an adjustment proposed under paragraph 2(b) is adequate to maintain a comparable level of mutually decided coverage,
- (b) the proposed modification is a minor adjustment or a rectification under paragraph 3(a), or
- (c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under paragraph 3(b),

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

Article 16.15: 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, including with respect to facilitating participation by small and medium enterprises in the government procurement market of the other Party.

Article 16.16: Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, a Party enters into another international agreement containing different procurement procedures and practices, including the introduction of shorter bid periods, a Party shall, if the other Party so requests, enter into negotiations to harmonize this Chapter with that international agreement.

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

Article 16.17: Information Technology

The Parties, to the extent possible, shall endeavour to use electronic means of communication to efficiently disseminate information on government procurement, particularly regarding tender opportunities offered by procuring entities, while respecting the principles of transparency and non-discrimination.