

- (c) consider any matter in relation to this Chapter as the Parties may agree.
2. The responsibilities of the Committee on Trade in Services, Investment and Government Procurement in relation to Chapter Nine (Government Procurement) are set out in Article 9.19 (Responsibilities of the Committee).

## CHAPTER NINE

### GOVERNMENT PROCUREMENT

#### ARTICLE 9.1

##### Definitions

For the purposes of this Chapter:

- (a) "commercial goods and services" means goods and 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;

- (b) "competitive activity" means, in the case of the Union:
- (i) an activity, performed within the territory of a Member State of the Union, which is directly exposed to competition in markets to which access is not restricted; and
  - (ii) a competent authority in the Union has adopted a decision establishing the applicability of paragraph (i);
- for the purposes of subparagraph (b)(i), the question of whether an activity is directly exposed to competition shall be decided on the basis of the characteristics of the goods or services concerned, the existence of alternative goods or services, and their prices and the actual or potential presence of more than one supplier of the goods or services in question;
- (c) "construction services" means a service that has as its objective the realisation by whatever means of civil or building works as defined in Division 51 of the Provisional UN Central Product Classification (CPC);
- (d) "corrective action" means, in the context of domestic review procedures, either setting aside or ensuring the setting aside of decisions that were taken unlawfully by a procuring entity, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or any other document relating to the tendering procedure;

- (e) "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;
- (f) "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;
- (g) "juridical person" is understood as provided for in paragraph (b) of Article 8.2 (Definitions);
- (h) a "Union juridical person" or a "Singapore juridical person" is understood as provided for in paragraph (c) of Article 8.2 (Definitions);
- (i) "limited tendering" means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;
- (j) "locally established" means a juridical person which is established in one Party and which is owned or controlled by natural or juridical persons of the other Party;

a juridical person is:

- (i) "owned" by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in that juridical person is beneficially owned by persons of the other Party; and

- (ii) "controlled" by natural or juridical persons of the other Party if such persons have the power to name a majority of the directors of that juridical person or otherwise to legally direct its actions;
- (k) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (l) "multi-use list" means a list of suppliers that a procuring entity has determined satisfies the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (m) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (n) "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;
- (o) "open tendering" means a procurement method where all interested suppliers may submit a tender;

(p) "privatised" means, in the case of Singapore, an entity that has been reconstituted from a procuring entity or part thereof to be a legal person acting in accordance with commercial considerations in the procurement of goods and that is no longer entitled to exercise governmental authority, even though the government possesses holdings thereof or appoints members of the Board of Directors thereto;

for greater certainty, where the government of a Party possesses holdings thereof or appoints a government official to the board of directors of a privatised entity, that entity is deemed to act in accordance with commercial considerations in its purchase of goods and services, such as with regard to the availability, price and quality of the goods and services if the government or the government official so appointed does not directly or indirectly influence or direct the decisions of the board of directors in relation to the entity's procurement of goods and services;

(q) "procuring entity" means an entity covered under Annexes 9-A, 9-B or 9-C;

(r) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(s) "Revised GPA" means the text of the Agreement on Government Procurement, as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012;

- (t) "selective tendering" means a procurement method where only qualified suppliers are invited by the procuring entity to submit a tender;
- (u) "services" includes construction services, unless otherwise specified;
- (v) "standard" means a document that has been approved by a recognised body and that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory; it may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;
- (w) "supplier" means a person or group of persons of either Party, as applicable, that provides or could provide goods or services; and
- (x) "technical specification" means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

## ARTICLE 9.2

### Scope and Coverage

#### Application of this Chapter

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

- (i) as specified in each Party's Section of Annexes 9-A to 9-G; and
- (ii) 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, and rental or hire purchase with or without an option to buy, and any public-private partnership contracts as defined in Annex 9-I;

- (c) for which the value, as estimated in accordance with paragraphs 6 to 8, equals or exceeds the relevant threshold specified in Annexes 9-A to 9-G at the time of publication of a notice in accordance with Article 9.6 (Notices);
  - (d) by a procuring entity; and
  - (e) that is not otherwise excluded from coverage in paragraph 3 or in a Party's Section of Annexes 9-A to 9-G.
3. Except where provided otherwise in Annexes 9-A to 9-G, this Chapter does not apply to:
- (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
  - (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
  - (c) 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;
  - (d) public employment contracts;

(e) procurement conducted:

- (i) for the specific purpose of providing international assistance, including development aid;
- (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
- (iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance, where the applicable procedure or condition would be inconsistent with this Chapter.

4. Each Party shall specify the following information in Annexes 9-A to 9-G:

- (a) in Annex 9-A, the central government entities whose procurement is covered by this Chapter;
- (b) in Annex 9-B, the sub-central entities whose procurement is covered by this Chapter;
- (c) in Annex 9-C, all other entities whose procurement is covered by this Chapter;
- (d) in Annex 9-D, the goods covered by this Chapter;
- (e) in Annex 9-E, the services, other than construction services, covered by this Chapter;

- (f) in Annex 9-F, the construction services covered by this Chapter; and
  - (g) in Annex 9-G, any general notes.
5. Where a procuring entity, in the context of covered procurement, requires persons who are not listed in Annexes 9-A to 9-C to procure in accordance with particular requirements, Article 9.4 (General Principles) shall apply *mutatis mutandis* to such requirements.

#### Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:
- (a) neither divide a procurement into separate procurements nor 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; and
  - (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
    - (i) premiums, fees, commissions, and interest; and
    - (ii) where the procurement provides for the possibility of options, the total value of such options.

7. 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 (hereafter referred to as "recurring procurements"), the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring procurements of the same type of good or service awarded during the preceding twelve 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 subsequent twelve months; or
- (b) the estimated value of recurring procurements of the same type of good or service to be awarded during the twelve months subsequent to the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is twelve months or less, the total estimated maximum value for its duration; or
  - (ii) where the term of the contract exceeds twelve months, the total estimated maximum value, including any estimated residual value;

- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

## ARTICLE 9.3

### Security and General Exceptions

1. Nothing in this Chapter shall be construed as preventing a Party from taking any action or from not disclosing any information that 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 defence 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 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:
  - (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.

## ARTICLE 9.4

### General Principles

#### National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall immediately and unconditionally accord to the goods and services of the other Party and to the suppliers of the other Party treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services, and suppliers.
2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:
  - (a) treat a locally established supplier of the other Party less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
  - (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

## Use of Electronic Means

3. When conducting covered procurement by electronic means, procuring entities 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. Procuring entities shall conduct covered procurement in a transparent and impartial manner that:
  - (a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

## Rules of Origin

5. For the purposes of covered procurement, neither Party may apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the other Party.

## Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce any offsets.

## Measures Not Specific to Procurement

7. 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 or formalities, and measures affecting trade in services other than measures governing covered procurement.

## ARTICLE 9.5

### Information on the Procurement System

1. Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation, and any procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party on request.

2. Each Party shall list in Annex 9-H:

- (a) the electronic or paper media in which the Party publishes the information described in paragraph 1; and
- (b) the electronic or paper media in which the Party publishes the notices required by Article 9.6 (Notices), paragraph 8 of Article 9.8 (Qualification of Suppliers), and paragraph 2 of Article 9.15 (Transparency of Procurement Information).

3. Each Party shall promptly notify the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees) of any modification to the media of information listed in Annex 9-H.

## ARTICLE 9.6

### Notices

#### Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, which shall be directly accessible by electronic means, free of charge, through a single point of access, except in the circumstances described in Article 9.12 (Limited Tendering). The notice of intended procurement shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice. The appropriate electronic medium shall be listed by each Party in its Section of Annex 9-H.
  
2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:
  - (a) the name and address of the procuring entity, and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
  
  - (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
  
  - (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language at the place where the procuring entity is located;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where the procuring entity intends to select a limited number of qualified suppliers to be invited to tender pursuant to Article 9.8 (Qualification of Suppliers), the criteria that will be used to select those suppliers and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

- (I) an indication that the procurement is covered by this Agreement.

### Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible in one of the WTO languages at the same time as the publication of the notice 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 or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the address from which documents relating to the procurement may be requested.

### Notice of Planned Procurement

4. Procuring entities are encouraged to publish by electronic means through the single point of access used for the publication of notices of intended procurement as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as a "notice of planned procurement"). That notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. Procuring entities covered by Annexes 9-B or 9-C may use a notice of planned procurement as a notice of intended procurement, provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

## ARTICLE 9.7

### Conditions for Participation

1. Procuring entities shall limit the conditions for participation in a given procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial ability to undertake the relevant procurement.
2. In establishing the conditions for participation, procuring entities:
  - (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party, or that the supplier has prior experience in the territory of that Party; but
  - (b) may require relevant prior experience where essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, procuring entities:
  - (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
  - (b) shall base their evaluation on the conditions that they specified in advance in notices or tender documentation.
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 upon the commercial integrity of the supplier; or
  - (f) failure to pay taxes.

## ARTICLE 9.8

### Qualification of Suppliers

#### Registration Systems and Qualification Procedures

1. Each Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
  - (a) its procuring entities make efforts to minimise differences in their qualification procedures; and
  - (b) where its procuring entities maintain registration systems, those procuring entities make efforts to minimise differences in their registration systems.
3. Neither Party, including its procuring entities, shall 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.

## Selective Tendering

4. Where a procuring entity intends to use selective tendering, that procuring entity shall:
  - (a) in the notice of intended procurement include at least the information in subparagraphs 2(a), (b), (f), (g), (j), (k), and (l) of Article 9.6 (Notices) and invite suppliers to submit a request for participation; and
  - (b) by the commencement of the time period for tendering, provide at least the information in subparagraphs 2(c), (d), (e), (h), and (i) of Article 9.6 (Notices) to the qualified suppliers that it notifies in accordance with subparagraph 3(b) of Article 9.10 (Time Periods).
5. Procuring entities shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity sets a limit in the notice of intended on the number of suppliers that will be permitted to tender and states the criteria for selecting the limited number of suppliers. In any case, the number of suppliers permitted to submit a tender shall be sufficient to ensure competition without affecting the operational efficiency of the procurement system.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, the procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers that have been selected in accordance with paragraph 5.

## Multi-Use Lists

7. Procuring entities may 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, in the appropriate medium listed in Annex 9-H.

8. The notice provided for in paragraph 7 shall include:

- (a) a description of the goods or services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the list;
- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
- (e) an indication that the list may be used for procurement covered by this Agreement.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, procuring entities may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

- (a) states the period of validity and that further notices will not be published; and
- (b) is published by electronic means and is made available continuously during the period of its validity.

10. Procuring entities 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.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents relating thereto within the time period provided for in paragraph 2 of Article 9.10 (Time Periods), the procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the request unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

## Annex 9-C Entities

12. Procuring entities covered under Annex 9-C may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:
  - (a) the notice is published in accordance with paragraph 7 and includes the information in paragraph 8, as much of the information in paragraph 2 of Article 9.6 (Notices) as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
  - (b) the procuring entity promptly provides to suppliers that have expressed an interest to the procuring entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 2 of Article 9.6 (Notices), to the extent such information is available.
13. Procuring entities covered under Annex 9-C may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

### Information on Procuring Entity Decisions

14. Procuring entities shall promptly inform any supplier that submits a request for participation or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request.

15. Where a procuring entity rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, that procuring entity shall promptly inform the supplier and, at the request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## ARTICLE 9.9

### Technical Specifications and Tender Documentation

#### Technical Specifications

1. Procuring entities shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.
2. In prescribing the technical specifications for the goods or services being procured, procuring entities shall, where appropriate:
  - (a) set out 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, recognised national standards, or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, procuring entities should indicate, where appropriate, that they will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.
4. Procuring entities shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements, and provided that, in such cases, the procuring entity include words such as "or equivalent" in the tender documentation.
5. Procuring entities 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.
6. For greater certainty, each Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

7. Where procuring entities lay down environmental characteristics in terms of performance or functional requirement, as referred to in paragraph 2(a), they may consider using the detailed specification or, if necessary, parts thereof, as defined by eco-labels existing within the Union and green labels existing in Singapore, provided that:

- (a) those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract;
- (b) the requirements of the label are drawn up on the basis of scientific information; and
- (c) those specifications are accessible to all interested parties.

#### Tender Documentation

8. Procuring entities shall provide to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria that the procuring entity will apply 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 authorised 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, such as whether on paper or by electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

9. In establishing any delivery date for the goods or services being procured, procuring entities shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

10. Procuring entities may lay down environmental conditions relating to the performance of a procurement, provided that these are compatible with the rules established by this Chapter and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement<sup>1</sup> or tender documentation.

11. The evaluation criteria set out in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics, and terms of delivery.

12. Procuring entities shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

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<sup>1</sup> For the purposes of paragraphs 10, 11 and 13 of this Article and paragraph 2 of Article 9.11 (Negotiations), "another notice used as a notice of intended procurement" means a notice of planned procurement falling within paragraph 5 of Article 9.6 (Notices) and a notice inviting suppliers to apply for inclusion on a multi-use list falling within paragraph 12 of Article 9.8 (Qualification of Suppliers).

- (b) provide, on request, the tender documentation to any interested supplier; and
- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

#### Modifications

13. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in a notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notices or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

## ARTICLE 9.10

### Time Periods

#### General

1. Procuring entities shall, consistent with their own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:
  - (a) the nature and complexity of the procurement;
  - (b) the extent of subcontracting anticipated; and
  - (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points, where electronic means are not used.

Such time-periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

#### Deadlines

2. Procuring entities that use selective tendering shall establish that, in principle, the final date for the submission of requests for participation shall not 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 ten days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, procuring entities 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, whether or not it uses a multi-use list.

4. Procuring entities may reduce the time-period for tendering set out in paragraph 3 to not less than ten days where:

- (a) the procuring entity published a notice of planned procurement under paragraph 4 of Article 9.6 (Notices) at least 40 days and not more than twelve months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement;
  - (ii) the approximate final dates for the submission of tenders or requests for participation;
  - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
  - (iv) the address from which documents relating to the procurement may be obtained; and

- (v) as much of the information that is required under paragraph 2 of Article 9.6 (Notices) for the notice of intended procurement, as is available;
- (b) the procuring entity, for procurements of a recurring nature, indicated in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity has rendered the time period for tendering established in accordance with paragraph 3 impracticable.

5. Procuring entities may reduce the time period for tendering set out in 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 tenders can be received by electronic means by the procuring entity.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering set out in paragraph 3 to less than ten days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering set out in paragraph 3 to not less than thirteen days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the procuring entity also accepts tenders for commercial goods and services by electronic means, it may reduce the time period set out in paragraph 3 to not less than ten days.

8. Where a procuring entity covered under Annexes 9-B or 9-C has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than ten days.

## ARTICLE 9.11

### Negotiations

1. Each Party may provide for its procuring entities to conduct negotiations:
  - (a) where the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 9.6 (Notices); or
  - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation.

2. Procuring entities shall:

- (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation; and
- (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

## ARTICLE 9.12

### Limited Tendering

1. Provided that they do not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, procuring entities may use limited tendering and may choose not to apply Article 9.6 (Notices), Article 9.7 (Conditions for Participation), Article 9.8 (Qualification of Suppliers), paragraphs 8 to 13 of Article 9.9 (Technical Specifications and Tender Documentation), Article 9.10 (Time Periods), Article 9.11 (Negotiations), Article 9.13 (Electronic Auctions), and Article 9.14 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

(a) 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;

provided that the procuring entity does not substantially modify the requirements set out in the tender documentation;

- (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 and services that were not included in the initial procurement where a change of supplier for such additional goods and services:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

- (ii) would cause significant inconvenience or substantial duplication of costs 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 could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity at acceptable quality standards, but does not include quantity production, supply for the purpose of establishing commercial viability, or the recovery of research and development costs;
- (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; and
- (h) where a contract is awarded to a winner of a design contest, provided that:
  - (i) the contest has been organised 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.
2. Procuring entities shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

## ARTICLE 9.13

### 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 relating to the conduct of the auction.

## ARTICLE 9.14

### Treatment of Tenders and Awarding of Contracts

#### Treatment of Tenders

1. Procuring entities shall receive, open, and treat all tenders in accordance with procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. Procuring entities shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay was due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

#### Awarding of Contracts

4. To be considered for an award, a tender shall have been submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation, and shall be from a supplier that satisfies the conditions for participation.

5. 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 to be capable of fulfilling the terms of the contract and that, 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. 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, and whether the price takes into account the grant of subsidies.

7. Where a procuring entity establishes that a tender is abnormally low because the supplier has obtained subsidies, it may reject the tender on that ground alone only after having consulted with the supplier and the latter is unable to prove, within a sufficient period fixed by the procuring entity, that the subsidy in question was granted in compliance with the disciplines relating to subsidies laid down in this Agreement.

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

## ARTICLE 9.15

### Transparency of Procurement Information

#### Information Provided to Suppliers

1. Procuring entities shall promptly inform participating suppliers of the procuring entity's contract award decisions and, upon the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 9.16 (Disclosure of Information), procuring entities shall, upon 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

2. Not later than 72 days after the award of each contract covered by this Chapter, the procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex 9-H. Where the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;

- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used pursuant to Article 9.12 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

#### Maintenance of Documentation, Reports, and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 9.12 (Limited Tendering); and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

#### Collection and Report of Statistics

4. Each Party agrees to communicate to the other Party the available and comparable statistical data relevant to the procurement covered by this Chapter.

## ARTICLE 9.16

### Disclosure of Information

#### Provision of Information to Parties

1. Upon the request of a Party, the other Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose such information to any supplier, except after consultation with, and the agreement 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, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.
3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information where disclosure:
  - (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 9.17

### Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:
  - (a) a breach of this Chapter; or
  - (b) where the supplier does not have the right to challenge a breach of this Chapter directly under the domestic law of that Party, a failure to comply with that Party's measures implementing this Chapter,

arising in the context of a covered procurement in which the supplier has, or has had, an interest. In any case, each Party shall ensure that the review body, upon a challenge by a supplier, can examine decisions taken by their respective procuring entities on whether a particular procurement falls within the procurement that is covered by this Chapter.

The procedural rules for all challenges shall be in writing and made generally available through electronic means or a paper medium.

2. In the event of a complaint by a supplier, that there has been a breach or a failure as referred to in paragraph 1 arising in the context of covered procurement in which the supplier has, or has had, an interest, the Party of the procuring entity conducting the procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in on-going or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure.
3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known to the supplier or reasonably should have become known to the supplier.
4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities for the purpose of receiving and reviewing challenges by suppliers arising in the context of covered procurements.
5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the relevant 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.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that 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 to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to the decision of the review body on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations, in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures 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. Just cause for not acting shall be provided in writing.

8. Each Party shall provide that where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, the review body may impose corrective action or grant compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge. Where a contract has already been awarded, the Parties may provide that corrective action is not available.

## ARTICLE 9.18

### Modification and Rectification of Coverage

#### Notification of Proposed Modification

1. Each Party shall notify the other Party of any proposed rectification of Annexes 9-A to 9-I, any transfer of an entity from one of those Annexes to another, any withdrawal of an entity from those Annexes, or any other modification to those Annexes (such acts collectively referred hereinafter to as a "modification").
2. For any proposed withdrawal by a Party of a procuring entity from Annexes 9-A to 9-C on the grounds that government control or influence over the procuring entity's covered procurement has been effectively eliminated, the Party proposing the modification (hereinafter referred to as "modifying Party") shall include in the notification evidence that such government control or influence has been effectively eliminated. Government control or influence over the covered procurement of entities covered under Annex 9-C is deemed to be effectively eliminated if:
  - (a) in the case of the Union, the procuring entity performs a competitive activity; and

- (b) in the case of Singapore, the procuring entity has been privatised.

Where government control or influence over the covered procurement of a procuring entity of a Party has been effectively eliminated, the other Party shall not be entitled to compensatory adjustments.

3. For any other proposed modification, the modifying Party shall include in the notification information as to the likely consequences of the change for the coverage provided in this Chapter. Where the modifying Party proposes to make minor amendments or technical rectifications of a purely formal nature not affecting covered procurement, it shall notify these modifications at least every two years.

#### Resolution of Objection

4. Where the other Party (hereinafter referred to as "objecting Party") objects to the notification by the modifying Party, the Parties shall seek to resolve the objection through consultations, including if necessary, consultations at the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees). In such consultations, the Parties shall consider:

- (a) evidence pertaining to the effective elimination of government control or influence over an entity's covered procurement in the case of a notification under paragraph 2;
- (b) evidence that the proposed modification does not affect coverage in the case of a notification under paragraph 3; and

- (c) any claims relating to the need for compensatory adjustments arising from modifications notified according to paragraph 1 or to the level of such adjustments. Such adjustments may consist either of the compensatory expansion of coverage by the modifying Party or of a withdrawal of equivalent coverage by the objecting Party, in both cases with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter.

5. The Parties may have recourse to the dispute settlement mechanism under Chapter Fourteen (Dispute Settlement) where the objecting Party, after consultations under paragraph 4, considers that one or more of the following situations exist:

- (a) in the case of subparagraph 4(a), government control or influence over an entity's covered procurement has not been effectively eliminated;
- (b) in the case of subparagraph 4(b), a modification does not meet the criteria in paragraph 3 and which affects coverage, and should be subject to compensatory adjustments; or
- (c) in the case of subparagraph 4(c), compensatory adjustments proposed during the consultation between the Parties are not adequate to maintain a comparable level of mutually agreed coverage.

## Implementation

6. A proposed modification shall only become effective where:
  - (a) the objecting Party has not submitted a written objection to the proposed modification to the modifying Party within 45 days of the date of the notification of the proposed modifications;
  - (b) the objecting Party has notified the modifying Party of the withdrawal of its objection;
  - (c) the Parties have reached an agreement after due consultations under paragraph 4; or
  - (d) the objection has been resolved through the dispute settlement mechanism under paragraph 5.

## ARTICLE 9.19

### Responsibilities of the Committee

1. In the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees), the Parties may:
  - (a) adopt modalities for reporting statistical data pursuant to paragraph 4 of Article 9.15 (Transparency of Procurement Information);
  - (b) review pending notifications of modifications to coverage and endorse updates to the list of entities in Annexes 9-A to 9-C;

- (c) endorse compensatory adjustments resulting from modifications affecting coverage;
- (d) revise, where required, indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement;
- (e) adopt criteria for deciding over the level of compensatory adjustments of coverage;
- (f) consider issues regarding government procurement that are referred to it by a Party;
- (g) exchange information relating to government procurement opportunities in each Party, including those at sub-central levels; and
- (h) discuss any other matters related to the operation of this Chapter.

2. In the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees), the Parties may take any decision required for the purposes of subparagraphs (a) to (h).

## ARTICLE 9.20

### Adjustment to GPA provisions

If the Revised GPA is amended or superseded by another agreement, the Parties shall amend this Chapter by decision in the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees), as appropriate.