

CHAPTER SIXTEEN
GOVERNMENT PROCUREMENT

ARTICLE 16.1: SCOPE OF APPLICATION

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 procurement of goods, services, or any combination thereof:
 - (a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - (b) by any contractual means, including purchase, lease, rental, or hire purchase, with or without an option to buy;
 - (c) for which the value, as estimated in accordance with paragraphs 5 through 7 as appropriate, equals or exceeds the relevant threshold specified in Annex 16A;
 - (d) that is conducted by a procuring entity; and
 - (e) that is not otherwise excluded from coverage under paragraph 4 or Annex 16A.
3. For purposes of this Chapter, build-operate-transfer contracts (hereinafter referred to as “BOT contracts”) and public works concession contracts shall be subject to Annex 16B.
4. This Chapter shall not apply to:
 - (a) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, subsidies, equity infusions, guarantees, and fiscal incentives;
 - (b) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities. For greater certainty, this Chapter shall 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;

- (c) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter; and
- (d) hiring of government employees and related employment measures.

Valuation

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

- (a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of a procurement for purposes of avoiding the application of this Chapter; and
- (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for in the procurement, and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases.

6. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as “recurring procurements”), the calculation of the total estimated maximum value shall be based on:

- (a) the value of recurring procurements of the same type of good or service awarded during the preceding 12 months or the procuring entity’s preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
- (b) the estimated value of recurring procurements of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity’s fiscal year.

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

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

ARTICLE 16.2: EXCEPTIONS TO THE CHAPTER

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential

security interests related to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction 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) related to goods or services of persons with disabilities, philanthropic institutions, or prison labor.

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

ARTICLE 16.3: GENERAL PRINCIPLES

National Treatment and Non-Discrimination

1. With respect to any measure 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 offering such goods or services, treatment no less favorable than that accorded to domestic goods, services, and suppliers.

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

- (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

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

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
- (a) is consistent with this Chapter;
 - (b) avoids conflicts of interest; and
 - (c) prevents corrupt practices.

Rules of Origin

5. For purposes of covered procurement, each Party shall apply to covered procurement of goods or services imported from or supplied from the other Party the rules of origin that it applies in the normal course of trade to the same goods or services from the other Party.

Offsets

6. A procuring entity shall not seek, take account of, impose, or enforce offsets at any stage of a procurement.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 shall not apply to:
- (a) customs duties and charges of any kind imposed on, or in connection with importation;
 - (b) the method of levying such duties and charges;
 - (c) other import regulations or formalities; and
 - (d) measures affecting trade in services other than measures governing covered procurement.

ARTICLE 16.4: PUBLICATION OF PROCUREMENT INFORMATION

Each Party shall:

- (a) promptly publish any measure of general application and any modification thereto regarding covered procurement, in an electronic medium listed in Section H of Annex 16A, and in such a manner as to enable the other Party and its suppliers to become acquainted with them; and

- (b) provide an explanation thereof to the other Party, upon request.

ARTICLE 16.5: PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice inviting suppliers to submit tenders, or where appropriate, applications for participation for that procurement, except in the circumstances described in Article 16.9. The notice shall be published in an electronic medium listed in Section H of Annex 16A, and each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Each notice of intended procurement shall include:

- (a) a description of the intended procurement;
- (b) the procurement method;
- (c) any conditions that suppliers must fulfill to participate in the procurement;
- (d) the name of the procuring entity issuing the notice;
- (e) the address and contact point where suppliers may obtain all documents related to the procurement;
- (f) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (g) the address and the final date for the submission of tenders;
- (h) where applicable, for recurring contracts, if possible, an estimate of the timing of subsequent notices of intended procurement;
- (i) the dates for delivery of the goods or services to be procured or the duration of the contract; and
- (j) an indication that the procurement is covered by this Chapter.

3. Procuring entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Annex 16A.

Notice of Planned Procurement

4. Each Party shall encourage its procuring entities to publish in an electronic medium listed in Section H of Annex 16A, as early as possible in each fiscal year, a notice regarding their future procurement plans. Such notices should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

Summary Notice

5. For purposes of this Chapter, each Party, including its procuring entities, shall endeavor to use English as the language for publishing the notice for each case of intended procurement. The notice shall contain at least the following information:

- (a) the subject matter of the procurement;
- (b) the final date for the submission of tenders; and
- (c) the address and contact point from which documents related to the procurement may be requested.

ARTICLE 16.6: CONDITIONS FOR PARTICIPATION

1. Where a Party requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation in order to participate in a procurement, 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 with sufficient time to prepare and submit applications and for the procuring entity to evaluate and make its determination based on such applications.

2. In establishing the conditions for participation, a procuring entity shall:

- (a) limit such conditions to those that are essential to ensure that a supplier has the legal, financial, commercial, and technical abilities to fulfill the requirements and technical specifications of the procurement on the basis of that supplier's business activities outside the territory of the Party of the procuring entity, as well as its business activities, if any, inside the territory of the Party of the procuring entity; and
- (b) base its determination solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of the Party;
- (b) may require relevant prior experience where essential to meet the requirements of the procurement; and

- (c) shall allow all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation to be recognized as qualified and to participate in the procurement.

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

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

5. Procuring entities shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

6. The process of, and the time required for, registering and qualifying suppliers shall not be used in order to exclude suppliers of the other Party from being considered for a particular procurement.

7. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, the procuring entity shall, upon request of the supplier, promptly provide it with a written explanation.

ARTICLE 16.7: INFORMATION ON INTENDED PROCUREMENTS

Tender Documentation

1. A procuring entity shall promptly provide to suppliers interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.

2. 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 unknown, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;
- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection therewith;
- (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time, and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and
- (h) any dates for the delivery of goods or the supply of services or the duration of the contract.

3. A procuring entity shall make available relevant tender documentation in an electronic medium listed in Section H of Annex 16A.

Technical Specifications

4. 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 trade between the Parties.

5. 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.

6. A procuring entity shall not prescribe any 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, words such as “or equivalent” are also included in the tender documentation.

7. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

8. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or protect the environment.

Modifications

9. 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, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications, or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment, or re-issuance, if known, 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 re-submit amended tenders, as appropriate.

ARTICLE 16.8: TIME-PERIODS

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

2. A procuring entity that uses selective tendering shall ensure that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4 and 5, 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 procuring entity notifies suppliers that they will be invited to submit tenders.
- 4. A procuring entity may reduce the time-period for tendering set out in accordance with paragraph 3 by five days for each one of the following circumstances:
 - (a) the notice of intended procurement is published by electronic means;
 - (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
 - (c) the procuring entity accepts tenders by electronic means.
- 5. A procuring entity may reduce the time-period for tendering set out in paragraphs 3 and 4 to not less than 10 days:
 - (a) where the procuring entity published a notice in an electronic medium listed in Section H of Annex 16A containing the information specified in paragraphs 3 and 4 of Article 16.5 at least 40 days and not more than 12 months in advance;
 - (b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;
 - (c) where the procuring entity procures commercial goods or services; or
 - (d) where a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.

ARTICLE 16.9: TENDERING PROCEDURES

1. Procuring entities shall award their contracts in a manner consistent with this Chapter, using open, selective, or limited tendering.

Open Tendering

2. A procuring entity shall award contracts by means of open tendering except where paragraphs 16.9.3 through 5 apply.

Selective Tendering

3. Where a Party's law allows the use of selective tendering, 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 with time to prepare and submit applications and for the procuring 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 procuring entity has determined satisfy the conditions for participation to submit a tender, unless the procuring 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.

Limited Tendering

4. Provided that it does not use this provision for purposes of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering only under the following circumstances:

- (a) provided that the requirements of the tender documentation are not substantially modified, where:
 - (i) no tenders were submitted, or no suppliers requested participation;
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) no suppliers satisfied the conditions for participation; or
 - (iv) the tenders submitted have been collusive;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
 - (i) the requirement is for a work of art;
 - (ii) the protection of patents, copyrights, or other exclusive rights; or
 - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
 - (i) can not be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services can not be obtained in time using open tendering or selective tendering, and the use of such method would result in serious injury to the procuring entity;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service which is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
 - (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular related 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.

5. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 4. Such 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 4 that justified the use of limited tendering.

6. If, in tendering procedures, a procuring entity allows tenders to be submitted in several languages, one of those languages shall be English.

ARTICLE 16.10: ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the procuring entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information on the conduct of the auction.

ARTICLE 16.11: OPENING OF TENDERS AND AWARDING OF CONTRACTS

Treatment of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.
2. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

3. A procuring entity shall require that, in order to be considered for an award, a tender:
 - (a) be submitted in writing by a supplier that satisfies any conditions for participation; and
 - (b) at the time of opening, conform to the essential requirements specified in the notices and tender documentation.
4. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the procuring entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation, or where price is the sole criterion, the lowest price.
5. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
6. A procuring entity shall not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents this Chapter.

ARTICLE 16.12: TRANSPARENCY IN PROCUREMENT INFORMATION

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions and, upon request, shall do so in writing. Subject to Article 16.13, a procuring entity shall, upon request, provide an unsuccessful supplier with an explanation of the reasons that the procuring entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. No later than 72 days after an award, a procuring entity shall publish in a paper or electronic medium listed in Section H of Annex 16A, a notice that includes at least the following information on 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) where the procuring entity has not used open or selective tendering, an indication of the circumstances in accordance with Article 16.9.4 justifying the procedures used.

Maintenance of Records

3. A procuring entity shall maintain reports and records of tendering procedures related to covered procurement, including the reports provided for in Article 16.9.5, and shall retain such reports and records for a period of at least three years after the award of a contract.

ARTICLE 16.13: DISCLOSURE OF INFORMATION

Provision of Information to a Party

1. Upon 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. The information shall include information on the characteristics and relative advantages of the successful tender.

Non-Disclosure of Information

2. Neither Party, including its procuring entities, authorities, and review bodies, shall disclose information that the person providing it has designated as confidential in accordance with its domestic laws, except with the authorization of such person.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide information to a particular supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where release:

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

ARTICLE 16.14: DOMESTIC REVIEW PROCEDURES FOR SUPPLIER CHALLENGES

1. Each Party shall ensure that its procuring entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of this Chapter arising in the context of a covered procurement in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its procuring entities through consultations with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure in accordance with the due process principle through which a supplier may challenge alleged breaches of this Chapter arising in the context of covered procurements in which the supplier has, or has had, an interest.

3. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement, and to make appropriate findings and recommendations.

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 or reasonably should have become known to the supplier.

5. Where a body, other than an authority referred to in paragraph 3, 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 16.15: 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 shall not be obliged to provide compensatory adjustments where:

- (a) the modification in question is a minor amendment or a 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 a procuring entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),

it shall object in writing within 30 days following the receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for purposes of Chapter Twenty-Three (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 Annex 16A.

ARTICLE 16.16: FURTHER NEGOTIATIONS

In case where a Party offers, after the entry into force of this Agreement, to non-Party additional advantages with regard to its government procurement market access coverage agreed under this Chapter, it shall agree, upon request of the other Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

ARTICLE 16.17: SMALL AND MEDIUM-SIZED ENTERPRISES¹ PARTICIPATION

1. The Parties recognize the importance of the participation of small and medium-sized enterprises in government procurement.

2. The Parties also recognize the importance of business alliances between suppliers of each Party, and in particular between small and medium-sized enterprises, including the joint participation in tendering procedures.

¹ For purposes of this Article, Article 16.18, and Annex 16B, for Peru, “small and medium-sized enterprises” includes micro enterprises as defined in Peru’s domestic legislation.

3. The Parties shall endeavor to work jointly towards exchanging information and facilitating access of small and medium-sized enterprises to government procurement procedures, methods, and contracting requirements, focusing on their special needs.

ARTICLE 16.18: COOPERATION

1. The Parties recognize the importance of cooperation with a view to achieving a better understanding on their respective government procurement systems, as well as a better access to their respective markets, in particular for small and medium-sized enterprises.

2. The Parties shall endeavor to cooperate on matters such as:

- (a) exchange of experiences and information, such as regulatory frameworks, best practices, and statistics;
- (b) development and use of electronic communications in government procurement systems;
- (c) capacity building and technical assistance to suppliers with respect to access to the government procurement market; and
- (d) institutional strengthening for the fulfillment of this Chapter, including training government officials.

ARTICLE 16.19: COMMITTEE ON PROCUREMENT

1. The Parties hereby establish a Committee on Procurement comprising representatives of each Party.

2. The Committee shall:

- (a) evaluate the implementation of this Chapter and recommend to the Parties the appropriate activities;
- (b) evaluate and follow up the activities related to cooperation; and
- (c) consider further negotiations aimed at broadening the coverage of this Chapter.

ARTICLE 16.20: DEFINITIONS

For purposes of this Chapter:

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

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

electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders.

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, procedure, requirement, or practice;

notice of intended procurement means a notice published by a procuring entity inviting 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. The Parties understand that open tendering includes modalities such as framework agreements and reverse auction in accordance with their respective legislations;

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;

procuring entity means an entity covered under Annex 16A;

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

services includes construction services, unless otherwise specified;

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 labeling requirements as they apply to a good, service, process, or production method;

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

technical specification means a tendering requirement that:

- (a) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or
- (b) addresses terminology, symbols, packaging, marking, or labeling requirements, as they apply to a good or service.