

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter on Government Procurement

• **CHAPTER ON GOVERNMENT PROCUREMENT**

[Article I. Aims]

[1. The purpose of this Chapter is to [[create [,] [and] maintain [and expand] a [[single,] broad] government procurement market [among the Parties] in order to maximize and optimize] [generate] business] [market access] opportunities [in government procurement] for [participating] [the Parties'] suppliers [of originating goods and services of the Parties] [and to reduce the business transactions costs of the public [and private] sectors [in the Parties [, [and] [as well as] ensuring the greatest simplicity in the application of government procurement measures]]].]

[[2. In order to attain this goal, each Party shall] [guarantee] [recognize that it is desirable to establish]:]

[a) the principles of non-discrimination [,] [and] transparency [, [legality,] [[impersonality,] [morality,]] [equality] [due process], publicity, [and] [competitiveness] [free competition], [[a link to the individual instrument of a procurement requirement, objective judgment and other principles consistent with the basic principles herein above] in government procurement,] [pursuant to the provisions of this Chapter, [and]]]]]

[b) the development of cooperation and technical assistance mechanisms.]

[2. In order to attain this goal, each Party shall:

a) promote the principles of non-discrimination, transparency and competitiveness, consistent with the provisions of this Chapter and applicable national laws;

b) guarantee the development of cooperation and technical assistance mechanisms, and

c) encourage, through the provision of greater advantage in the procurement process, small and medium-sized enterprises in the smaller and lesser developed Parties.]

[Article II. General Rights and Obligations:]

[1. The Parties [agree upon the following rights and obligations, in accordance with the provisions of this Chapter:] [recognize the desire]]

[a) to apply the measures relating to government procurement in such a way as to allow [the highest possible degree of competition [appropriate to the circumstances] [, respecting the principles [of transparency and nondiscrimination [, as well as the other provisions contained in this Chapter]] [and the other provisions contained in this Chapter]] ;] [competition, consistent with their size, levels of development and development requirements;]]

[b) to [promote] [provide] business opportunities so that the suppliers compete in government procurements [preferably on the basis of [principles defined in Article 1 and] the quality-price ratio [principle]] [and delivery timing] [, as long as the application of this principle is compatible with the nature of the procurement in question]. [The application of [this principle] [these criteria] is aimed at obtaining the most efficient results with the financial resources allocated to the entities that carry out the procurement, taking into account the public needs of these entities];]

[c) to ensure [maximum simplicity and] publicity in the application of government procurement measures;]

[d) to [[maintain and] promote business] [provide market access] opportunities in government procurement processes for suppliers [from other Parties [during the periods of implementation needed for compliance with the commitments arising from the international agreements relating to this matter to which they are parties]];]

[e] to grant [equal] [non-discriminatory] opportunities to suppliers from other Parties in government procurement processes; and]

[f] to [refrain from applying] [not apply] measures that:]

[i] are discriminatory;]

[ii] are arbitrary; [or]]

[iii] have the effect of denying equal access or opportunity to a supplier from another Party.]

[2. None of the entities of the Parties shall design, prepare or structure a government procurement [contract or policy] in such a way as to circumvent this Chapter.]

[3. Each Party shall ensure that all measures affecting government procurement are administered in a reasonable, objective, and impartial manner.]

[4. [This Chapter shall be applied in [conjunction] [congruity] with the specific laws of each Party.] [Each Party shall ensure that measures applied by [its] [the] entities [covered] [conform] [give effect] to the provisions of this Chapter.]]

[5. Nothing in this Chapter shall be construed to prevent a Party State from adopting the measures it considers necessary for protecting its fundamental interests in regard to procurements related to national security and defense.]

Article III. [[Principles of] National Treatment [and] [,] [Most Favored Nation Treatment] [and Special and Differential Treatment]] [Non-discrimination]

[1. With respect to all measures covered by [the provisions of] this Chapter [implemented by entities through competitive procedures], each Party shall [immediately and unconditionally] accord to the goods [and services] of another Party, [and] to the [suppliers of such goods, and to service] suppliers of another Party [that offer such goods and services], treatment no less favorable than [the most favorable treatment] the Party accords to:]

[a)] its own [like] goods, [like] services and suppliers [of said goods and services] [; and] [.]

[b] [like] goods, [like] services and [the] suppliers [of said goods and services of any other] [non-Party] [Party] [of another Party] [or third countries].]

[2. With respect to all measures covered by this Chapter, no Party may:]

[a) accord a locally established supplier treatment less favorable than that accorded to 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 another Party [or of any non-Party].]

[3. This article shall not apply to measures relating to customs duties or other charges of any kind imposed on or in connection with importation, to the method of levying such duties and charges, or to other import regulations, including restrictions and formalities [,and measures affecting trade in services] other than laws, regulations and requirements regarding government procurement covered by this Chapter.]

[4. The Parties shall apply the principle of Special and Differentiated Treatment in the obligations and terms agreed to in this chapter for the purpose of creating the opportunity for effective and balanced enjoyment of the benefits of the agreement for all participating countries. To this end, in accordance with the level of development and size of the economies, special conditions shall be provided which permit the gradual assimilation and application of the

agreement's measures. Similarly, consideration shall be given to the need for technical assistance to permit full application of the present agreement.]

Article IV. [Offsets] [Prohibition of Compensatory Measures]

1. [Each Party shall ensure that its entities do not take into account, seek, require or impose, [in the [qualification and selection of suppliers, goods or services, or in the evaluation of tenders and award of contracts] [various stages of the processes],] [special compensatory conditions (offsets) [or special performance requirements]] [offsets] [from suppliers [from other Parties] taking part in government procurement processes].] [Each Party shall ensure that it does not facilitate the use of compensatory conditions to the extent that these represent discrimination in the qualification and selection of suppliers, goods or services, or in the award of contracts.]

[2. The developing countries or the smaller economies may apply compensatory conditions provided these are objective, clearly defined and non-discriminatory, and so long as they are only used for purposes of qualifying and not as criteria for the awarding of contracts.]

[Article V. Rules of Origin]

[1. For purposes of government procurement covered by this Chapter, [no Party may apply rules of origin to goods imported from another Party that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade.] [the rules of origin used will be the rules of origin in the Chapter on Market Access for Goods.] [originating goods of the Parties will be those that qualify as such according to Annex V.1 (Rules of Origin) of this Chapter.]]

[2. For purposes of the present Chapter, goods and services shall be considered originating goods and services of the Parties where they qualify as such in accordance with [the pertinent provisions in the Chapter on access of goods and the Chapter on Services] [annex X of the present Chapter].]

Article VI. Denial of Benefits

1. [A Party may deny the benefits granted by this Chapter to a service supplier from another Party [, following notification and consultation,] [during the period included between the presentation of tenders and the awarding of the contract,] when it determines that the service is being provided by an enterprise [that has no substantial business activities in the territory of another Party and] that [, according to the applicable laws of that Party,] is owned or controlled by persons from a non-Party. [Any Party may make consultations relative to this Article during the procurement processes conducted in any other Party State.]] [A Party may deny the benefits of this Chapter if it determines that the [procuring entity] [supplier] is not a juridical person of or established in a Party to the FTAA Agreement, with "substantial connections" to the Party, as defined by the national legislation of the respective state.]

[2. A Party may also deny the benefits of this Chapter to a service supplier of another Party where the service is being provided by a company owned or controlled by nationals of a non-Party, and the denying Party:]

[a) does not maintain diplomatic relations with the non-Party, or]

[b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the company or that would be violated or circumvented if the benefits of this Chapter were accorded to the company.]

[Article VII. Scope of Application]

[1. [[Except as otherwise provided [in this Chapter],] this Chapter applies to [the measures that a Party adopts or maintains in relation to]:] [[any manner of purchasing goods, providing services or of purchasing goods and providing services jointly,] [covered in the respective legislation in force and done by the entities of the Parties [, excluding concessions]].] [[any law, regulation, requirement[s], procedure[s] or practice[s] governing] the procurement, [leasing or renting with or without option to purchase] by any contractual means [excluding concessions], by [covered] entities [listed in Annex VII.1 (Entities),] of goods [or] [,] services, [and public works] [including public works,] or any combination thereof, [indicated in Annex VII.2] [[for governmental purposes] and

not with a view to commercial resale or with a view to use in the production or supply of goods [or] [,] services [and public works indicated in Annexes ____, ____ and ____] for commercial sale].[Government procurement by means of concessions is not covered by this Chapter.]] [any type of procurement of goods, services, or combinations of goods and services, [including, inter alia, [licensed] concessions [for public works]] [, provided for by the applicable legislation in force and carried out by public entities of the Parties, with the exception of the entities listed in Annex VII.1 (Entities)].] [Except as provided in Annexes XX.01 and XX.02, this Chapter shall apply the government procurement envisaged in the respective current legislation of the Parties and carried out by its entities, in regard to:

- a) goods; and
- b) services, subject to the provisions of Annexes I and II of Chapter XX (Cross-border Trade in Services).]]

[2. Notwithstanding the provision in paragraph 1(b), this Chapter shall not apply to:

- a) subsidies or donations accorded by one Party or one state enterprise, including loans, guarantees and insurance supported by any Party;
- b) government services or functions, such as implementation of laws, social readaptation, unemployment pension or insurance services, or services related to social security, social welfare, public education, public instruction, child care, health and protection; and
- c) cross-border financial services.]

[3. This Chapter shall comprise government procurements whose value is equal to or greater than the limits established in Annex IX.1 (Thresholds *–no text*).

4. None of the entities of the Parties shall conceive, prepare or structure a contract on government procurement in such a way as to evade the obligations of this Chapter.]

[Article VIII. Modalities of procurement]

[1. The Chapter applies to procurement involving any [method,] [modality established under the laws and regulations of the Parties.] [such as purchase, lease or rental contracts, with or without an option [to purchase], as well as combinations thereof]. [Government procurement by means of concessions is not covered by this Chapter.]]

[Article IX. [Thresholds and] Valuation [of contracts]]

[1. This Chapter shall cover government procurement, the value of which is equal to, or higher, than the limits set out in Annex IX.1 (Thresholds *– no text*).]

[2. For the purposes of determining whether procurement is above the thresholds in Annex IX.1 (Thresholds *– no text*), the following provisions shall apply:]

[a) The value of a procurement shall be estimated as of the time of publication of the notice of invitation to tender;]

[b) In calculating the [referential] value of the procurement, [all taxes and other headings that affect the cost of the product, service or works, as well as] the total value of all purchases provided for, including premiums, fees, commissions, [and] interest [, other revenue streams [, and the maximum permissible optional purchases] shall be taken into account];]

[c) [Contracts that are awarded in multiple parts, are awarded to more than one supplier, are for an indefinite quantity or duration, [or result in the awarding of more than one contract,] shall be valued at the total estimated value of the contract over the duration of the contract period, if available, or at the maximum value that could be awarded to a single supplier;] [If a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for the valuation shall be the

actual value of recurring contracts concluded over the previous fiscal year, adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve (12) months. In the absence of such contracts, [use] the estimated value of recurring contracts anticipated over the fiscal year or twelve (12) months subsequent to the initial contract;]]

[d] In cases of contracts for lease, or use, with or without an option to buy, or contracts which do not specify a total price, the basis for valuation shall be:]

[i] in the case of fixed-term contracts, where the term is twelve (12) months or less, the calculation will be made on the basis of the total contract value for their duration, or, where their term exceeds twelve (12) months, on the basis of the total value, including the estimated residual value; or]

[ii] in the case of contracts for an indefinite period, the basis will be the monthly installment multiplied by forty-eight (48),]

[iii] if the entity is not certain whether a contract is fixed-term or for an indefinite period, it shall calculate the contract value using the method outlined in [4.] [(c)] ii.]

[3. Parties shall ensure that their procuring entities do not select the valuation method or divide procurement requirements into separate contracts or otherwise value such requirements for the purposes of avoiding the application of this Chapter.]

[Article X. Exceptions]

[1. The types of government procurement excluded from this Chapter are listed in Annex X.1 (Exceptions).] [1. This Chapter shall not apply to:]

[a] agreements entered into in pursuit of economic integration at the sub-hemispheric level;]

[b] acquisitions and procurement linked to situations of defense, national security, public order, natural disasters and other emergencies involving the protection of health and the environment;]

[c] measures necessary to protect morals, public order or security, human, animal and plant health and life, intellectual property, and products manufactured or services provided by handicapped persons, philanthropic institutions or prison labor, provided such measures are not applied in a way that they constitute a means of arbitrary or unjustifiable discrimination among countries where the same conditions prevail, or a disguised restriction to international trade;]

[d] any form of government assistance, cooperative agreements, subsidies, grants, loans, equity infusions, guarantees, fiscal incentive, and the provision of supplies and services by a governmental entity or its representatives to any other governmental or non-governmental persons or entities;]

[e] government services or functions, such as [law enforcement,] social readaptation services, [health,] pension or unemployment insurance, social security or welfare services, public education, public training, [public health,] child healthcare and protection, and children's services;]

[f] cross-border financial services;]

[g] government procurement governed by a regime of concessions;]

[h] procurement financed with funds from international organizations, international development agencies, multilateral technical assistance organizations, and bilateral technical and financial assistance organizations, which shall be governed by the provisions established in the respective funding and technical assistance contracts;]

[i] in the case of the smaller and lesser developed Parties, government procurement which is intended to

stimulate small and medium sized enterprises;]

[j) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt;]

[k) capital transfers and fiscal incentives;]

[l) procurement made by embassies and consulates overseas [[, works of art,] [and those involving small amounts]]; and]

[m) the hiring of public employees, government loans, legal relations derived from the provision of public services for which a fee is charged, and other activities subject to a special procurement regime.]

[n) Occasional minor procurements made out of petty cash.

o) Procurements between government entities.

p) Procurements between the State and users of services for which a fee or general rate is charged.

q) Purchases of fresh produce.]

[r) any measure adopted or maintained with respect to Aboriginal peoples.]

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

3. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent any 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.]

Article XI. Publication of Laws and Regulations

[1. Each Party shall ensure that its entities provide effective dissemination [and understanding] of [its laws, regulations and administrative measures on] [the respective system of] government procurement [[, and the business opportunities generated by [government procurement] processes,] providing the suppliers of [the] other Parties with all necessary information for participating in said procurement [through the communications media called for in their respective national legislation]].]

[2. [In order to achieve a wider government procurement market,] the Parties shall endeavor to implement an electronic [information] [[and intermediation] system [[, use of which shall be compulsory] for] [in] their respective entities]. [The main objective of this system shall be the dissemination of [information on] business opportunities offered by those entities.]]

[3. Each Party undertakes to inform [the contact points,] no later than [one (1) year] [three months] after the entry into force of this Agreement of the laws regulating government procurement in its respective countries [as well as of the entities covered by this Chapter]. [This obligation shall also apply to any amendment of said information.]]

[4. The Parties, through the Contact Points, shall notify (the other Parties / the entity administering the Agreements), within ____ following their official publication, of all laws, decrees, regulations, administrative rulings and any procedure or legal rule relating to Government Procurement.

5. Based on the information supplied, the Contact Points at the national level shall publish and place at the disposal of interested parties the current national legislation.]

[6. Each Party shall:]

[a) promptly publish any law, regulation , [judicial decision,] administrative ruling of general application [and any procedure [(including standard contract clauses)]] regarding government procurement covered by this [Chapter] [.] [,] [Laws and regulations] [these] shall be published no later than their date of entry into force.]

[b) publish such information in [officially designated media which are readily accessible [to suppliers and other Parties].] [officially designated media which are readily accessible to the public.] [[appropriate] publications [identified by the Parties in Annex XI.6 (Publication of Laws and Regulations- *no text*)] which are readily accessible to suppliers and other Parties.] [[through Internet.] [This notwithstanding, when a Party is not in a position to provide information in the manner described above, it must provide the information to [the FTAA Secretariat for subsequent inclusion on its web page].]]]

[c) publish, in the same media and in a timely manner, all additions and changes to such information, [as well as any changes in the names or different variants with regard to contracting procedures. [The Parties may directly report amendments to their laws and regulations using electronic or other means of communication.]]]

[Article XII. Designation of Contact Points]

[1. Each Party shall designate [and notify (the other Parties / the entity administering the Agreement)] [by the date the Agreement enters into force] [within [____] [30 days] [one (1) year] following the entry into force of the Agreement] [one or more] [one] contact points [which shall be responsible for supplying the information referred to in the present Chapter] [[to facilitate communication among Parties], to respond to their queries regarding the aspects covered by the Chapter, such as laws, regulations, procedures and practices related to government procurement, [notices of upcoming contracts that have been published,] the addresses of the entities covered in the Chapter, to provide information on training and orientation programs and other information of interest].]

[2. Each Party shall notify the FTAA Secretariat of the appropriate contact information for this contact point.]

[Article XIII. [General Principles Governing] Procurement Procedures]

[1. The Parties shall ensure that their procuring entities, in conducting procurement subject to this Chapter, use [the] [tendering] [modalities and] procedures [established in their national laws provided that these are] in accordance with [the provisions of [this] [the present] Chapter [on open, [selective] or limited tendering procedures, pursuant to the definitions in Annex ____ (Definitions)]] [the principles defined in this Chapter].]

[2. The [formalities related to the] [tendering modalities,] qualification of suppliers, calls for tenders, tender documentation, time limits, submission, reception and opening of tenders, [evaluation of tenders and] awarding of contracts [and the amounts established,] are those stipulated in the legal framework of each Party [, or those established in the legislation of each Party [, which must be in accordance with the Principles of this Chapter]].]

[3. In order to guarantee free competition and allow for the participation of tenderers from any of the Parties, the entities shall abstain from applying procedures in a discriminatory manner [and from setting time limits, requiring technical specifications or any other requirement] whose aim is to limit or exclude competition.]

[4. Entities covered by this Chapter shall provide sufficient and timely information [to the extent of the resources of the Parties] on their procurement procedures [so as to permit broad and equitable participation by suppliers from all the Parties]. Parties shall not give information on a given government contract in such a manner as to have the effect of impeding competition.]

[Article XIV. Application of Procurement Methods]

[1. [The Parties shall ensure that their procuring entities use the tendering procedures duly established in the laws of each country, while respecting the principles and guidelines contained in this agreements.] [The Parties shall ensure [through their respective legal frameworks] that their procuring entities use open tendering or [limited] tendering [modalities and] procedures to conduct procurement subject to this Chapter, except [where] [::]]]

[a] [in the specific circumstances identified in Article XVI of this Chapter for the use of limited tendering, provided that this does not involve the use of procedures to prevent the greatest possible degree of competition or in such a way that it constitutes a means of discriminating against suppliers of the other Parties or a means of protecting domestic suppliers.] [Furthermore, entities shall not use limited tendering because of a lack of advance planning by the requiring activity [or concerns relating to the amount of funds available to an entity within a particular period of time].]

[b] There are no tenders that meet the essential requirements set out in the tender documents distributed.

c) There are no tenders from suppliers who meet the advance approve requirements established in the invitation to tender.

d) The requirement is for engineering works related to infrastructure projects, or for reasons relating to protection of exclusive rights such as patents, copyright or undisclosed information, or where no competition exists due to technical reasons, the goods or services can only be provided by one specific supplier and there is no alternative or reasonable substitute;

e) For reasons of extreme urgency due to events that the entity could not foresee, it is not possible to obtain the goods or services on time through open or selective tendering and the use of these procedures would cause serious injury to the entity, the scheduled duties of the entity, or the responsible Party;

f) For additional deliveries by an original supplier for use as replacement parts or to extend the useful life or ensure continuing service of existing hardware, software, services or installations, and where a change in supplier would require the entity to purchase products or services which do not meet the requirement for interchangeability with existing hardware, software, services or installations;

g) For the procurement of local or foreign components or parts required for maintenance of hardware during the technical warranty period, where such exclusivity is an essential condition for the validity of the warranty;

h) When an entity purchases prototypes or a one-off good or service manufactured or provided at its request as part and for the execution of a specific contract for research, experimentation, study or original fabrication. Upon completion of contracts of this nature, the procurement of the goods or services resulting from them shall be by means of open or selective tendering procedures;

i) For the case of goods purchased on a commodities market;

j) Where the security of the State requires special guarantees confidentiality;

k) In contracts with a professional or entity recognized for specialization in its field of endeavor, where its prior performance, studies, experience, publications, organization, equipment, technical staff or other requirements related to its activities demonstrate that its work is essential and the best available means of fully satisfying the contract purpose;

l) Where an entity requires consulting services with regard to matters of a confidential nature, the disclosure of which could reasonably be expected to place government secrets at risk, cause serious economic disturbance, or be contrary to the public interest in similar fashion; and

m) Where the amount of the procurement is negligible or below the minimum for limited tendering established by the Parties under their respective laws or regulations.]

[Article XV. Selective Tendering]

[1. [In order to ensure competition between the suppliers of the Parties,] the greatest possible number of suppliers of the Parties shall be invited to participate [in selective tendering].]

[2. Any supplier [included in the list] may [present its proposal] [apply to participate], independent of whether or not it was invited to participate in the tendering.]

[3. If the participation of a supplier in selective tendering is not permitted, the tendering entity shall, upon request [by the interested party], provide the reasons for its decision.]

[Article XVI. Limited Tendering]

[1. Procuring entities may use limited tendering procedures in the following circumstances:]

[a] in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior open or selective tendering procedure, on condition that the requirements of the initial procurement are not substantially modified [in the contract as awarded];]

[b] in the absence of tenders from suppliers which meet qualification requirements established for a prior selective tendering procedure;]

[c] when, for works of art, [in regard to infrastructure works,] or for reasons connected with the protection of exclusive rights, such as patents, copyrights or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a [determined] particular supplier and no reasonable alternative or substitute exists;]

[d] in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable [or inevitable] by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures [and the use of such procedures would result in serious injury to the entity, the entity's program responsibilities, or the responsible Party];]

[e] 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 entity to procure products or services not meeting requirements of interchangeability with existing equipment, software, services, or installations];]

[f] for the acquisition of components or parts of domestic or foreign origin needed for the maintenance of equipment during the technical guarantee period, when such exclusive status is indispensable for the guarantee to have effect;]

[g] when an entity procures a prototype or a first good or service developed [or provided] at its request in the course of, and for a particular contract for research, experiment, study, or original development. When

such contracts have been fulfilled, [the purchase of goods or services made as a result thereof shall be adapted to open [or private] [, selective or limited] tendering procedures];]

[h) for goods purchased on a commodity market;]

[i) when state security requires special or proprietary guarantees;]

[j) in contracts with a professional or entity considered, within the particular field, to have recognized expertise, demonstrated by prior performance, studies, experiences, publications, organization, equipment, technical staff, or other requirements related to their activities, it can be inferred that its work is essential and [indisputably] the most appropriate for fully meeting the objective of the contract; and]

[k) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause serious economic disruption or similarly be contrary to the public interest.]

[l) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;

m) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is

i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,

ii) organized with a view to awarding the design contract to the winner, and

iii) to be judged by an independent jury.]

[Article XVII. [Principles of] Publicity [for inviting tenders]]

[1. [[In order to comply with the principle of publicity,] access to [all] information related to [a bidding process] must be available to all [possible] [interested] [suppliers] [bidders], not only in the initial stages of the process, but also in the opening of bids and any subsequent clarifications. [The [pertinent] process[es] must be conducted in such a way as to ensure maximum publicity and participation of [tenders] [tenderers] [suppliers] [, as appropriate to the circumstances].]] [The procurement procedures shall establish the same requirements and conditions for all participants, especially in relation to time and place of delivery, form and time of payment, contractual penalties, advances and bonds; the dependencies and entities shall provide all interested parties with equal access to the information related to said procedures, in order to avoid favoring any participant.]]

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

[3. The Parties shall endeavor, as far as possible, to use [electronic] means of communication for [efficiently] [rapidly] disseminating the invitation and information regarding participation in a government procurement [, especially that referring to business opportunities offered by the entities].]

[4. [In order to expand the market for government procurement,] the Parties shall endeavor to implement an electronic information [and [brokerage] [intermediation]] system [for] [in] their respective entities [, the principal objective of which will be to publish the invitation to participate in those entities' government procurement procedures].]

[Article XVIII. Publication of invitation [to tender]]

[1. [The Parties will carry out the procedures for [publicity and invitation for the participation of suppliers] in public procurement established in their respective regulations in force, guaranteeing the principles of transparency [,] [and] non-discrimination [, and flexibility] .] [A Party shall publish [an] [at least ___] invitation[(s)] to tender, for all procurements covered by this Chapter, except in the cases of [limited tendering] [limited tendering [and other with fewer requirements]] [limited tendering [and selective tendering]] .] [A procurement entity shall publish an invitation for the participation of suppliers in the government procurements established in this Chapter, except in the cases of limited tendering and selective tendering procedures, guaranteeing the principles of transparency, non-discrimination and flexibility.]]

[2. The publication shall be made [in the official national [gazette] [document] [and through the electronic information system of each one of the Parties] [as well as by electronic means].] [in a national daily newspaper with broad circulation or any other [means of communication or] publication used for this purpose [, as listed in Annex XVIII.2 (Publication of Invitation to tender- *no text*)].] [by methods which may include, but are not limited to, traditional media, such as newspapers and magazines, as well as electronic media.] [in an electronic or paper media which is widely disseminated and readily accessible to the general public.]]

[3. [[Notices] [The Parties shall guarantee in their respective legal frameworks that notices] of invitations [to tender]] [Invitations to tender] [should] [shall] contain the information necessary for suppliers to be able to evaluate their interest in participating in the procurement, [including [at least] [as far as possible]:]]

[a) the name and address of the [calling] entity [that will award the contract], as well as the procurement method that will be used and whether it will involve negotiation;]

[b) a description of the intended procurement, [including the nature and quantity [, as well as place of delivery of the [goods to be supplied , the services to be provided, or execution of public works]]];]

[c) [date,] place and time at which those interested may read and obtain the comprehensive text [of the tender document] [of the tender conditions], as well as additional information on the process;]

[d) the [[place, date,] cost, currency, form of payment and] way to obtain the [tender documentation] [tender conditions];]

[e) the language [or languages] in which the [tender documentation] [tender conditions] can be obtained and [in which] the suppliers shall present their proposals;]

[f) in the case of public works, the bond required;]

[g) the place and time-period for the submission [,] [and] opening [, and consideration] of tenders;]

[h) the tender validity period;]

[i) if selective procedures are used, the time limits for the submission of applications to qualify for participation in the intended procurement;]

[j) the deadline for fulfilling the contract;]

[k) date to begin and conclude the delivery of the goods object of the tendering procedure;]

[l) the origin of the funds that will finance the tender; and]

[m) an indication that the procurement is covered by the Chapter.]

[4. [Once the notice of tenders has been published, any change in the tender document shall require the publication of a new notice with the same publication requirements as before, and resetting the starting time for the regulatory terms, except when it absolutely clear that the change does not affect the formulation of proposals.] [If it becomes necessary to amend information provided to suppliers [during the procurement process] [before the date of reception of bids], procuring entities shall provide the amended information [in the form established for the original documentation]:]

[a) to all of the suppliers that are participating at the time the information is amended; and]

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

[Article XIX. Invitation to participate in a Supplier List under Selective Tendering Procedures]

[1. Before establishing the closed list of qualified suppliers, procuring entities shall publish, in one of the publications listed in Annex XIX.1 (Invitation to participate in a Supplier List under Selective Tendering Procedures- *no text*), a notice of the opportunity for interested suppliers to apply for inclusion in that list. Such notice shall contain the following information:]

[a) name and address of the calling entity;]

[b) a description, in as much detail as is available, of the goods or services to be procured from suppliers included on that list;]

[c) the conditions to be fulfilled by suppliers in order to be included on that list;]

[d) the place where the participants shall appear;]

[e) the documents to be submitted for evaluation;]

[f) the period of validity of the list; and]

[g) a statement that the notice constitutes a notice of the opportunity to apply for qualification to be included on the list.]

[2. For as long as a procuring entity maintains a closed list of qualified suppliers, such entity shall publish a notice of the opportunity for interested suppliers to apply for inclusion on that list, in accordance with the requirements of paragraph 1 above, at least once each year.]

[3. Procuring entities maintaining such closed lists shall, on request, provide additional information in a timely manner which allows all suppliers who have expressed an interest to have a meaningful opportunity to assess their interest and, if they choose, apply for inclusion on a closed list of qualified suppliers. [This information shall include the information contained in the notices referred to in Articles XXIII through XXV of this Chapter, to the extent available.]]

[Article XX. Time Periods for responses to inviting tenders]

[1. [[Any] [The Parties shall guarantee in their respective legal frameworks that any] prescribed time periods for the tendering process [shall be] [is] adequate to allow participating suppliers of all Parties to this Chapter to prepare and submit responsive tenders.] [The time limits established in the call for tenders shall be based on the type of process involved [and the conditions related to same].]]

[2. In determining a time-limit, entities shall, consistent with their reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated, the normal time for transmitting tenders from foreign and domestic suppliers and the time required for joint regional bidding procedures by a group of states.]

- [3. The procuring entity shall take into account the delays in publication.]
- [4. Procuring entities shall apply the same time periods for all suppliers.]
- [5. If, as a result of a need to amend information provided to suppliers during the procurement process, a procuring entity [must] [may] extend the time period for the tendering procedures, such entity shall permit all participating suppliers to submit final tenders in accordance with a common deadline.]
- [6. For publishing an invitation to tender the time periods are:]
- [a] open tendering: at least [30] days prior to the final period for delivery of proposals;]
 - [b] selective tendering: at least [15] days prior to the final period for delivery of proposals.]
- [7. Except as provided for in Article XXI of this Chapter:]
- [a] a procuring entity using open tendering or selective tendering procedures shall provide no less than [40] calendar days between the date on which a notice of invitation to tender is published and the date on which the tendering procedures relating to that notice are closed.]
 - [b] a procuring entity using selective tendering procedures shall provide no less than [25] calendar days, beginning on the date on which the notice of invitation to tender is published, for interested suppliers to submit their applications for qualification.]
 - [c] procuring entities using selective tendering procedures shall provide no less than [40] calendar days between the date on which a notice of invitation to tender is distributed to participating suppliers and the date on which the tendering procedures relating to that notice is closed.]
- [8. [[In order to ensure fair [and equitable] treatment for all tenderers [, in particular, suppliers from smaller economies,]] a minimum of [45 – 60] days [should] [shall] be allowed for the preparation and submission of bids [unless, such a time period would severely affect the objectives of the tender].] [Accordingly, a minimum period of ___ days shall be established between the notice to participate in the process and the deadline for the receipt of tenders.]]
- [9. The notice of the opportunity for interested suppliers to be included in the closed list of qualified suppliers for the purposes of conducting a selective tendering procedure shall be published at least [60] [30] days before establishing that list.]
- [10. These time periods shall be calculated as of the [last] date of publication of the [notice of tenders] [notification].]
- [11. In the case of extreme urgency or of subsequent publications dealing with contracts of a recurring nature, shorter time periods may be used, consistent with the principles of fairness and transparency]

[Article XXI. Shorter Time Periods]

- [1. Under the following circumstances, procuring entities may replace the time periods referred to in this Chapter with a period which is sufficiently long to enable suppliers to submit responsive tenders, but which in no case shall be less than [10] calendar days from the date on which the notice of invitation to tender is published [or issued]:]
- [a] if a separate notice has been published at least 40 calendar days and not more than 12 months in advance, [and the notice contains: a description of the subject matter of the procurement; the time limits for the submission of tenders or, when appropriate, applications for qualification; and the address from which documents relating to the procurement may be requested] [the period of 40 days may be reduced to not less than 24 calendar days];]

[b] in the case of the second or subsequent publications dealing with contracts of a recurring nature [, the period of 40 days for reception of bids may be reduced to not less than 24 calendar days];]

[c] in the case of procurement of commercial goods and services which are sold or offered for sale to and customarily purchased and used by non-governmental buyers for non-governmental purposes, except that a procuring entity shall not reduce time periods for this reason if the entity uses qualified open tendering procedures or selective tendering procedures; and]

[d] when, for duly substantiated reasons of extreme urgency brought about by events unforeseeable [or inevitable] by the entity, [the adherence to the time periods referred to in this Chapter would result in serious injury to the entity or the relevant Party]; however, concerns relating to the amount of funds available to an entity within a particular period of time shall not be considered to be a reason of extreme urgency for these purposes] [the periods may be reduced to not less than ten calendar days].]

[2. When a procuring entity publishes a notice of invitation to tender or invitation to participate in a supplier list in accordance with this Chapter in an electronic media listed in Annex XXI.2 (Shorter Time Periods – *no text*), the entity may reduce the time periods provided for in this Chapter by up to 5 calendar days. The use of this provision, however, shall in no case result in the reduction of those time periods to less than 10 calendar days from the date on which the notice of invitation to tender is published.]

[3. Each Party shall apply transparent procurement procedures, with time periods in accordance with its legislation, to enable the suppliers of the Parties to prepare and submit responsive tenders to the invitation to participate.]

[Article XXII. [Tender Documentation] [Tender conditions]]

[1. [[In the tender documentation the] Procuring entities shall [provide to suppliers tender documentation that includes] [include] [all] information necessary to permit suppliers to prepare and submit responsive bids [.] [,]] [[Unless] [unless this has] already [been] provided in the notice of invitation to tender [, such documentation shall include [a complete description of] [in a detailed way, the following information]:]]]

[a] [the] [name and] address of the [calling] entity to which [tenders] [bids] [proposals] should be sent, as well as the address where requests for additional information should be sent;]

[b] the language or languages in which tenders and tendering documents should be submitted;]

[c] the periods for reception of bids, and the date, time and place for their opening; and]

[d] the intended procurement, including the nature [and 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;]

[e] any conditions for participation in the procurement, including any financial guarantees, information and documents required from suppliers;]

[f] all criteria to be considered in the awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders [and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes] and currency of payment;]

[g] the time limits for the receipt of tenders [, and the date, time and place for the opening of tenders]; and]

[h] [the terms of payment, and any other terms or conditions] [the terms and conditions of contract] [.] [;and]]

[i] the persons authorized to attend the opening of the bids.]

[Article XXIII. Qualification of Suppliers]

[1. [In the process of qualifying suppliers,] [The] requirements for suppliers shall not constitute [a] [an unnecessary] barrier to [access] [trade]. [Parties shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties.]]

[2. Each Party shall provide, in the selection process, equitable opportunities to the suppliers included in the lists or registries of the Parties. An entity shall not use the qualification process, including the time required for the process, to keep suppliers of another Party off a list of suppliers [, or to disregard them for a given procurement].]

[3. Parties shall ensure that any conditions for participation in a tendering process used by its procuring entities [shall be] [are] limited to those which are essential to ensure a potential supplier [’s] [has the legal, technical and financial] ability to fulfil the requirements and technical specifications of the contract in question.]

[4. Parties shall ensure entities covered by this Chapter [shall] recognize as qualified suppliers such domestic suppliers or suppliers of another Party that meet the requisite conditions for taking part in a given procurement process covered by this Chapter.]

[5. Parties shall ensure entities [shall] base their [supplier] qualification decisions solely on the conditions for participation that have been specified in advance in notices or tender documentation.]

[6. Parties shall ensure [entities [[shall] evaluate the financial, commercial and technical capabilities of a supplier on the basis of that supplier's global business activities, and] do not impose the condition that, in order for a supplier to participate in a procurement process, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party] [that entities do not impose the condition that the supplier must have previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party].]

[7. Nothing in this Article shall preclude the exclusion of a supplier on grounds such as bankruptcy or false declarations.]

[8. Without prejudice to the right of suppliers to protect their intellectual property or trade secrets, the procuring entities may require those participating in the tendering process to submit pertinent documentary proof showing that:

a) They possess the necessary technical competence and sufficient financial resources, equipment and other physical installations, business acumen, experience and reputation, for fulfillment of the contract to be awarded.

b) They have the necessary legal capacity to sign contracts.

c) They have complied with their tax and social security obligations.

9. Any requirement established in accordance with the foregoing paragraph shall be included in the tender documents and shall be equally applicable to all suppliers of the Parties.]

[10. The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity.]

[Article XXIV. [Prequalification] Registers [of Suppliers]]

[1. The Parties may establish a [National] [Pre-qualification] Registry [of Suppliers] for all persons, companies or entities that wish to compete for contracts to procure goods, works and services. [This registry should be kept by the agencies and entities that carry out bidding processes, or a central agency which regulates such activities.]]

[2. Parties whose entities use [permanent lists or] registers of [qualified] goods suppliers and service providers shall ensure that the inclusion in [a list] or register, is for no other reason than to verify their aptness to conduct business with the Party [, and [shall not raise any] [and not that of raising] [impediments] [obstacles] to their inclusion in the list of any goods supplier or service provider of any other Party].]

[3. Tenderers who, for reasons defined in the respective legal frameworks of the Parties are prohibited from either direct or indirect participation in any procurement competition, may not be included in the Registry of Suppliers.]

[Article XXV. [Pre]Qualification and Registration Procedures.]

[1. Each Party shall:]

[a) ensure that each of its entities uses a single qualification procedure. Where the entity establishes the need for a different procedure, it shall employ additional or different qualification procedures, which must be duly justified;]

[b) endeavor to minimize the differences between the qualification procedures of its entities.]

[2. [Qualification procedures shall be consistent with the following:] [Each Party shall ensure that the qualification procedures defined in its respective legal framework are consistent with the principles of transparency and non-discrimination in this Chapter.]]

[a) the conditions for the participation of suppliers in tendering procedures shall be published in adequate time to enable suppliers to initiate and complete the qualification process;]

[b) goods suppliers or service providers can apply for [registration,] qualification [or entitlement] at any time [, and shall submit the required documentation [based on the relevant legislation of each Party]]];]

[c) all [goods] [qualified] suppliers [or service providers] that so request are put on the lists as soon as possible [and without undue delay];]

[d) when, after publication of a notice of invitation to tender for which there is a qualification requirement [or after publication of a notice of the opportunity for interested suppliers to apply for inclusion on a closed list of qualified suppliers], a supplier that is not yet qualified requests to participate in the relevant procurement process, the entity shall promptly start the qualification procedure. The entity shall consider such supplier for the relevant procurement, provided there is sufficient time to complete the qualification procedure;]

[[e)] information concerning business activity prior to and up to their registration as suppliers, shall be received from the interested parties. [The information required figures in Annex XXV.3 e) (Qualification and Registration Procedures- *no text*)];]

[f) entities shall promptly communicate to suppliers that have applied for qualification its decision on whether or not they qualify [, as well as the reasons therefor];]

[g) where an entity rejects an application for qualification, or ceases to recognize the qualification of a supplier, that entity shall provide, without delay, upon the request of the supplier, [relevant information on the reasons for its action] [a written explanation of the reasons for its decision]; and]

[h) all goods suppliers or service providers included in the lists or registers are notified if such lists and registers are cancelled or if they have been removed from them.]

Article XXVI. Application of Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt, or apply any technical specification with the purpose or effect of creating unnecessary obstacles to trade [, eliminating or restricting competition [, or discriminating against the providers of other Parties]].

[2. Each Party shall ensure that, where appropriate, the technical specifications shall be [based [primarily]] [specified in terms of] on the performance requirements of the product or service being procured, rather than on design and descriptive characteristics.]

[3. [Technical specifications shall be based on international standards, national norms or technical standards, and must be compatible with the provisions on technical barriers to trade.] [In establishing the technical specifications for each product or service being procured, each Party shall ensure that its entities specify, whenever available and applicable to that Party, an existing domestic or international consensus standard, except where the use of a consensus standard would fail to meet the entity's program requirements or would impose more burdens than the use of a government-unique standard. Each Party shall ensure that, whenever there is an existing consensus standard for a product or service being procured and an entity specifies a government-unique standard, such entity shall maintain an official record explaining why the existing consensus standard would fail to meet the entity's program requirements or would impose more burdens than the use of a government-unique standard.] [The technical specifications and certification of the quality of the products or production processes shall be based on international standards [recognized by the Parties] or, where no such standards exist, on the domestic technical regulations and technical standards of the Party where the procurement is being done and if the procuring entity considers it feasible and appropriate in its counterparts in the other Parties.]]

[4. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or tradename, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.]

[5. The technical and professional capabilities shall be limited solely to the areas of greatest relevance and meaningful value to the purpose of the tender set out in the documentation. There shall be no requirements of minimum quantities of services provided, or time periods in which they were supplied. Nevertheless, for purposes of technical qualification and where the complexity of the service or the work so requires, the experience gained over the years prior to the call for tenders shall be taken into consideration.]

[6. Each Party shall ensure that its entities do 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 or company that may have a commercial interest in that procurement.]

[Article XXVII. Submission, receipt [and] [,] opening [of] [,] evaluation and awarding contacts under tenders]

[1. [[Procuring] [Contracting] entities shall receive and open all tenders under procedures that guarantee the transparency, [fairness,] [security,] impartiality, [and public disclosure] of the procurement process. [, with due regard to proprietary rights of bidders and national security interests] .] [All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on the opening of tenders.]]

[2. [In the case of a public bidding process,] all [physical] [natural] and juridical persons may submit tenders who meet the requirements established [and are not legally prohibited from doing so].]

[3. [The Parties shall also [use] [apply] the procedures [established in their respective legislation in force] for the submission, receipt and opening [and evaluation] of tenders [provided for in their respective legislation in force] [, provided they conform to the provisions of this Article] [guaranteeing the transparency, fairness, security, impartiality, and public disclosure of the procurement process].] [Procuring entities shall use procedures for the submission, receipt and opening of tenders in accordance with the following:]]

[a] [tenders shall be presented in writing [only], [in sealed envelopes] [in closed envelope], whether directly or by mail [or by electronic media when expressly indicated in the tender document and when doing so does not contravene the principles of this Chapter];] [when tenders by telex, telegram, telecopy or electronic mail or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender [, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the clauses and terms of the invitation];] [[Entities may use electronic media when expressly indicated in the tender document] [and when doing so does not contravene the principles of this Chapter];]

[b] [a tender made by means of electronic transmission must be confirmed within the time-frame set in the invitation or the tender document, by the dispatch of the original document of the tender or a signed copy by means of electronic transmission.] For the purpose of this paragraph, electronic means of communication includes those by which the receiver can produce a printed copy of the tender at the receiving end of the transmission;]

[c] the content of the electronic message shall prevail in the case where there is a difference or conflict between it and any documentation received after the time limit for the receipt of tenders;]

[d] tenders presented by telephone shall not be permitted;]

[e] tenders shall be duly signed and paged numbered;]

[f] tenders must be presented on the date, and at the place and time established in the tender documentation, along with a declaration stating that all of the clauses and conditions of the tender document have been accepted;]

[g] the awarding agency shall extend a certification indicating the date, place and time the tender was received;]

[h] tender must be presented in the language of the Party that issued the call for tenders;]

[i] tenders received by the entity after the deadline for presentation shall be returned unopened to the corresponding suppliers;]

[j] tenders will be opened in public session [in the presence of the tenderers and any other interested party, on a date] and at a time and place established in the tender documentation. [A record shall be made of the opening act, listing the tenders received and including the observations made by those present. The record shall be signed by the representatives of the entity and by the bidders [that so desire]];]

[k] the procuring entity shall guarantee the protection of confidential information included in the tenders;]

[l] procuring entities shall not penalize any supplier for reasons attributable exclusively to that entity [, specially to] [In particular, entities shall not penalize] suppliers whose tender is received after the time specified for receiving tenders if the delay is caused solely by the entity; and]

[m] entities may allow for the correcting of errors of form or errors of a non-substantial nature, provided such corrections do not alter the competitive conditions [or introduce discriminatory treatment between suppliers]. In doing so, they shall provide the same opportunities to all participating suppliers.]

[4. The Parties shall guarantee that the procedures for evaluation of tenders and awarding of contracts established in their respective laws will be transparent and will guarantee non-discrimination.]

[5. Each Party shall guarantee that its procedures are transparent and non-discriminatory, and applied with due process.]

[Article XXVIII. Criteria for assessing bids]

[1. Assessment criteria [shall be described [explicitly] in the notice and tender documentation provided in advance to all participating suppliers [and] shall be transparent, objective and measurable]. [The evaluation systems used to pre-qualify enterprises and the evaluation systems used to qualify tenders shall be part of the tender documentation and the call for tenders, which must be delivered together.]]

[2. To be considered for an award, a tender must, at the time of opening, conform to the [essential] requirements stipulated in the invitation or tender documentation and have been submitted by a supplier that complies with the conditions for participation. [Neither the tender of the winner, nor the terms and conditions stipulated in the [tender] [contract] documentation, may be altered.]]

[3. If the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation or is or will be capable of fulfilling the terms of the contract. [If not, that tender will be rejected.]]

[4. Cost elements to be used in assessing the price of the tenders shall include transportation, insurance and inspection costs. In the case of goods and services of other Parties, tariffs and other import charges, taxes and currency of payment will be considered.]

[Article XXIX. Negotiation Disciplines]

1. National law permitting, an entity may conduct negotiations only:

a) in the context of a procurement in which the entity has, in the tender notice published in accordance with Articles 23 and 24, indicated its intent to negotiate; or

b) where it appears to the entity from the evaluation of tenders that no one tender is clearly the most advantageous in terms of the specific evaluation criteria set out in the tender documentation.

2. An entity shall use negotiations primarily to identify the advantages and disadvantages of the tenders.

3. An entity shall treat all tenders in confidence. In particular, no entity may provide to any person information that would enable any supplier or provider to bring its tender up to the level of any other supplier or provider.

4. No entity may, in the course of negotiations, discriminate between the suppliers of goods or the providers of services. In particular, an entity shall:

a) carry out any elimination of suppliers of goods or providers of services in accordance with the criteria set out in the tender documentation;

b) provide in writing all modifications to the criteria or technical requirements to all suppliers or providers remaining in the negotiations;

c) permit all remaining suppliers of goods or providers of services to submit new or amended tenders on the basis of the modified criteria or requirements; and

d) when negotiations are concluded, permit all remaining suppliers of goods or providers of services to submit final tenders in accordance with a common deadline.]

[Article XXX. Criteria for awarding of contracts]

[1. Each Party shall ensure that awarded contracts [are duly grounded] on criteria established in advance by its entities [, respecting the basic principles of [[equality] [due process] [equity], [morality,] legality, impartiality, and] transparency [and non-discrimination]].]

[2. [Procuring entities shall award each contract to the tenderer [who has been determined to be fully capable of undertaking the contract and] whose tender is [either the lowest tender [, within those offering the same quality and technical specifications,] or] the tender which is determined to be the most advantageous [for the contracting entity] in terms of the requirements and evaluation criteria set forth in the notices or tender documentation [[, unless otherwise decided for reasons of the public good]. Tenders [of] [for] goods and services presented by suppliers of Parties shall not be increased by levying of taxes that introduce discrimination between domestic suppliers of the Party where the tender is made and those of other Parties].] [An entity shall award the contracts in accordance with the following:

- a) to be considered for the award, a bid must meet, at the time of the opening, the essential requirements stipulated in the invitation or in the bidding conditions and be made by suppliers that satisfy the conditions for participation;
- b) if the entity receives a bid whose price is abnormally lower than the others submitted, the entity may question the supplier to ensure that the latter satisfies the conditions of participation and is or will be capable of performing the terms of the contract;
- c) unless for reasons of public interest the entity decides not to award the contract, the entity shall award it to the supplier that it considers fully capable of performing the contract and whose bid has the lowest or most advantageous price according to the specific evaluation criteria established in the invitation or in the tender conditions;
- d) the awards shall be made in accordance with the criteria and the essential requirements established in the tender conditions; and
- e) the clauses relative to options shall not be used to evade this chapter.]]

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

[Article XXXI. Awarding of the Contract]

[1. [After the winning tenderer is notified, the contract will be signed. Prior to signing, the tender will [, when required,] present a performance bond, and during [the] [its] signing must present the payment bond [where this is required in the contract documentation].] [All participants shall be notified of the act of award at the domicile indicated, not later than three (3) business days after the day of the award.]]

[2. [If for any reason the tenderer selected does not sign the contract or does not present the bond, the contract may be awarded to the tenderer with the next highest rating, without the need to go through a new bidding process.] [The contract shall be signed not later than ___ after notification of the selected tenderer. After execution of the contract, the selected supplier shall submit a performance bond within a period of ___, and as the case may be, shall submit the advance payment bond posted for the total amount of the advance, at the time of delivery of the same.]]

[3. [The awarding of the contract shall be communicated to all the participants at the domicile they have indicated, within [three (3)] [fourteen (14)] [(5)] working days following the awarding.] [If the interested party does not sign the contract due to causes imputable to the same, during the period referred to in the preceding clause, the department or entity may, without need for a new procedure, award the contract to the participant that has submitted the next lowest solvent bid, and so on successively if the last participant does not accept the award, provided the difference in price with respect to the initial winning bid is not greater than ten percent.]]

[4. [After [60 (sixty)] [45] days following the date of the delivery of proposals, if no contract is awarded, the bidders shall be released from their commitments.] [Subject to an extension of the tender validity period, if after 90 days following the date of the delivery of proposals no contract is awarded, the bidders shall be released from their commitments.]]

[5. Procuring entities shall not cancel a procurement process, or terminate or modify awarded contracts in a manner which circumvents the objectives and requirements of this Chapter.]

[6. [The documentation] related to the [government contracting] [contract award] procedures shall be kept for at least [5] years.]

Article XXXII. Information regarding the awarding of the contract

[1. Parties shall ensure that its entities provide an effective [understanding and] dissemination of the results of government procurement processes [, in accordance with the provisions of their domestic legislation].]

[2. Procuring entities shall [promptly] [upon request] [inform suppliers that have submitted tenders of the procurement award decisions [within a period of ___ calendar days], and] provide opportunities for losing bidders to obtain an explanation of the reasons for not being selected [and the relative characteristic and advantages of the tender selected, [the name of the winning supplier, the date of the award and the value of the contract awarded, in accordance with the principle of transparency. If so requested, the entity must inform them in writing by means of an explanatory resolution]].]

[3. A Party may seek additional information on the award of a contract as may be necessary to determine whether the procurement was made [fairly and impartially] [in a manner compatible with this Chapter]. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. [The Party making the request may not reveal the additional information referred to , except with the consent of the Party that has provided the information.]]

[Article XXXIII. Publication of the Award]

[1. Having awarded a contract, entities shall publish, [for a reasonable period of time] [one time only] [at least once] [information on contract awards] [notice] [the award], including: the name of the winning supplier, the value and date of the contract; [a description of the nature and quantity of the goods or services included in the contract; the name and contact location of the procuring entity;] [the [name and] position of the official authorized to sign the contract;] [and the type of procurement procedure used, [and in cases where limited tendering procedures are used, a description of the circumstances justifying the use of such procedures [and whether the award was covered by this Chapter]]].]

[2. The entities shall publish [such information] [a notice] [award] [in the officially designated media listed in Annex XXXIII.2 (Publication of the Award – *no text*)] [in at least two daily national newspapers] [in a newspaper of national or international circulation] [which is readily accessible to suppliers and other Parties] [within 72 days of][within [3] [5] working days following] [no later than [90] days after] [the award of the contract. [Officially designated media may be electronic or paper.]]]

[3. The Parties shall endeavor to make this information available to the public through electronic means, such as the Internet.]

[4. Notwithstanding the provisions of the preceding paragraphs, entities may decide, to withhold disclosure of certain awards, where such disclosure may be contrary to law enforcement objectives, or the wider public interest.]

[Article XXXIV. Confidential Information]

[1. [Nothing in this Chapter shall be construed as requiring any Party and its procuring entities to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, [including their intellectual property rights,] or might prejudice fair competition between suppliers [, without formal authorization from the Party or supplier providing the information [, or a legal order that so provides]].] [No provision of this Chapter shall be interpreted as imposing on a Party the obligation of revealing information the divulging of which it considers contrary to vital security interests, or when its dissemination could constitute an impediment to complying

with the laws, or if it is contrary to the public good, or if it harms the commercial interests of public or private enterprises.]]

Article XXXV. Review and Appeal Procedure

[1. [Procurement processes must enable suppliers to challenge presumed infractions in the context of a bidding process of interest to them.] Each Party shall adopt or maintain [arbitration or] administrative or judicial procedures which permit, at the request of [an affected] supplier [from another Party], the [prompt] review of administrative decisions affecting government procurement under this Chapter.]

2. [Each Party shall ensure [in its respective laws] that [[such] [the] appeals] [challenge] procedures are timely, transparent, [and] effective, [and impartial] [and that they comply with the principles of nondiscrimination and due process [, so as to give the right to a hearing to suppliers, who may be represented and assisted and who may submit any type of evidence recognized by the legislation of the Party, to give them access to proceedings, which shall be public except when legal reasons limit publicity, and to insure that the resolutions are available in writing and substantiated in law making them known to the suppliers through the media established in the legislation of the Party]].] [Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.]

[3. [[In the event of a complaint by a supplier that there has been a breach of this Chapter, each Party shall encourage such supplier and its relevant procuring entity to seek resolution of the complaint through consultations.] [The Parties shall guarantee that the] Procuring entities shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to suppliers' participation in ongoing or future procurement activities or to suppliers' rights to seek corrective measures under the challenge system.] [In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. Procuring entities shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to suppliers' participation in ongoing or future procurement activities or to suppliers' rights to seek corrective measures under the challenge system.]]

[4. Each Party shall apply the procedures for legal redress, claims or complaints which are available to any affected supplier and ensure that their interests are defended. For the purpose of promoting fair, open and impartial procurement procedures, each Party shall adopt and maintain challenge procedures for procurements covered under this Chapter, pursuant to the following:]

[a) each Party [, consistently with its domestic legislation,] shall allow goods suppliers and service providers to seek legal redress [and/] or enter a challenge at any stage of the procurement process [which, for the purposes of this article, is initiated from the moment an entity defines the purpose of procurement and runs through to the award of the contract];]

[b) each Party shall ensure that [its entities] consider in [an appropriate and] impartial manner any complaint of challenge regarding procurements covered under this Chapter; and]

[c) if the claim is not settled in the administrative sphere, no goods supplier or service provider shall be prevented from appealing to other bodies.]

[5. [If a complaint is not resolved via consultation channels, it may be submitted to the decision of the [corresponding judicial authority].] [Regardless of who hears the complaint, procedures shall ensure that participating suppliers have the right to a hearing, that they may be assisted and represented, that they have access to all proceedings, and that they can present witnesses and documented evidence. The procedures for presenting challenges shall be available in writing, and the proceedings may be made public.]]

[6. Each Party shall establish or designate at least one impartial authority, separate and independent from its procuring entities, to receive and review supplier challenges relating to the provisions of this Chapter and make appropriate findings and recommendations. Such authorities shall be authorized to take rapid interim measures, at

the time a challenge is initiated, to prevent potential breaches of the provisions of this Chapter, including the possibility of delaying the award of a contract pending the resolution of a challenge.]

[7. Each Party shall provide timely, effective, transparent, [predictable], and non-discriminatory means for suppliers to challenge alleged breaches of this Chapter, without prejudice to suppliers' participation in ongoing or future procurement activities. All challenge procedures shall be specified in writing and made generally available.]

[8. [In the event that a challenge is initially reviewed by a body other than an authority established or designated under paragraph 4 (*SIC*),] each Party shall ensure that suppliers may appeal the [initial decision] [award, alleging procedure irregularities,] [of the procuring entity] to an impartial administrative or judicial authority which is separate and independent from the procuring entity that is the subject of the challenge.]

[9. Each Party shall ensure that review procedures are conducted in accordance with the following:]

[a) Suppliers shall be allowed a sufficient period of time to prepare and submit challenges, which in no case shall be less than [10] [5] days from the time when the basis of the complaint became known or reasonably should have become known to the supplier.]

[b) The proceedings shall be conducted in an open and transparent manner, consistent with [predictable,] written procedures that are readily available to all participants in advance.]

[c) A supplier that initiates a complaint [shall] [may] be provided an opportunity to be heard prior to a decision being reached on its complaint, and that supplier, its designated representatives, [witnesses, and other interested participants] shall have access to the [review proceedings at all times] [ruling on its appeal] [, with due regard to proprietary rights of suppliers and national security interests].]

[d) Decisions relating to supplier challenges shall be provided in a timely fashion, in writing, with an explanation of the basis for each decision.]

[e) Procuring entities [and suppliers that initiate complaints and/or challenges] shall disclose all relevant documents to the review body.]

[f) The reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question.]

[10. All challenges filed by suppliers must specify the points in the tender document and bidding conditions which, in their opinion, were violated in the award of contract to another participating supplier.]

[Article XXXVI. Dispute Settlement]

[[1.] [Differences arising [between the Parties] with regard to the provisions stipulated in the Chapter on government procurement shall be resolved [as indicated in] [in accordance with] the Chapter on Dispute Settlement] [, which establishes the appropriate challenge and dispute settlement mechanisms for appeals].]

[2. The Chapter on Dispute Settlement of the Agreement does not apply to the differences which arise between the entities and the suppliers of the Parties.]

[Article XXXVII. Technical cooperation and assistance]

[1. [The developed Parties shall provide the smaller and lesser developed Parties with technical cooperation and assistance, to enable them to develop their capacities to fully implement the provisions of this Chapter. Specific obligations are set out in Annex _____ (Technical Cooperation and Assistance – *no text*).] [The Parties shall [endeavor to] provide each other with technical cooperation and assistance, taking into account the specific needs of countries, [through the development of] [in the area of] training [programs] [human resources], [in order to achieve a better understanding of their respective] government procurement and statistical [information] systems [, among

others] [as well as better access to their respective markets and business opportunities in the field of government procurement].]

[2. For that purpose, the Parties shall provide information concerning the training and orientation programs related to their government procurement systems and nondiscriminatory access to any program they conduct. The training and orientation programs include:]

- [a] training of public sector personnel who directly participate in government procurement procedures;]
- [b] training of suppliers interested in taking advantage of the business opportunities in the government procurements;]
- [c] explication and description of specific aspects of the Parties' government procurement systems, such as their appeals mechanisms;]
- [d] information on the market opportunities of Parties' government procurements; and]
- [e] training in the different electronic programs used by the Parties to process the government procurement data and provide statistics on them.]

[3. The developed countries of the FTAA will cooperate with developing countries and countries with small and vulnerable economies, providing technical and financial support in this process. Also, they will provide technical assistance for solving problems related to government procurement, when requested by the developing countries. Specific obligations related to technical and financial assistance are laid out in Annex XXXVII.3 (Technical Cooperation and Assistance – *no text*).]

[4. Developed Parties to this Agreement shall seek to facilitate the requests of the small economies for technical assistance in the development and maintenance of suitable infrastructure to ensure the easy accessibility and availability of information in these member states. Smaller economies will require technical assistance in ensuring that notifications issued regarding invitations to participate in a procurement process are easily accessible to other parties as well as among smaller economies, particularly in light of the hardware requirement associated with the use of electronic media.]

[Article XXXVIII. [Special and Differential Treatment and Transitions] [Treatment of the Differences in the Level of Development and Size of Economies]]

[1. [[In accordance with the principles enshrined in this Agreement/Chapter] Parties to this Agreement shall, [in the implementation and administration of this Agreement,] apply the principle of] [Notwithstanding the general provisions of this Chapter, Parties shall, in the implementation and administration of this Agreement, accord] special and differential treatment [and accord flexible treatment] to the [smaller] economies of the hemisphere, taking into account, inter alia, their [small size,] level[s] of development [and the size of their economies] [and vulnerability to external shocks, [so that they can gradually conform and adapt] [in order to facilitate the shaping and adaptation of] their institutions to the new international context and harmonize their national laws, with a view to achieving the level of development they need to participate effectively in the agreement on government procurement, with the intention of creating the opportunity for all participating countries to effectively reap the benefits of the agreement. Such measures shall include, but are not limited to measures to:]]

- [a] safeguard their balance of payments position and ensure a level of reserves adequate for the implementation of programmes for national economic development;]
- [b] promote the establishment or development of domestic industries, through [the use of offsets,] exceptions to the national treatment obligations, such as buy national policies, including the development of small scale and cottage industries and economic development of other sectors of the economy;]
- [c] support industrial units [or service providers,] so long as they are wholly or substantially dependent on government procurement;]

[d) encourage economic development and expansion through sub-regional arrangements]

[2. [Developed countries, when drawing up their coverage schedules, shall make every effort to include entities that procure goods or services which developing countries in the FTAA are interested in exporting.] [Developed countries shall include in their coverage schedules entities that procure goods or services which developing countries in the FTAA are interested in exporting.]]

[3. [Smaller economies] [The countries, according to their level of development,] shall be allowed to maintain certain exceptions in order to pursue the development of domestic industry, the utilization of offsets and the safeguarding of sensitive sectors crucial to the national economic interest.]

[4. Once the present Agreement has entered into force, [developing countries] [the countries, according to their level of development] may ask the Joint Council to grant exceptions for certain entities, sectors, goods or services included on their coverage schedules, in light of the deterioration of their production sectors. Any request submitted by developing countries related to modifying coverage shall be accompanied by all documentation relevant to same, or by any other information that may be needed to consider the request.]

[5. It is prohibited for entities in developed countries to use offsets in the qualification and selection of suppliers, for goods and services and in evaluating tenders or awarding contracts, such as the imposition of conditions that encourage local development or improve balance of payments accounts by such methods as local content requirements, licensing of technology, investment, compensatory trade or similar requirements.]

[6. [Nevertheless,] government entities [of the countries, according to their level of development especially] within smaller economies shall be allowed to utilize offsets [, under certain conditions,] in the qualification and selection of suppliers, products or services and in the evaluation of tenders and awards of contracts. Such offsets may include the requirement for incorporation of domestic content, among other provisions.]

[7. Developing countries and countries with small or vulnerable economies may apply objective and clearly defined offsets [which are not discriminatory]. These countries will receive special compensatory treatment in terms of longer time limits, exceptions to rules and greater support.]

[8. [Developing] countries, [according to their level of development, especially the smaller economies,] in the procurement of goods and services, may establish reservations in an amount not to exceed [___] [20] %; in the case of works, they may establish reservations in an amount not to exceed [___] [30] %.]

[9. In fulfillment of the provisions of this Chapter, the adjustment period should not be more than ___ or __.]

[10. [Countries, according to their level of development, especially the,] Smaller economies shall be allowed a transitional period of 20 years to complete the full implementation of the provisions of this arrangement, beginning from the date of its entry into force.]

[11. The following countries or territories shall be granted a transition period of ___ years to accord reciprocal and/or national treatment to the other countries of the area; the following countries or territories will not have a period of ___ years.]

[12. [Countries, according to their level of development, especially the] Smaller economies [should also be allowed to] [may] engage in joint regional bidding for the award of contracts given the limitations of small size and limited infrastructural capability. Recognizing that such regional bidding will require a longer period for the preparation and submission of bids by [smaller economies] [those countries], more developed members should facilitate, as far as possible, the full participation of [smaller economies] [those countries] in the process.]

[13. [Countries, according to their level of development, especially the] Smaller economies retain the right to utilize all procurement methods (i.e. open tendering, selective tendering and limited tendering), provided that such methods are utilized in a transparent manner.]

[Article XXXIX. Administration of the Agreement]

[1. The Parties shall establish a Government Procurement Committee, composed of representatives of each of them, to be appointed within [____] [60 days] following the entry into force of this Agreement.]

[2. The Government Procurement Committee shall have the following duties:]

[a) oversee the implementation of the Chapter and compliance with its provisions;]

[b) unless otherwise agreed to by the Parties, review the results of this Chapter's application every two (2) years;]

[c) meet [at least] once a year [, or when necessary,] to [examine] [evaluate] the operation of the Chapter and progress in achieving its objectives;]

[d) conduct consultations and studies intended to incorporate the entities listed in Annex VII.1 (Entities) into the scope of this Chapter;]

[e) promote the development and implementation of the [electronic] information and intermediation system referred to in Article XVIII ;]

[f) coordinate the exchange of statistical information on government procurement;]

[g) coordinate and promote the design of training programs for the Parties' competent authorities;]

[h) enhance technical cooperation and assistance referred to in Article XXXVII; and]

[i) promote opportunities for micro-enterprises and small- and medium-scale enterprises, etc.]

[3. The regulation and specific functions of the Committee on Government [Acquisitions and] Procurement is in Annex XXXIX.3 (Administration of the Agreement – *no text*) to this Chapter.]

[4. The committee may set up working groups or other auxiliary bodies to help in carrying out its assigned tasks.]

[Article XL. [Amendments] [Modification to coverage]]

[1. The Agreement, its annexes and its appendices may be amended after the proposed amendment has been submitted to the corresponding body for consideration. Amendments shall enter into force [after notification that all legal proceedings have concluded] [after notification of the Parties to this Agreement by means of publication].]

[2. The Parties shall conduct consultations, at the request of any of them, to examine the possibility of incorporating the entities covered by Annex VII.1 (Entities) into the scope of this Chapter.]

[3. A Party may make modifications to the scope of the present Chapter only under extraordinary circumstances.]

[4. The Parties shall approve these agreements, in accordance with the terms of Article ____ [(Free Trade Commission)] [Administration of the Agreement].]

[5. [In the case of privatization of the Parties' entities covered by this Chapter, no provision in this Chapter shall be interpreted as meaning that a Party is prohibited from privatizing an entity covered in this Chapter. In these cases, another Party may not demand compensation of any kind.[The privatized entities shall not be subject to this Chapter's application.]] [Nothing in this Chapter shall be construed to prevent a Party from withdrawing an entity covered by this Chapter if the State's loses its effective control over the entity or if such control is removed from the State. [In these cases, another Party may not demand compensation of any kind.]] [The privatized entities shall not be subject to this Chapter's application.]]

[6. A Party may reorganize its [government] entities covered in this Chapter. This may include programs for the decentralization of procurement by said entities or decentralization of public functions, which an entity may cease to carry out, whether or not it is covered by this Chapter. No Party may withdraw entities covered by this Chapter with the intention of avoiding compliance with the obligations herein.]

[7. Where an entity covered by this Chapter is withdrawn, any Party may request the initiation of negotiations with a view to obtaining compensation for the purpose of restoring balance to the coverage.]

[8. Notwithstanding the provisions herein above, a Party may make rectifications only as to form and minor amendments to its lists in the Annexes. The Party shall notify such rectifications to the ____ . [If no Party enters an objection to such rectifications within 90 (ninety) days, the] [Such] rectifications shall not trigger negotiations for the purpose of obtaining compensation and shall enter into force immediately [after this time period].]

[9. The withdrawal of an entity by [a Party] under this Chapter shall be preceded by a communication to ____ .]

[10. Each Party shall notify [within ____ days of their approval] modifications [relating to Annexes XI.3 (Publication of Laws and Regulations- *no text*), XVIII.2 (Publication of Invitation to tender- *no text*), XIX.1 (Invitation to participate in a Supplier List under Selective Tendering Procedures- *no text*), XXI.2 (Shorter Time Periods- *no text*), and XXXIII.2 (Publication of the Award- *no text*)] [to its Laws and Regulation] to the other Parties or the Committee. [They shall become effective provided there is no objection within 30 days.]]

[Article XLI. Privatization

1. No provision of this Chapter shall be construed to hinder the privatization of an entity covered in this Chapter by any Party. In these cases, another Party may not demand compensation.

2. Privatized entities shall not be subject to the application of this Chapter.]

[Article XLII. Systems for implementing the Agreement]

[1. The Committee on Government [Acquisitions and] Procurement shall take the necessary steps to create within the Hemisphere statistical systems and an information platform which would allow the systematization of the information on Government [acquisitions and] procurement, with sufficient transparency and without discrimination.]

[2. Procuring entities shall prepare a report in writing on each contract awarded through limited tendering. Each such report shall include the name of the procuring entity, the value and kind of goods or services procured [, and a statement indicating the circumstances and conditions described in the previous paragraph that justified the use of limited tendering]. Entities shall retain each such report for a minimum of three years.]

[3. Parties shall ensure that their procuring entities maintain and make available upon request by any other Party, records of tendering procedures relating to procurements subject to this Chapter. [Procuring entities shall maintain such records for a period of at least [three] [five] years.]]

[Annex V.1 Rules of Origin]

[1. The provisions contained in the Chapter on rules of origin shall apply to [goods acquired through] government procurement. [The following will be considered as originating in the FTAA: all live animals born and bred there, and the by-products of same; plants and plant by-products harvested or gathered there; minerals and other substances that are found there naturally; products of the sea and of the ocean floor and sub-floor extracted from its territorial waters; merchandise produced on board ships (factories), manufactured using products of the sea (fish, crustaceans, mollusks, and other aquatic invertebrates); merchandise prepared exclusively in the Parties of the FTAA using products that originate there; and merchandise that incorporates materials or products not originating there and whose processing bestows a new identity on them.]]

[2. A good shall be considered to be of national origin if the cost of the national materials, labor and [other] services used to produce it constitutes not less than 50% of their total cost.]

[3. Regarding the nationality of the enterprise, it must be constituted in conformity with the laws of the Party in which it has its principal domicile, or must have its principal business office in a Party of the FTAA. [More than 50% of its capital must be [domestically] owned [by a natural person or legal entity of one of the Parties of the FTAA, or by a citizen or resident of same]. Also, it must constitute an integral part of the economy of the Party in which it is domiciled.]]

[Annex VII.1. Entities]

[Positive List:]

- [Government entities at the central and sub-central levels]
- [The federal and sub-federal government entities]
- [Municipalities]
- [State or Government enterprises]
- [Decentralized, Autonomous and Semi-autonomous Institutions]
- [Public enterprises that finance, totally or partially, 50% or more of their annual budget with public resources]
- [Private companies that finance more than 50% of their annual budget with public resources.]

[This does not include government institutions in which 50% or more of their funding is contributed by their members; also, public enterprises in which 50% of the capital stock belongs to individuals are excluded.]

[Negative List:]

[For (...)]

[Annex X.1. [Exceptions] [Types of Procurement]]

[Negative List:]

[The types of government procurement excluded from this Chapter are the following:]

- [a) government procurement processes for defense, of a strategic nature, and other procurements related to national security;]
- [b) government procurement of personnel assigned to perform duties inherent to the entities; and]
- [c) government procurement carried out with funds from States, regional or multilateral organizations, or persons that impose conditions inconsistent with the provisions of this Chapter.]
- [d) [Administrative] [Public] concessions.]
- [e) procurement of armaments by the military and national police.]

[Annex XXV. 3 e) Information Requirements for Qualification Procedures]

[1. A certifiably clean legal record, as well as the fulfillment of tax and reserve obligations shall be recognized, provided that such certification is submitted [by the bodies listed in Annex ____] [and certified by the competent public institutions of each Party], an insurance-backed guarantee of the bid, as well as an insurance-backed guarantee of performance.]

[1. Financial bonds and guarantees, technical qualifications and the information necessary to verify their financial, commercial and technical capacity, as well as certification of their legal existence issued by the competent authority of the Parties, if they are juridical persons.]

[a) General requirements

- Exact address or business address
- Telephone and fax number
- Email address and post office box number]

[b) Legal capacity to conduct business

- Articles of incorporation and by-laws duly registered with the relevant government registering entity,
- Power of attorney duly registered with the relevant government registering entity
- A statement attesting that the supplier is not the subject of a suit brought by creditors, is not bankrupt, in receivership or subject to an injunction.
- A statement attesting that the supplier is not prohibited under national law from conducting business.
- Foreign-registered companies shall comply with the requirement to present a duly notarized document that certifies the incorporation of the company, as well as appoint a legal representative in the country, who shall be registered with the relevant government registering entity.
- Current and previous year's financial statements]

[c) Technical capacity to conduct business

- Relevant operating license
- Background on the natural person or legal entity in the field of business
- Other (in accordance with the specific characteristics of the project for which tenders are to be invited)]

[For Validation]

- [[Uncertified or certified] Copy of charter]
- [Uncertified or certified] Copy of certificate legalizing enterprise (legal existence)
- [Notice of constitution of enterprise]
- [Uncertified or certified] Copy of list of shareholders
- [[Uncertified or certified] Copy of by-laws of enterprise]
- [Certification from a court that the enterprise has not filed for bankruptcy]
- [Certification from a court that no judicial ruling has been issued against the enterprise]
- [Proof of payment of taxes in its country.]

[For pre-qualification]

- Letter of introduction
- List of projects executed by the enterprise in the specific field of the bidding process, indicating amount, beginning and ending dates, and evidentiary documents of the satisfactory execution of same
- List of projects currently being executed by the enterprise, indicating amount, percentage completed, beginning date and possible ending date

- List of executive and technical personnel of the enterprise who work in the specific field of the bidding process (curriculum vitae)
- List of equipment available for use in the specific area of the bidding process
- Organizational chart, showing structure and personnel of enterprise
- Financial statement of the enterprise
- Credit record and bank references of the enterprise
- Credit record and business references.]

[Regarding the procurement of goods and services, in order to guarantee compliance with their obligations, tenderers and winning tenderers must post [performance] bonds with [their tenders and contract] [the] award[s], [and if applicable, for the total advance received] in the amount established in each case. In cases of non-compliance by the contractor, the bond shall be forfeited [in accordance with the procedures established in the laws of each Party].]

[Likewise, the participants in [bidding processes and] the awarding of contracts for works and services are obligated to post [bid bonds, contract or] performance bonds, payment bonds and bonds covering hidden defects [, when this requirement is duly set out in the tender documents].]

[Annex ___: Definitions]

[Government Procurement: any type of modality of government procurement of goods, services, or of a combination of goods and services, envisaged in the respective current legislation and carried out by the public entities of the Parties. This concept shall include public works concessions.]

[Limited tendering procedures: procedures in which a procuring entity does not issue an advance notice of invitation to tender and invites tenders only from a supplier [or suppliers] that the entity identifies through an internal non-competitive selection process.]

[Measures: includes any law, regulation, procedure, requirement or practice.]

[Offsets [or Performance Requirements]: any [requirements] or conditions imposed or considered by an entity, prior to, or in the course of the procurement process, in order to foster local development or improve its balance of payments accounts, by means of local content requirements, licensing of technology, investments, compensatory trade or similar requirements.]

[Open Tendering Procedures: those procedures in which the procuring entity permits all interested suppliers to participate in a procurement competition.]

[Privatization: a process by means of which a public entity is released from State control, be it through public tendering of shares in that entity or otherwise, as provided for in the Parties' applicable legislation in force.]

[Selective Tendering Procedures: those procedures in which the procuring entity:

- a) requires each supplier to be qualified before such supplier may participate in the tendering process; and
- b) permits interested suppliers to apply for qualification while the tendering process is underway.]

[State control: when the State has a majority economic share [and/or effective control of the entity].]

[Technical specification: a specification which sets down the characteristics of goods or their related processes and production methods, or the characteristics of services or their related operating methods, such as quality, performance, safety and dimensions, including any applicable administrative provisions. It may also include or deal exclusively with issues relating to terminology, symbols, packaging, marking, labeling or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, as they apply to goods, processes, or production and operating methods.]

[Provider: a person of any Party that provides goods or services pursuant to the this Chapter.]

[Tendering procedures: all procedures for government procurement that are not limited tendering.]