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CHAPTER NINE
GOVERNMENT PROCUREMENT

Article 9.1: Definitions

For purposes of this Chapter:

Build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, 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 the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods and services means goods and services of a type of goods and services that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

days mean calendar days;

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.;

international standard means a standard that is developed in a manner consistent with the decisions of the WTO Committee on Technical Barriers to Trade, as elaborated in "Decisions and Recommendations adopted by the Committee since 1 January 1995", G/TBT/1/Rev.8, 23 May 2002, Section IX ("Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement");

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

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;

offsets means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment, counter-trade or similar

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actions to encourage local development or to improve a Party's balance-of-payments accounts;

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

procurement official means any person who performs procurement functions;

procuring entity means an entity listed in Annex 9;

relevant authority means any authority authorized by a Party to conduct any aspect of a procurement;

services includes construction services, unless otherwise specified;

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

technical specification means a tendering requirement that:

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

Article 9.2: Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure regarding procurement by a procuring entity of goods, services or any combination thereof that is covered by this Chapter.
2. This Chapter applies to procurement:

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- (a) by any contractual means, including purchase, lease or rental, with or without an option to buy, build-operate-transfer contracts and public works concessions contracts; and
 - (b) for which the value, as estimated in accordance with the provisions of paragraphs 5 and 6, equals or exceeds the relevant threshold specified in Annex 9-G.
3. This Chapter does not apply to:
- (a) non-contractual agreements or any form of assistance provided by a Party or a government enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and government provision of goods or services to persons or to state, regional or local governments;
 - (b) purchases funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;
 - (c) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
 - (d) any good or service component of a contract to be awarded by an entity that is not listed in Annex 9; and
 - (e) the procurement of transportation services that form a part of, or are incidental to, a procurement covered by this Chapter.

Compliance

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting procurement covered by this Chapter.

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether that procurement is covered by this Chapter, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding

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the application of this Chapter;

- (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and
- (c) without prejudice to paragraph 6, base its calculation of the total maximum value of the procurement over its entire duration, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers.

6. In the case of procurement by lease or rental or procurement that does not specify a total price, the basis for estimating the value of the procurement shall be, with respect to:

- (a) a fixed-term contract,
 - (i) where the term is 12 months or less, the total estimated contract value for the contract's duration, or
 - (ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value; or
- (b) a contract for an indefinite period, the estimated monthly installment multiplied by 48. Where there is doubt as to whether the contract is to be a fixed-term contract, the basis for estimating the value of the procurement described in this subparagraph shall be used.

Article 9.3: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure and any procurement covered by this Chapter, each Party and each procuring entity shall accord unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of that Party, treatment no less favorable than the most favorable treatment the Party or the procuring entity accords to its own goods, services and suppliers.

2. With respect to any measure and any procurement covered by this Chapter, a procuring entity may not:

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

Rules of Origin

3. For purposes of procurement covered by this Chapter, neither Party may apply rules of origin to goods imported from the other Party that are different from the rules of origin the Party applies in the normal course of trade to imports of the same goods from the other Party.

Offsets

4. With regard to procurement covered by this Chapter, a procuring entity may not seek, take account of, impose or enforce offsets in the qualification and selection of suppliers, goods or services, in the evaluation of tenders or in the award of contracts, prior to or in the course of a procurement process.

Measures Not Specific to Procurement

5. 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 procurement covered by this Chapter.

Article 9.4: Publication of Procurement Information

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application and procedure regarding procurement covered by this Chapter in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public.

2. With respect to the measures referred to in Paragraph 1, each Party shall:

- (a) promptly publish in the same media all additions and changes; and
- (b) on request, provide explanations to the other Party.

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Article 9.5: Publication of Notice of Intended Procurement and Notice of Planned Procurement

Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice (“notice of intended procurement”) inviting interested suppliers to submit tenders or, where appropriate, applications for participation in the procurement. The notice shall be in electronic or paper media that are widely disseminated and readily accessible to the public for the entire period established for tendering.

2. A procuring entity shall include the following information in each notice of intended procurement:

- (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;
- (b) a description of the procurement, including the nature, and any conditions for participation that a supplier must satisfy in order to participate in the procurement;
- (c) the dates for starting or completing delivery of goods or services;
- (d) the procurement method that will be used;
- (e) the address and the time-limit for the submission of tenders and, where appropriate, any time limit for the submission of an application for participation in a procurement.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding the procuring entity’s procurement plans. The notice should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 6:3(a), a procuring entity may apply Article 6:3 for the purpose of establishing shorter time limits for tendering for procurements covered by this Chapter.

Article 9.6: Time Limits

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1. A procuring entity shall prescribe time limits for the tendering process that allow suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Except as provided for in paragraphs 3 and 4, a procuring entity shall provide that the final date for the submission of tenders shall not be less than 40 days after the notice of intended procurement is published.
2. Where a procuring entity requires suppliers to apply for participation in a procurement, the entity shall provide that the final date for the submission of such applications shall not be less than 25 days after the date on which the notice of intended procurement or a notice of application for participation in a procurement is published. In such cases, the procuring entity also shall provide that the final date for submission of tenders shall not be less than 40 days after the date of issuance of an invitation to tender.
3. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 40 days from the later of the date of publication of the notice of intended procurement or the date of issuance of invitations to tender, provided that such time-limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than 10 days prior to the final date for the submission of tenders where:
 - (a) the procuring entity published a separate notice, including a notice of planned procurement under Article 5:3 at least 40 days and not more than 12 months in advance, and such separate notice contains: a description of the procurement; the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement and the address from which documents relating to the procurement may be obtained;
 - (b) the procuring entity procures commercial goods or services, except that the procuring entity may not rely on this provision if it requires suppliers to satisfy conditions for participation, in accordance with Article 8; or
 - (c) for duly substantiated reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the use of a 40-day time limit would result in serious injury to the procuring entity or the relevant Party.
4. When a procuring entity publishes a notice of intended procurement in accordance with Article 5 in an electronic medium, the procuring entity may reduce the time limit for submission of a tender or an application for participation in a procurement by up to five days. The use of this provision, however, shall in no case result in the reduction of either time limit to less than 10 days from the date on which the notice of intended procurement is published.
5. A procuring entity shall require all participating suppliers to submit tenders in accordance

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with a common deadline. For greater certainty, this requirement also applies where:

- (a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or
- (b) negotiations are concluded and suppliers may submit new tenders.

Article 9.7: Information on Intended Procurements

Tender Documentation

1. A procuring entity shall provide to interested 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, scope and, where quantifiable, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;
- (b) any conditions for participation, including any financial guarantees, information and documents that suppliers are required to submit;
- (c) all criteria, including all cost factors, to be considered in the awarding of the contract, and the relative importance of such criteria;
- (d) the date, time and place for the opening of tenders; and
- (e) any other terms or conditions, including terms of payment.

2. A procuring entity shall promptly:

- (a) provide, on request, the tender documentation to any supplier participating in the procurement; and
- (b) reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.

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Technical Specifications

3. A procuring entity may not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:
 - (a) specify the technical specification, wherever appropriate, 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 and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose more burdens than the use of a government-unique standard.
5. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
6. A procuring entity may 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 procurement from a person that may have a commercial interest in the procurement.
7. 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 to protect the environment.

Modifications

8. Where, during the course of procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit all such modifications or amended or re-issued notice or tender documentation:
 - (a) to all the suppliers that are participating at the time of the information is amended, if known, and in all other cases, in the same manner as the original information;

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and

- (b) in adequate time to allow such suppliers to modify and re-submit their initial tenders, as appropriate.

Article 9.8: Conditions for Participation

General Requirements

1. Where suppliers are required to satisfy conditions for participation, a procuring entity shall, subject to the other provisions of this Chapter:

- (a) limit any conditions for participation, to those that are essential to ensure that a supplier has the legal, commercial, technical and financial abilities to fulfill the requirements and technical specifications of the procurement;
- (b) evaluate the financial, commercial and technical abilities of a supplier on the basis of the supplier's global business activities, including both its activity in the territory of the Party of the supplier, as well as its activity, if any, in the territory of the Party of the procuring entity, and may not impose as a condition for participation, that a supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party;
- (c) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that have been specified in advance in notices or tender documentation; and
- (d) allow all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation to participate in the procurement.

2. Nothing in this Article shall preclude the exclusion of a supplier from a procurement on grounds such as bankruptcy or false declarations.

3. Where a procuring entity requires suppliers to satisfy conditions for participation in order to participate in a procurement, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers with adequate time to prepare and submit responsive applications and for the entity to evaluate and make its determination on such applications.

Multi-Use Lists

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4. A procuring entity may establish a multi-use list provided that the entity annually publishes in a paper or electronic media, 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 or services that may be procured using the list;
- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (d) the date on which use of the list will terminate, or where a date is not provided, an indication of the method by which advance notice will be given of the termination of use of the list;
- (e) any deadlines for submission of applications for inclusion on the list; and
- (f) an indication that the list may be used for procurement covered by this Chapter.

5. A procuring entity that maintains a multi-use list shall allow suppliers to apply at any time for inclusion on the list and shall include all suppliers that fulfill the conditions for participation within a reasonably short time.

Information on Procuring Entity's Decisions

6. Where a supplier applies for participation in a procurement, or for inclusion on a multi-use list, a procuring entity shall promptly advise such supplier of its decision with respect to its application.

7. Where a procuring entity rejects an application for participation in a procurement, inclusion on a multi-use list or ceases to recognize a supplier as having satisfied the conditions for participation, the procuring entity shall promptly inform the supplier and, on request of such supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 9.9: Tendering Procedures

1. A procuring entity shall conduct procurement covered by this Agreement in a manner that is consistent with this Chapter, and, except where specifically provided otherwise in this

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Chapter, in a transparent and impartial manner and shall permit any interested supplier to submit a tender.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 5-8 in the following circumstances:

- (a) where no tenders that conform to the essential requirements in the tender documentation were submitted in response to a notice of intended procurement, or where no suppliers that satisfied the conditions for participation applied to participate in a procurement, provided that the essential requirements of the procurement are not substantially modified;
- (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 the following reasons:
 - (i) the requirement is for a work of art;
 - (ii) the protection of patents, copyrights or other exclusive rights or proprietary information; or
 - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the procuring entity to procure goods or services that would:
 - (i) alter the operation or use of the existing goods or services; or
 - (ii) due to the change of goods or services, require existing equipment or services to be altered;
- (d) for goods purchased on a commodity market;
- (e) 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. When such a contract has been fulfilled, subsequent procurements of goods or services shall be subject to Articles

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3 through 11; or

- (f) in so far 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 under procedures consistent with Articles 5-8, and the use of such procedures would result in serious injury to the procuring entity or the relevant Party.

3. For each contract awarded under paragraph 2, a procuring entity shall prepare a report in writing that includes 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 2 that justified the use of such procedures.

Article 9.10: Treatment of Tenders and Awarding of Contracts

Receipt and Opening of Tenders

1. A procuring entity or relevant authority shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity or relevant authority shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity or relevant authority provides suppliers with opportunities to correct, or concur in the correction of, unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunities to all participating suppliers.

Awarding of Contracts

4. A procuring entity or relevant authority shall require that in order to be considered for award, a tender be submitted:
 - (a) in writing and, at the time of opening, conform to the essential requirements and evaluation criteria specified in the notices and tender documentation; and
 - (b) by a supplier that satisfies any conditions for participation.
5. Unless a procuring entity or relevant authority determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity or authority

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has determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender determined to be the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation.

6. A procuring entity or relevant authority may not cancel a procurement, nor terminate or modify awarded contracts in a manner that circumvents the obligations of this Chapter.

Information Provided to Suppliers

7. Subject to Article 14 (*Non-Disclosure of Information*), a procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision and, on request of a supplier, provide an unsuccessful supplier with an explanation of the reasons that the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 60 days after the award of each contract covered by this Chapter, a procuring entity or relevant authority shall publish a notice in an officially designated publication that may be in an electronic or paper medium. The notice shall include at least the following information about the contract:

- (a) the name and address of the procuring entity;
- (b) a description of the goods or services procured;
- (c) the date of award;
- (d) the name and address of the successful supplier;
- (e) the contract value; and
- (f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9:2, a description of the circumstances justifying the use of such procedure.

Provision of Information to Other Party

9. On request of the other Party, a Party shall provide pertinent information on the award of a contract as may be necessary to determine whether a given procurement was conducted fairly, impartially and in accordance with this Chapter. Such information shall include information on the characteristics and relative advantages of the winning tender and on the contract price.

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Maintenance of Records

10. A procuring entity or relevant authority shall maintain reports and records of tendering procedures relating to contracts covered by this Chapter, including reports provided for in Article 9.3, and shall retain such reports and records for a period of at least three years from the award of a contract.

Article 9.11: Ensuring Integrity in Procurement Practices

1. Each Party shall adopt and maintain the necessary legislative or other measures to establish that it is a criminal offense under its law for:

- (a) a procurement official of that Party to solicit or accept, directly or indirectly, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;
- (b) any person to offer or grant, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for himself or for another person, in exchange for any act or omission in the performance of his or her procurement functions; and
- (c) any person to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official or for that foreign procurement official or a third party, in order that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain an improper advantage.

2. Each Party shall establish and maintain systems to declare ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement.

On the request of the other Party, a Party shall identify the suppliers determined to be ineligible under these systems, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.12: Domestic Review of Supplier Challenges

1. Each Party shall provide timely, effective, transparent and predictable means for a supplier to challenge the conduct of a procurement covered by this Chapter, without prejudice to that supplier's participation in ongoing or future procurement activities. Each Party shall ensure

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that its review procedures are made generally available in writing, and are timely, transparent, effective and consistent with the principle of due process.

2. Each Party shall establish or designate at least one impartial authority that is independent from its procuring entities, to receive and review challenges submitted by suppliers relating to the obligations of this Chapter and make appropriate findings and recommendations.

3. Where a body other than an authority established or designated under paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.

4. Each Party shall authorize the authorities established or designated under paragraph 2 to take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded. However, in deciding whether to apply an interim measure, each Party may take into account any overriding adverse consequences to the public interest. If a Party decides not to apply an interim measure, it shall provide a written explanation of the grounds for its decision

5. Each Party shall ensure that its review procedures are conducted in accordance with the following:

- (a) A supplier shall be allowed a sufficient period of time to prepare and submit a written challenge, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- (b) A procuring entity shall respond in writing to the complaint and disclose all relevant documents to the review body or authority;
- (c) A supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response prior to a decision being taken on the complaint by the review body or authority; and
- (d) The review authorities or authorities shall provide decisions relating to a supplier challenges in a timely fashion, in writing, with an explanation of the basis for each decision.

Article 9.13: Modifications and Rectifications to Coverage

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1. Either Party may modify its coverage under this Chapter provided that it:
 - (a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and
 - (b) offers within 30 days acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, where necessary, except as provided in paragraphs 2 and 3.
2. Either Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Annexes to this Chapter, provided that it notifies the other Party in writing and that the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments.
3. A Party need not 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. Where the Parties do not agree that 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.
4. Where the Parties are in agreement on the proposed modification, technical rectification or minor amendment, the Joint Commission shall modify the relevant Annex to reflect such agreement.

Article 9.14: Non-Disclosure of Information

1. No Party, procuring entity, relevant authority or review authorities, referred to in Article 12 (*Domestic Review of Supplier Challenges*), may disclose information designated as confidential, without the authorization of the persons providing the information. The relevant authority and procuring entities shall treat tenders in confidence. In particular, they shall not provide information to other suppliers where doing so might prejudice fair competition between suppliers.
2. Nothing in this Chapter shall prevent a Party or a procuring entity from withholding the release of information under this Chapter where release might:
 - (a) impede law enforcement;

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- (b) prejudice fair competition between suppliers;
- (c) prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property; or
- (e) otherwise be contrary to the public interest.

Article 9.15: Exceptions

1. Provided 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 adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

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