

Chapter VI

Government Procurement

Article 6-01: Scope and coverage

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement
 - (a) by entities set out in Annex I;
 - (b) of goods in accordance with Annex II, services in accordance with Annex III, or construction services in accordance with Annex IV; and
 - (c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold as set out in Annex V¹.
2. Paragraph 1 is subject to the provisions set out in Annex VI.
3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.
4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.
5. This Chapter covers any procurement² by any contractual means, including through such methods as purchase, lease, rental or hire purchase, with or without an option to buy, including any combination of goods and services.

Article 6-02: National treatment and non-discrimination

1. With respect to any law, regulation, procedure or practice regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods of the other Party, to the suppliers of such goods and to the services suppliers of the other Party, treatment no less favorable than the most favorable treatment that the Party accords to domestic goods, services and suppliers.
2. With respect to any law, regulation, procedure or practice regarding government procurement covered by this Chapter, each Party shall ensure:

¹ The threshold value shall be calculated and adjusted according to the provisions set out in Annex V.

² Procurement does not include:

- (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or states and municipal governments; and
- (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

- (a) that its entities shall not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of foreign affiliation or ownership; and,
- (b) that its entities shall not discriminate against locally- established suppliers on the basis of the country of production of the goods or service being supplied, provided that the country of origin is the other Party in accordance with Articles 6-03 and 6-04.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

Article 6-03: Rules of origin

- 1. A Party shall not apply rules of origin to goods imported from the other Party, for purposes of government procurement covered by this Chapter, that are different from the rules of origin applied in the normal course of trade.
- 2. Following the conclusion of the work program for the harmonization of rules of origin for goods to be undertaken under the WTO Agreement on Rules of Origin, the Parties shall take the results of that work program into account in amending paragraph 1 as appropriate.

Article 6-04: Denial of benefits

- 1. A Party may deny the benefits of this Chapter to a service supplier of the other Party, subject to prior notification and consultation with the other Party, where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.
- 2. Following the conclusion of the negotiations regarding trade in services within the framework of the General Agreement on Trade in Services, the Parties shall take the results of those negotiations into account in amending paragraph 1 as appropriate.

Article 6-05: Valuation of contracts

1. The following provisions shall apply in determining the value of contracts³ for purposes of implementing this Chapter.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter.
4. If an individual requirement for procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
 - (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
 - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.
5. In cases of contracts for the lease, rental or hire purchase of goods or services, or in the case of contracts, which do not specify a total price, the basis for valuation shall be:
 - (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value; or
 - (b) in the case of contracts for an indefinite period, the monthly installment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

Article 6-06: Technical specifications

1. Technical specifications laying down the characteristics of the goods or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
2. Technical specifications prescribed by procuring entities shall, where appropriate:

³ This Chapter shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article 9.

- (a) be in terms of performance rather than design or descriptive characteristics; and
- (b) be based on international standards, national technical regulations⁴, recognized national standards⁵ or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

Article 6-07: Tendering procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles 6-07 through 6-14.

2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner, which would have the effect of precluding competition.

3. For the purposes of this Chapter:

- (a) open tendering procedures are those procedures under which all interested suppliers may submit a tender;
- (b) selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article 6-10 and other relevant provisions of this Chapter, those suppliers invited to do so by the entity may submit a tender; and
- (c) limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article 6-15.

Article 6-08: Qualification of suppliers

⁴ For the purpose of this Chapter, a technical regulation is a document which lays down characteristics of a good or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

⁵ For the purpose of this Chapter, a standard is 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.

In the process of qualifying suppliers, entities shall not discriminate among suppliers of the Party or between domestic suppliers and suppliers of the other Party. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favorable to suppliers of the other Party than to domestic suppliers. The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the suppliers, and its activity, if any, in the territory of the Party of the procuring entity;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Party who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article 6-09, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (g) each Party shall ensure that:
 - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
 - (ii) efforts be made to minimize differences in qualification procedures between entities.

- (h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Chapter.

Article 6-09: Invitation to participate

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article 6-15. The notice shall be published in the appropriate publication listed in Annex VII.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annex I (only for government enterprises) may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article 6-20 and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.
6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:
 - (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the goods or services to be procured;
 - (b) whether the procedure is open or selective or will involve negotiation;
 - (c) any date for starting delivery or completion of delivery of goods or services;
 - (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;

- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and
- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex VII a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the goods or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Chapter.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by this Chapter.

Article 6-10: Selection procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Party, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles 6-08 and 6-09. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

5. Where an entity of the Parties does not invite or admit a supplier to tender, the entity shall, on the request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 6-11: Time – limits of tendering and delivery

1. Any prescribed time-limit shall be adequate to allow suppliers of the other Party as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.

2. Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

3. Except in so far as provided in paragraph 4,

(a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article 6-09;

(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article 6-09; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article 6-09.

4. The periods referred to in paragraph 3 may be reduced in the circumstances set out below:

(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:

(i) as much of the information referred to in paragraph 6 of Article 6-09 as is available;

(ii) the information referred to in paragraph 8 of Article 6-09;

(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and

(iv) a contact point with the entity from which further information may be obtained,

the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;

- (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article 6-09, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;
- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article 6-09; or
- (d) the period referred to in paragraph 3(c) may, for procurements by entities listed in Annex I (only for government enterprises), be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

5. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

Article 6-12: Tender documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.
2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article 6-09, and the following:
 - (a) the address of the entity to which tenders should be sent;
 - (b) the address where requests for supplementary information should be sent;
 - (c) the language or languages in which tenders and tendering documents must be submitted;
 - (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
 - (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
 - (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;

- (g) a complete description of the goods or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of goods or services of the other Party, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment; and
- (j) any other terms or conditions.

3. In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.

4. In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.

5. Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Article 6-13: Submission, receipt and opening of tenders and awarding of contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram, facsimile or other means of electronic transmission⁶ are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, facsimile or electronic transmission. Tenders presented by telephone shall not be permitted. The content of the telex, telegram, facsimile or electronic transmission shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and

⁶ Means of electronic transmission consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

- (b) the opportunities that may be given to tenders to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Chapter. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles 6-17, 6-20, 6-21 and Chapter X (Institutional Provisions and Dispute Settlement Procedures).

4. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.

5. Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic goods or services, or goods or services of the other Party, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.

6. Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

7. No entity may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

8. The Parties shall not require for the performance of the contract or as award criteria in the tender the establishment of the supplier or service provider or his presence in the territory of the contracting entity, except where such establishment or presence is an essential and objective requirement for the performance of the contract to be awarded.

9. Option clauses shall not be used in a manner which circumvents the provisions of this Chapter.

Article 6-14: Negotiations

1. A Party may provide for entities to conduct negotiations:

- (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article 6-09; or
 - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:
- (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;
 - (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
 - (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and
 - (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

Article 6-15: Limited tendering

1. The provisions of Articles 6-07 through 6-14 governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of the other Party or protection to domestic producers or suppliers:
- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
 - (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment⁷ or services;
- (e) when an entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to Articles 6-07 through 6-14⁸;
- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;
- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles 6-07 through 6-14 and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
- (h) for goods purchased on a commodity market;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;

⁷ It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by this Chapter.

⁸ 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. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

- (j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Chapter, notably as regards the publication, in the sense of Article 6-09, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners;
- (k) an entity may use limited tendering procedures when an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles 6-17, 6-20, 6-21, and under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

Article 6-16: Offsets

- 1. Entities shall not, in the qualification and selection of suppliers, goods or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets, except otherwise provided in Annex VI.
- 2. For purposes of this Article, offsets are conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 6-17: Challenge procedures

- 1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.
- 2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.
- 3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Chapter shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days from that time.

6. Challenges shall be heard by a court or by an impartial and independent reviewing authority with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented; and
- (g) documents are disclosed to the review body.

7. Challenge procedures shall provide for:

- (a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
- (b) an assessment and a possibility for a decision on the justification of the challenge;
- (c) correction of the breach of the Chapter or compensation for the loss or damages suffered, where appropriate. In the case of compensation for the loss or damages suffered, it shall be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

Article 6-18: Exceptions to this Chapter

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the goods or services of handicapped persons, of philanthropic institutions or of prison labor.

Article 6-19: Rectification, modification and privatization

1. Each Party may modify its coverage under this Chapter only in exceptional circumstances.

2. Where a Party modifies its coverage under this Chapter, that Party shall:

- (a) notify the other Party of the modification;
- (b) reflect the change in the appropriate Annex; and
- (c) propose to the other Party appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to Annexes I to VI, provided that it notifies such rectifications to the other Party and the other Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.

4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity whether or not subject to this Chapter, provided that it notifies such reorganization to the other Party. In such cases, compensation need not be proposed. No Party may undertake such reorganizations or programs to avoid the obligations of this Chapter.

5. Where a Party considers that:

- (a) an adjustment proposed under paragraph 2(c) is not adequate to maintain a comparable level of mutually agreed coverage; or
- (b) a rectification or amendment does not meet the requirements of paragraph 3 and should be compensated,

that Party may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

6. Where a Party considers that a reorganization of procurement entities does not meet the requirements of paragraph 4 and should be compensated, it may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures), provided that it has objected to such reorganization within 60 days from the day of the notification.

7. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter:

- (a) If, on the public offering of shares of an entity listed in Annex I (government enterprises), or through other methods, the entity is no longer subject to government control, that Party may delete the entity from its Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Party.
- (b) Where the other Party objects to the withdrawal on the grounds that the entity remains subject to government control, that Party may have recourse to procedures under Chapter X (Institutional Provisions and Dispute Settlement Procedures).

Article 6-20: Provision of information and review as regards of Parties

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Chapter, in the appropriate publications listed in Annex VII and in such a manner as to enable other Party and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to the other Party its government procurement procedures.

2. The Party of an unsuccessful tenderer may seek, without prejudice to the provisions under Chapter X (Institutional Provisions and Dispute Settlement Procedures), such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the Party of the procuring entity shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the Party of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the Party of the unsuccessful tenderer.

3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to the other Party.

4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the Party providing the information.

5. The Parties shall annually exchange, on a reciprocal basis, all available relevant data regarding statistics on its procurements covered by this Chapter. The first exchange of relevant data will take place two years after the entry into force of this Agreement.

6. Following the conclusion of the negotiations regarding Israel's commitments under Article XIX(5) of the WTO Government Procurement Agreement, the Parties shall take the results of those negotiations into account in amending paragraph 5 as appropriate.

Article 6-21: Information and review as regards obligations of Entities

1. Entities shall publish a notice in the appropriate publication listed in Annex VII not later than 72 days after the award of each contract under Articles 6-13 through 6-15. These notices shall contain:

- (a) the nature and quantity of goods or services in the contract award;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of winning tenderer;
- (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article 6-09 or justification according to Article 6-15 for the use of such procedure; and
- (g) the type of procedure used.

2. Each entity shall, on request from a supplier of a Party, promptly provide:

- (a) an explanation of its procurement practices and procedures;
- (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and
- (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

Article 6-22: Further negotiations

In the case that, after the entry into force of this Agreement, Israel or Mexico offer a WTO Government Procurement Agreement or North American Free Trade Agreement Party, respectively, additional advantages with regard to the rules, procurement procedures or access to their respective procurement markets beyond what has been agreed under this Chapter, that Party shall agree to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.