

## CHAPTER 13

### GOVERNMENT PROCUREMENT

#### Article 13.1: Definitions

For the purposes of this Chapter:

**build-operate-transfer contract and public works concession contract** means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

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

**covered procurement**<sup>1</sup> means government procurement:

- (a) of a good, service or any combination thereof, as specified in each Party's Schedule to Annex 13-A;
- (b) by any contractual means, including purchase; rental or lease, with or without an option to buy; and build-operate-transfer contracts and public works concessions contracts;
- (c) for which the value, as estimated in accordance with Articles 13.2.7, 13.2.8, 13.2.9 and 13.2.10, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 13-A, at the time of publication of a notice of intended procurement;
- (d) by a procuring entity; and
- (e) that is not otherwise excluded from coverage under this Agreement;

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

---

<sup>1</sup> For greater certainty, a Party's commitments under this Chapter do not constitute commitments in relation to the supply of services made under Chapter 7 (Cross-Border Trade in Services), Chapter 8 (Financial Services) or Chapter 12 (Establishment and Related Provisions).

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

**multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

**notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender or both;

**offset** means any condition or undertaking that requires the use of local content, a local supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to improve a Party's balance of payments accounts;

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

**procuring entity** means an entity listed in Sections A (Central Government Entities), B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 13-A;

**publish** means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

**qualified supplier** means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

**selective tendering** means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

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

**supplier** means a person or group of persons that provides or could provide a good or service to a procuring entity; and

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

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

## Article 13.2: Scope and General Provisions

### *Application*

1. Subject to paragraph 2, this Chapter shall apply to any measure regarding covered procurement.

### *Activities Not Covered*

2. This Chapter shall not apply to:

- (a) non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements;
- (b) procurement for the direct purpose of providing international assistance, including development aid;
- (c) public employment contracts;
- (d) procurement conducted 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;
- (e) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;
- (f) procurement conducted 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 governments of a project; and
- (g) 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, derivatives and other securities.

### *Schedules*

3. Each Party shall specify the following information in its Schedule to Annex 13-A:

- (a) in Section A (Central Government Entities), the central government entities whose procurement is covered by this Chapter;
- (b) in Section B (Sub-Central Government Entities), the sub-central government entities whose procurement is covered by this Chapter;

- (c) in Section C (Other Entities), other entities whose procurement is covered by this Chapter;
- (d) in Section D (Goods), the goods covered by this Chapter;
- (e) in Section E (Services), the services, other than construction services, covered by this Chapter;
- (f) in Section F (Construction Services), the construction services covered by this Chapter;
- (g) in Section G (General Notes), any General Notes; and
- (h) in Section H (Threshold Adjustment Formula), the applicable Threshold Adjustment Formula.

#### *Compliance*

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.
5. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.
6. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

#### *Valuation*

7. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:
  - (a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;
  - (b) the value of any option clause; and
  - (c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

8. For Hong Kong, China, if an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (recurring contracts), the calculation of the estimated maximum total value shall be based on:

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

9. For Hong Kong, China, 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, if:
  - (i) the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
  - (ii) the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

10. For Australia, if the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

### **Article 13.3: Exceptions**

1. 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 trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to the good or service of a person with disabilities, of a philanthropic or not-for-profit institution, or of prison labour.

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

#### **Article 13.4: General Principles**

##### *Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to local goods, services and suppliers.

2. With respect to any measure regarding covered procurement, neither Party, including its procuring entities, shall:

- (a) treat a locally established supplier 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 good or service offered by that supplier for a particular procurement is a good or service of the other Party.

##### *Procurement Methods*

3. A procuring entity shall use open, selective or limited tendering procedures.

##### *Rules of Origin*

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

### *Offsets*

5. With regard to covered procurement, neither Party, including its procuring entities, shall seek, take account of, impose or enforce any offset, at any stage of a procurement.

### *Measures Not Specific to Procurement*

6. Paragraph 1 and paragraph 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.

### *Use of Electronic Means*

7. The Parties shall, as far as practicable and reasonable, seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders.

## **Article 13.5: Publication of Procurement Information**

1. Each Party shall promptly publish its procurement laws, regulations, procedures and policy guidelines relating to covered procurement, and any change or addition to this information.

2. Each Party shall, on request, respond to an inquiry from the other Party relating to the information referred to in paragraph 1.

## **Article 13.6: Notices**

### *Notice of Intended Procurement*

1. In an open tendering procedure and, if appropriate, a selective tendering procedure, a procuring entity shall publish a notice of intended procurement in such a way as to be readily accessible to any interested supplier of the other Party for the entire time period established for tendering.

2. The information in each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, and the time periods for submission of tenders or, if applicable, for the submission of requests for participation in the procurement.

### *Notice of Planned Procurement*

3. Procuring entities are encouraged to publish, prior to or as early as possible in the fiscal year, a notice regarding their future procurement plans (notice of planned procurement). The notice of planned procurement should include the subject matter of each procurement and the planned date of the publication of the notice of intended procurement or commencement of the related tender procedure.

4. A procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 13-A 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 to the procuring entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

### **Article 13.7: Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement.

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

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

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

- (a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the Area of the Party of the procuring entity; and
- (b) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

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

- (a) bankruptcy or insolvency;

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

### **Article 13.8: Qualification of Suppliers**

#### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. 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*

3. If a procuring entity uses selective tendering:
  - (a) for Australia, to ensure optimum effective competition under selective tendering procedures, a procuring entity shall, for each intended procurement, invite tenders from the maximum number of local suppliers and suppliers of the other Party, taking due account of the efficient operation of the procurement system and market conditions. It shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner; and
  - (b) for Hong Kong, China, a procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
4. For greater certainty, a procuring entity applying selective tendering may use a list of qualified suppliers or a multi-use list established in accordance with paragraph 5.

### *Multi-Use Lists*

5. A Party or procuring entity may establish a multi-use list, provided that the Party or procuring entity publishes annually, or otherwise makes available continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

- (a) a description of the goods and services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and obtain all relevant documents relating to the list; and
- (d) any deadlines for submission of applications for inclusion on that list.

6. A Party or procuring entity that maintains a multi-use list shall include on the list all suppliers that satisfy the conditions for participation within a reasonably short time.

7. If a supplier applies for participation in a covered procurement, or for inclusion on a list referred to in paragraph 5, a procuring entity shall promptly advise such supplier of its decision with respect to its application. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

8. A procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 13-A 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 5 and includes the information required under paragraph 5, as much of the information required under Article 13.6.2 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 entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 13.6.2, to the extent such information is available.

9. A procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 13-A may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 7 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.

10. If a procuring entity rejects a supplier's request for participation in a procurement 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, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

### **Article 13.9: Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect local suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 13.6, 13.7, 13.8, 13.10, 13.11, 13.12, 13.13 or 13.14. A procuring entity may use limited tendering only under the following circumstances:

(a) if, in response to a prior notice, invitation to participate or invitation to tender:

- (i) no tenders were submitted or no suppliers requested participation;
- (ii) no tenders were submitted that conform to the essential requirements in the tender documentation;
- (iii) no suppliers satisfied the conditions for participation; or
- (iv) the tenders submitted were collusive,

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

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

- (i) the requirement is for a work of art;
- (ii) 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 or its authorised agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or 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) for a good purchased on a commodity market or exchange;
- (e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or 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 prototype or 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 prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (f) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;
- (g) if a contract is awarded to the winner of a design contest, provided that:
  - (i) the contest has been organised in a manner that is consistent with this Chapter; and
  - (ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or
- (h) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring

entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

### **Article 13.10: Negotiations**

1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:
  - (a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required in accordance with Article 13.6; or
  - (b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity 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 tender documentation; and
  - (b) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

### **Article 13.11: Technical Specifications**

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.
2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:
  - (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
  - (b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognised national standards or building codes.
3. A procuring entity 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 these cases, the procuring entity includes words such as “or equivalent” in the tender documentation.

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

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

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

#### **Article 13.12: Tender Documentation**

1. A procuring entity shall promptly make available and shall provide, on request, to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender, including all criteria that the procuring entity will consider in awarding the contract.

2. A procuring entity shall promptly 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*

3. If, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to a participating supplier or amends or re-issues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if 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 13.13: Time Periods**

### *General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

- (a) the nature and complexity of the procurement; and
- (b) the time necessary for transmitting tenders by non-electronic means from foreign as well as local points if electronic means are not used.

### *Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraph 4, paragraph 5 and paragraph 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity 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) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

- (a) the procuring entity has published a notice of planned procurement in accordance with Article 13.6 at least 40 days and no more than 12 months in advance of the date 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) the address from which documents relating to the procurement may be obtained; and
  - (iv) as much of the information that is required for the notice of intended procurement as is available;
- (b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3;
- (c) the procuring entity procures commercial goods or services; or
- (d) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

8. If a procuring entity covered under Sections B (Sub-Central Government Entities) or C (Other Entities) of a Party's Schedule to Annex 13-A has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

## **Article 13.14: Treatment of Tenders and Awarding of Contracts**

### *Treatment of Tenders*

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

### *Awarding of Contracts*

3. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.
4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:
  - (a) the most advantageous tender; or
  - (b) if price is the sole criterion, the lowest price.
5. If a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
6. A procuring entity shall not use options, cancel a covered procurement, or modify awarded contracts for the purpose of circumventing the obligations of this Chapter.

## **Article 13.15: Post-Award Information**

1. A procuring entity shall, not later than 72 days after the date of the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:
  - (a) a description of the good or service procured;
  - (b) the name and address of the procuring entity;

- (c) the contract date or the date of award;
- (d) the name and address of the successful supplier;
- (e) the value of the contract award; and
- (f) the procurement method used.

2. A procuring entity shall promptly inform suppliers that have submitted tenders of the contract award decision. Subject to Article 13.16, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons why the procuring entity did not select its tender.

#### *Maintenance of Records*

3. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 13.9.3, for at least three years after the date of the award of a contract.

### **Article 13.16: Disclosure of Information**

#### *Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining 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, except to the extent required by law, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers without the written authorisation of the supplier that provided the information.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if that 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 13.17: Ensuring Integrity in Procurement Practices**

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement, and that its procuring entities have in place policies and procedures to eliminate, to the extent possible, any potential conflict of interest on the part of those engaged in or having influence over a procurement.

#### **Article 13.18: Administrative and Judicial Review**

1. In the event of a complaint by a supplier that there has been a breach of measures implementing this Chapter in the context of a covered procurement in which the supplier has, or has had, an interest, 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.

2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, a complaint that a supplier submits, in accordance with the Party's laws, regulations and procedures, relating to a covered procurement.

3. Each Party shall make information on its complaint mechanisms generally available.

#### **Article 13.19: Modifications and Rectifications to Coverage**

1. A Party may modify its coverage under this Chapter, provided that:
  - (a) it notifies the other Party in writing and simultaneously offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraph 2 and paragraph 3; and

(b) the other Party does not object in writing within 30 days of the notification.

2. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedule to Annex 13-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment is not required to provide compensatory adjustments.

3. A Party is not required to provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. If the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

#### **Article 13.20: Cooperation and Further Negotiations**

1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems.

2. The Parties shall endeavour, to the extent practicable, to cooperate in such matters as:

- (a) facilitating participation by suppliers in government procurement;
- (b) exchanging experiences and information, such as regulatory frameworks, contract establishment and management, best practices and statistics; and
- (c) developing and expanding the use of electronic means in government procurement systems.

3. A Party may request consultations regarding this Chapter, and the Parties may decide to hold further negotiations with a view to revising:

- (a) the thresholds set out in Annex 13-A; and
- (b) the Threshold Adjustment Formula set out in Section H (Threshold Adjustment Formula) of Annex 13-A.