

## **FTAA – Free Trade Area of the Americas**

### **Draft Agreement**

#### **Chapter XVIII Government Procurement**

## CHAPTER XVIII Government Procurement<sup>1</sup> \*

### Section A General Aspects

#### Article 1. Definitions

1.1. For purposes of this Chapter:

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

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

**[in writing or written** means any worded or numbered expression that can be read, reproduced and later communicated, and includes electronically transmitted and stored information;]

**[measure** means any law, regulation, procedure, requirement, administrative guidance or practice;]

**[offsets** means any conditions or undertakings that encourage local development or improve a Party's balance-of-payments accounts, such as the use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment [requirements], counter-trade and similar actions;]

**[person** means a natural or juridical person;]

**procurement** means [contractual transactions to acquire property or services for the direct benefit or use of the government. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award. It does not include procurements made with a view to commercial resale or made by one entity of a Party from another entity of that Party;] [any type of procurement of goods, services, or a combination thereof, including works carried out by public entities of the Parties for public purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale, unless otherwise specified. [It includes procurement by such methods as purchase or lease, or rental or hire purchase, with or without an option to buy;]]

**[procuring entity** means an entity listed in Annexes XX (*no text*);]

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<sup>1</sup> This text has been reorganized in accordance with the template approved by the TNC for the draft Chapters as established in "Guidance and Instructions to the FTAA Entities" (FTAA.TNC/23).

\* Note that the term "Procurement" has been agreed to in the English version of this Chapter while the Spanish version utilizes three options: "compras/contrataciones/adquisiciones." These alternatives are not explicitly identified throughout the English version.

[**publish** means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;]

[**services** includes construction services [or public works], unless otherwise specified;]

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

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

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

## [**Article 2. Objective[s]**

[2.1. The objective of this Chapter is to expand access to the government procurement markets of the FTAA Parties.]

[2.1. The objectives of this Chapter are to recognize the importance of conducting government procurement in accordance with the fundamental principles of openness, transparency, and due process; and to strive to provide comprehensive coverage of procurement markets by eliminating market access barriers to the supply of goods and services, including construction services.]]

## **Article 3. Scope of Application**

3.1. This Chapter applies to:

- (a) any [measure adopted or maintained] [law, procedure or practice applied] by a Party [or a procuring entity thereof] regarding a procuring entity's procurement of goods, services [and public works] [or any combination thereof] that is covered by this Chapter]; and
- (b) procurement by any contractual means, [including purchase, lease or rental with or without an option to buy, [or hire purchase]] [, and build-operate-transfer contracts and public works concessions contracts] and [for which the value, as estimated in accordance with Article 12 (Valuation of Procurement) equals or exceeds the relevant threshold specified in Appendix XX (*no text*),] at the time of publication of the notice in accordance with Article 16 (Publication of Notice of Solicitation).]

[3.2. [For purposes of this Chapter, procurement does not include] [This Chapter does not apply to]:

- (a) non-contractual agreements or any form of assistance provided by a Party or a government enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and government provision of goods or services to persons or to State, regional or local Governments] [procurements between government entities];

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\*Note that the term "supplier" has been agreed to in the English version of this Chapter while the Spanish version utilizes the two options: "proveedor/prestador." These alternatives are not explicitly identified throughout the English version.

- [b] purchases funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter and] [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;]
- [c] acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;]
- [d] 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, health care and protection and childcare;]
- [e] cross-border financial services;]
- [f] government procurement governed by a regime of concessions;]
- [g] procurement made by embassies and consulates overseas;]<sup>2</sup>
- [h] 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;]
- [i] any measure adopted or maintained with respect to Aboriginal peoples;]<sup>3</sup>
- [j] purchases by enterprises with public participation where fifty percent (50%) of the capital is privately owned;] and
- [k] the acquisition of fresh food items from markets, national farm produce exchanges, agricultural fairs, or directly from producers, provided that said food items are not acquired for commercialization purposes.]<sup>4</sup>

#### **[Article 4. General Principles**

4.1. Each Party shall [guarantee] [recognize]:

- [a] the principles of non-discrimination, [and] transparency, [legality,] [impersonality,] [integrity of the procurement process] [morality,] [objectivity,] [due process,] [publicity,] [and] [a link to the instrument of a procurement invitation,] in government procurement, [pursuant to the provisions of this Chapter];]
- b) [the principle of differential treatment in accordance with the differences in the levels of development and size of the economies]; [and]

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<sup>2</sup> [The NGGP agreed it would be appropriate to consider this item as a market access issue or as an exception.]

<sup>3</sup> [See footnote 2.]

<sup>4</sup> [See footnote 2.]

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

## **Section B Substantive Provisions**

### **Article 5. [National Treatment and Most Favored Nation Treatment] [Non-Discrimination]**

[5.1. With respect to any measure [and any procurement] covered by this Chapter, [and subject to the exception provided for in Article 27 (Exceptions),] [transitions and reservations included in the same,] each Party [and each procuring entity] shall accord [immediately and unconditionally] to the goods [and services] of any other Party and to the suppliers of any other Party [offering the goods or services of any other Party,] treatment no less favorable than the treatment the Party [or the procuring entity] accords to:

- a) domestic goods, services and suppliers; and
- [b) goods, services and suppliers of any other Party.]]

[5.2. With respect to any measure and any procurement covered by this Chapter, a [Party] [procuring entity] may not:

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

5.3. This Article shall not apply to customs duties and charges of any kind imposed on, [or in connection with,] importation, [the method of levying such duties and charges,] or other import regulations or formalities, and measures affecting [foreign] trade [in services] other than measures regarding procurement covered by this Chapter.

### **[Article 6. Treatment of the Differences in the Level of Development and Size of Economies]**

[6.1. The principle of differential treatment set forth in this Article 4 (General Principles) covering this Chapter may be reflected in the following aspects:

- a) consideration of the transition periods for the fulfillment of the obligations set forth in this Chapter;
- b) establishment of differential thresholds for defining market access;
- c) establishment of special measures based on programs designed to promote the development of the national production apparatus;
- d) establishment of special measures based on programs designed to promote the participation of small, medium and micro-enterprise in government procurement; and
- e) support for industrial units or service providers so long as they are wholly or substantially dependent on government procurement.]

[6.2. Parties shall, in the application and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing Parties and smaller economies, in their need 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 sector;
- c) support industrial units [or service providers,] to the extent that they are wholly or substantially dependent on government procurement; and
- d) Encourage economic development and expansion through sub-regional arrangements.]

[6.3. [Smaller economies] [Parties, 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.]

[6.4. Developed Parties shall guarantee, for the benefit of Parties with smaller economies, a procurement quota equal to (...) of the total value of the contracts to be awarded.]

[6.5. Smaller and/or developing economies may at any time, consistent with demonstrated need, and as agreed with the Committee on Government Procurement, institute emergency safeguards when compliance with commitments under this Chapter cause or threaten to cause damage to national suppliers and sensitive economic or socio-economic sectors. These measures shall be temporary in application subject to the duration of the period of emergency and limited to:

- a) the addressing of balance of payments concerns;
- b) import quotas;
- c) additional exclusions;
- d) margins of preference;
- e) higher thresholds;
- f) higher percentage offsets; and
- g) set asides.]

## **Article 7. Offsets\***

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

[7.2. Notwithstanding the provisions of paragraph 7.1 considering the levels of development and size of the economies, smaller economies and developing Parties may apply offsets in accordance with Annex XX (containing schedules of Market Access commitments - *no text*).] [Developing Parties may negotiate offsets through an indication in the specifications for bidding in the public procurement of goods, services or public works.]

## **[Article 8. Rules of Origin**

[8.1. For purposes of procurement covered by this Chapter, no Party may apply rules of origin to goods imported from any other Party that are different from the rules of origin the Party applies in the normal course of trade [to imports of the same goods from the same Party].]

[8.1. For the purposes of Article 5 ([National Treatment and Most Favored Nation Treatment] [Non-Discrimination]), determination of the origin of goods shall be made on a non-preferential basis.]

[8.1. For purposes of the present Chapter, goods shall be considered originating goods of the Parties where they qualify as such in accordance with the pertinent provisions in the Chapter XX (Market Access for Goods) of the FTAA Agreement.]]

## **Article 9. Denial of Benefits**

[9.1. A Party may deny the benefits [granted by] [of] this Chapter to a service supplier of another Party, following notification [and consultation,] [during the period included between the presentation of tenders and the awarding of the contract,] when the Party determines that the service is being provided by an enterprise that:

[a) has no substantial business activities in the territory of the other Party;]

[b) is not established in a FTAA Party;] and

[c) is owned or controlled by persons of a non-Party] [according to the applicable laws of that Party].]

[9.2. A Party may deny to an enterprise of another Party the benefits of this Chapter if nationals of a non-Party own or control the enterprise 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 enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.]

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\*Note that the term in the title referring to "offset" has been agreed to in the English version of this Chapter, while the Spanish version utilizes the following phrase: "Condiciones Compensatorias Especiales" and "Compensaciones."

## **Article 10. Dissemination of Laws and Regulations**

### 10.1. Each Party:

- [a] shall publish [promptly] [within a reasonable period] laws, regulations, [judicial decisions], administrative [rulings] [measures] [of general application], [procedures and contract clauses that are incorporated by reference in notices and tender documents] relating to government procurement covered by this Chapter in officially designated print or electronic media that are widely disseminated and readily accessible to the public as identified in Annex XX (Publication of Laws and Regulations - *no text*). Each Party shall [promptly] [within a reasonable period] publish in the same media all changes and additions to such measures;]
- b) shall endeavor to develop an electronic information system that would provide access to the measures referred to in paragraph a) of this Article as well as any modification of those measures that may be effected in the future; and
- [c] shall notify the FTAA Secretariat, after the entry into force of this Agreement, of the laws regulating government procurement, as well as any modification to that legislation that may be effected in the future. The FTAA Secretariat will disseminate that information to the other Parties.]

## **[Article 11. Government Procurement Procedures] [General Principles]**

[11.1. The Parties shall ensure that their procuring entities use the procurement modalities and procedures established in their national laws, provided that these are in accordance with the provisions [of the principles] [defined] in this Chapter.]<sup>5</sup>

[11.1. Each Party shall ensure that its procuring entities [listed in its Appendices] comply with the provisions of this Chapter in conducting procurement covered by this Chapter.]

11.2. In order to guarantee free competition and transparency and allow for the participation of tenderers from any of the Parties, the entities shall abstain from applying procedures in a discriminatory manner, such as setting time limits, requiring technical specifications, or any other requirement, the aim of which is to limit or exclude competition, and shall afford all suppliers equal access to information on a procurement.

[11.3. For the purposes of this Chapter, government procurements instituted pursuant to Article 3 (Scope of Application) shall be conducted through open [or limited] tendering procedures, in accordance with the rules established herein.]

[11.3. Procuring entities shall conduct procurement covered by this Chapter in a manner that is consistent with the provisions set out in Article 3 (Scope of Application), and, except where specifically provided otherwise in this Chapter, in a transparent manner, using methods such as open tendering, selective tendering and limited tendering.]]

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<sup>5</sup> The NGGP agreed to discuss the need for compliance provisions in the Government Procurement Chapter at a later stage in the negotiations, in consultation with the FTAA Technical Committee on Institutional Issues (TCI).



**[Article 12. Valuation of Procurement**

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

- a) shall take into account all forms of remuneration including [the final valuation of the procurement] [any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases;]
- b) may not divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter; and
- c) shall, except as provided for in paragraph XX, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration [, including possible extensions or broadened time periods, explicitly authorized in the contracts or in national legislation.]

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

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

**[Article 13. Selective Tendering**

13.1. In order to ensure optimum and effective international competition in selective tenderings, entities shall invite to participate, for each procurement, the greatest possible number of domestic suppliers and suppliers from other Parties as are compatible with the efficient working of the procurement system. The entities shall select, in a fair and non-discriminatory manner, the suppliers who may participate in the tendering.

13.2. Entities that keep permanent lists of qualified suppliers may select those suppliers that will be invited to participate from among those included in such lists. Every selection must afford equal opportunities to the suppliers included in the lists.

13.3. Suppliers who apply to participate in a specific procurement shall be permitted to present offers and will be taken into account with the proviso that those who have not yet been qualified, be afforded

sufficient time to complete the qualification procedure as provided for in the Article 20 (Qualification of Suppliers). The number of additional suppliers authorized to participate shall be limited only for reasons related to the efficient functioning of the procurement operation.

13.4. Applications to participate in selective tenderings may be submitted by telex, telegram or fax.

13.5. Where an entity of a Party does not invite or accept a supplier to tender, at the request of the supplier, the entity shall provide without delay any pertinent information on the reasons for its action.]

**[Article 14. Limited Tendering**

[14.1. [A] [P][p]rocurring entit[y][ies] may use limited tendering procedures in the [following] circumstances [, provided that it does not use such procedures for the purpose of avoiding competition among suppliers or protection of domestic suppliers:] [provided for in their respective domestic laws:.. In any case, entities shall not use limited tendering procedures for the purpose of avoiding the obligations of this Chapter.]]

- [a] [in the absence of tenders in response to a bidding process;] [in the absence of tenders or when the tenders presented do not meet the requirements or conditions for participation, or are risky or run counter to public interest after two public sessions have been held and they have been declared void. In such cases, requirements identical to those of the original tender document shall be applied;]]
- [a] in the absence of tenders in response to a notice of solicitation, or where no tenders that comply with the requirements in the tender documentation were submitted in response to a prior notice of solicitation, provided that the tender requirements for the procurement are [not substantially modified] [essentially the same];]
- [b] where no suppliers satisfied the conditions of participation, provided that the tender requirements for the procurement are [not substantially modified] [essentially the same];]
- [c] when, for works of art, [the acquisition or lease of tangible goods, intangible goods or services], or for reasons connected with the protection of exclusive rights, [such as patents, copyrights or [proprietary] [restricted] information] or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a single supplier and no reasonable alternative or substitute exists;]
- [d] in so far as is strictly necessary, where for reasons of [emergency] [extreme urgency] brought about by events unforeseeable [or inevitable] by the procuring entity, the goods or services could not be obtained in time by means of open [or selective] [procurement] [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 [procuring entities shall not use this provision because of a lack of advance planning;]]]
- [e] for additional [deliveries] [contracts] 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 procurement procedures];]
- [h] 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 the most appropriate for fully meeting the objective of the contract;]
- [i] 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 confidentiality, cause serious economic disruption or similarly be contrary to the public interest;]
- [j] for purchases [of goods] made under exceptionally advantageous conditions that only arise in the very short term,[[such as] [in the case of] 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;]
- [k] 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;]
- [l] 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;]
- [m] for goods purchased on a commodity market;] and
- [n] in cases where a Party's legislation provides for contracting, by means of limited tendering, entities reporting to, or controlled by, the government, and non-profit institutions for social assistance, education, research, or institutional development, and for procurements using the resources of such institutions, provided they are for exclusive use in scientific and technological research.]

[14.2. Entities shall not use limited tendering procedures for the purpose of avoiding the obligations of this Chapter. Notwithstanding any of the provisions of this Article, entities shall not use limited tendering

because of a lack of advance planning or concerns relating to the amount of funds available to an entity within a particular period of time.]

[14.3. Where an entity uses a limited tendering procedure, it may choose not to publish or distribute a notice of intended procurement prior to the award of the procurement contract.]

[14.4. Each procuring entity shall prepare a report in writing on each contract awarded under paragraph 14.1 of this Article. Each such report shall include the name of the entity, the value and kind of goods and services procured and a statement indicating the circumstances described in paragraph 14.1 of this Article that justified the use of such procedures. Procuring entities shall retain this report for a minimum of three (3) years.]]

### **[Article 15. Negotiation Disciplines**

[15.1. Domestic law permitting, a procuring entity may conduct negotiations, providing that it has been expressly stipulated in the tender documentation.]

[15.1. Domestic law permitting, [and if so provided in the tender documentation,] an entity may conduct negotiations only:

- a) [in the event similar tenders are submitted, negotiations may be entered into with those tenderers that pre-qualify for the purpose, in order to secure better technical, quality or price terms and provided that the object of the tender document is not altered. The negotiation may be conducted through joint or individual sessions with each tenderer, but in either event, the conclusion of the negotiation and final submission of the improvements shall be done in a session to which all tenderers with similar tenders are convoked. A summary record shall be kept of the proceedings in each session;]
- b) in the context of a procurement in which the entity has, in the tender notice published in accordance with Article 16 (Publication of Notice of Solicitation) and Article 18 (Content of Tender Documentation) indicated its intent to negotiate; or
- c) when 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.]

[15.2. An entity shall use negotiations primarily to identify the advantages and disadvantages of the tenders.]

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

- a) carry out any elimination of suppliers of goods or 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 remaining in the negotiations;

- c) permit all remaining suppliers of goods or 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 services to submit final tenders on a common deadline.]

[15.4. The negotiation disciplines shall be applied in those procedures in which price is the determining element in the award.]

[15.5. Tenders whose prices are not more than five percent (5%) higher than the lowest tender shall be considered similar tenders.]

[15.6. Negotiations may be established to improve tenders in cases of manifestly objectionable prices.]

[15.7. The rules for improving tenders and for the negotiations stipulated above shall be used by the State entities when they deem it suitable to their interests.]]

**[Article 16. Publication of Notice of Solicitation\***

16.1. For each procurement covered by this Chapter, except as provided in Article 14 (Limited Tendering), [each Party shall ensure that its] procuring entities shall publish a notice of solicitation in the [appropriate] [official] print or electronic media, listed in Annex XX (*no text*). Such media shall be widely disseminated and [remain] accessible to the public.

16.2. The notice of solicitation shall contain the information necessary for suppliers to be able to evaluate their interest in participating in the procurement, including, at a minimum:

- a) the name and address of the procuring entity and other information for contacting the entity and obtaining all relevant documents relating to the procurement [and their cost];
- b) the procurement method that will be used [and whether it will involve negotiation];
- c) a description of the intended procurement, including the nature and quantity of the goods or services to be procured, [the location of the public works or where the services will be provided,] [options,] [and conditions for participation];
- [d) the approximate value of the contract and form of payment of the intended procurement;]
- [e) the language or languages in which the tender may be submitted; the medium in which tenders may be submitted, e.g. paper or electronic (e-mail, fax, mail, etc.);]
- f) the place, date and time period for the submission [and opening of tenders]; and
- g) an indication that the procurement is covered by this Chapter.

[16.3. Each Party will endeavor to develop an electronic information system that would provide access to such notices.]

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\* Note that the consistency between the English and the Spanish versions for the use of the term "solicitation" (participación) and "tendering" (licitación) in Articles 16 and 17 needs to be re-examined.

[16.4. After the notice of solicitation has been published, any change to 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 is absolutely clear that the change does not affect the formulation of proposals.]]

#### **[Article 17. Time Periods**

##### **Time Periods for responses [to inviting tenders] [to invitations to participate]**

[17.1. The Parties shall guarantee that the prescribed time periods for the tendering process shall be adequate to allow participating suppliers of all Parties to prepare and submit responsive tenders.]

[17.1. [[Any]\* [The Parties shall guarantee in their respective legal frameworks that [any]] [the] prescribed time period[s] for [the tendering process shall be adequate to allow] [responding to the invitation to a procurement shall not be shorter than (...) working days, as of the last publication of the invitation to participate that allows] participating suppliers of all Parties to prepare and submit responsive tenders.] [Such time periods shall be established depending on the modality and nature of the procurement in question.]]

[17.2. If, as a result of a need to amend information provided to suppliers during the procurement process, a procuring entity must extend the time period, such entity shall permit all participating suppliers to submit final tenders in accordance with a common deadline.]

[17.3. For submitting an invitation to tender the time periods are:

- [a) a procuring entity using open tendering procedures shall provide no less than [forty (40)] [thirty (30)] 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] [for delivery of proposals]. [In the case of electronic tendering when the object of the procurement so allows, a shorter time period, no less than (...) may be stipulated;]]
- [a) The prescribed time periods for the tendering process shall be adequate to allow participating suppliers of all Parties to prepare and submit responsive tenders. For open tendering procedures, the notice shall be published no fewer than (forty) (40) consecutive days before the final deadline for submitting tenders;]
- [b) For electronic tendering procedures, the period is at least fifteen (15) consecutive days for goods and services and at least forty (40) consecutive days for public works;] and
- [c) procuring entities using selective tendering procedures shall provide no less than [forty (40)] [fifteen (15)] 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] [for delivery of proposals].]]

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\*Note that there is a discrepancy between the English and Spanish versions. The Spanish version utilizes the term "Todo" meaning "All" and the English version utilizes the term "Any" meaning "Cualquiera" in this paragraph.

[17.4. These time periods shall be calculated from the earlier of the date of [last] publication of the notice of tender or the date on which the tender documentation actually becomes available, whichever occurs last.]

### **Shorter Time Periods**

[17.5. Under the following circumstances, procuring entities may establish a time period for tendering that is shorter than forty (40) days provided that such time period is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than ten (10) calendar days prior to the final date for the submission of tenders:]

- [a] if a separate notice has been published at least forty (40) calendar days and not more than twelve (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 forty (40) days may be reduced to no less than twenty four (24) calendar days];]
- [b] in the case of the second or subsequent publications dealing with contracts of a recurring nature [, the period of forty (40) days for reception of bids may be reduced to not less than twenty four (24) calendar days];]
- [c] in the case of procurement of commercial goods and services that 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 requires that potential suppliers be qualified for participation in the procurement before submitting tenders, in accordance with Article 13 (Selective Tendering) and Article 20 (Qualification of Suppliers); and]
- [d] when, for duly substantiated reasons of extreme urgency brought about by events unforeseeable by the entity, the use of a forty (40) day time period would result in serious injury to the entity or the relevant Party.]

[17.6. When a procuring entity publishes an advance notice of intended procurement in accordance with Article 16 (Publication of Notice of Solicitation) of this Chapter in an electronic media listed in Annex XX (*no text*) to this Chapter, the entity may reduce the time periods provided for in this Chapter by up to five calendar days. The use of this provision, however, shall in no case result in the reduction of those time periods to less than ten (10) calendar days from the date on which the notice of intended procurement is published.]

[17.7. Notwithstanding any other time periods in this Article, when a procuring entity is purchasing commercial goods and services and the notice of intended procurement and the tender documents are published electronically, and the tenders may be received electronically, the entity may reduce the time-period to no less than (...) days, provided such time is adequate to allow suppliers to submit responsive electronic tenders.]]

**[Article 18. Content of the Tender Documentation]**

[18.1. The Procuring entities shall provide interested suppliers with tender documentation that includes all information necessary to permit such suppliers to prepare and submit responsive bids. [Such documentation shall be prepared in accordance with the domestic laws of the Party calling for bids.][Such documentation shall include in precise terms, at least the following information:]

- a) name and address of the procuring entity, including the date, time and place for the submission and opening of the tenders, as well as the requests for additional information;
- b) the tendering procedure or modality;
- c) the language or languages in which tenders and tendering documents should be submitted;
- d) the tender validity period, after which tenderers shall be freed from the commitments they assumed;
- e) the purpose of the intended procurement, including the nature and quantity of the goods or services to be procured or the works to be executed and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or any required instructions;
- f) the conditions required of suppliers for participation in the procurement, including:
  - i) bonds;
  - ii) proof of legal and financial eligibility, of technical and economic/financial competence, where appropriate; and
  - iii) deadline for delivering goods or works or providing services;
- g) all criteria to be considered in the evaluation of tenders and the awarding of the contract, including any factors, other than price, that are to be considered in the evaluation of tenders, and if applicable, a clear explanation of the formula for weighing the factors used to select tenders, as well as the currency for submitting tenders and payment;
- h) the terms of payment, and any other terms or conditions;
- i) reference to the possibility of negotiation;
- j) date set to begin and conclude delivery of the goods or works or provision of services;
- k) an indication that the procurement is covered by this Chapter;
- l) the origin of the funds that will finance the procurement;
- m) the laws governing the procurement and challenge procedures; and
- n) annexes containing:
  - i) basic and/or executive project;



- ii) estimated budget, if relevant;
- iii) model contract to be signed by the Parties; and
- iv) the accompanying specifications and execution standards relevant to the tender.]

[18.2. In establishing any delivery date for the good or service being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.]

### **Article 19. Application of Technical Specifications**

19.1. A procuring entity may not prepare, adopt or apply any technical specification nor prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

[19.2. The technical specifications shall be created based on the use or properties of use and employment of the good and the destination of the service or public work and shall include objective requirements essential for compliance with the objective of the procurement and shall avoid deviation leading to poor practices.]

19.3. In prescribing the technical specifications for the good or service being procured, a procuring entity shall [, where appropriate]:

- a) specify the technical specifications, [wherever appropriate,] in terms of performance and functional requirements, rather than design, [method of development] or descriptive characteristics; and
- b) base the technical specifications on international standards [when applicable, or otherwise on national technical regulations on recognized national standards or building codes] where such exist [and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose more burdens than the use of a government-unique standard] [otherwise on recognized national standards or building codes] [or in the national technical standards of the country which the tender is located].

19.4. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

[19.5. The Parties shall ensure that its procuring entities shall not seek or accept from any person or enterprise that may have a commercial interest in the procurement, advice that may be used in the preparation or adoption of any technical specification for a specific procurement, in a manner that would have the effect of precluding or limiting competition.]

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

[19.7. Where, [during the course of a procurement,] [before the time set for the receipt for the opening of tenders] a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or re-issues a notice or tender documentation, it shall transmit all such modifications or amended or re-issued notice or tender documentation in writing, giving the same circulation as the original documents upon which the modification or amendment or re-issued notice or tender documentation is based:

- a) to all the suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and
- b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.]

## **[Article 20. Qualification of Suppliers**

20.1. Each Party shall ensure that:

- a) entities covered by this Chapter recognize as qualified all suppliers that meet the requisite conditions of participation;
- b) when evaluating the economic/financial and technical capacity of a tenderer, all activities conducted in the territory of any Party or in the territory of other Parties are recognized equally, and entities ensure that technical qualifications are limited to the areas of greatest importance and significant value of the procurement;
- c) the qualification decisions are based solely on the conditions for participation that have been specified in advance in the tender documentation;
- d) entities covered by this Chapter 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 that Party or that the supplier has prior work experience in the territory of that Party. There shall be no requirements of minimum quantities of contracts or time periods in which they were executed. Nevertheless, for purposes of technical qualification and where the complexity of the service or the work so requires, proof may be required of prior experience consistent with the characteristics and quantity of the procurement, including with regard to facilities, equipment, and technical personnel available to perform the contract; and
- e) entities covered by this Chapter use a single qualification procedure that is described in the tender documentation. Where an entity justifies the need for a different procedure, it shall employ additional or different qualification procedures, which must be described in detail in the tender documentation. The Parties shall also endeavor to keep to a minimum the differences between the qualification procedures of its entities.

20.2. Tendering entities may require from tenderers a guarantee of the bid, as well as a guarantee of performance from the successful tenderer.

20.3. Where a tenderer is rejected in a tendering procedure, the entity shall provide the interested parties with the reasons for its actions.

20.4 Nothing in the provisions set forth in the above paragraphs shall preclude an entity of a Party from excluding a tenderer on grounds such as bankruptcy, false declarations, or penalties that disqualify the tenderer from entering into contracts with entities of the Parties.]

**[Article 21. Registry of Suppliers**

21.1. Each Party may establish a registry of suppliers of goods, services and works.

21.2. Parties whose entities use lists or a register of suppliers of goods, services and works shall ensure that:

- a) goods or service suppliers can apply for inscription, qualification or entitlement at any time;
- b) all goods or service suppliers that so request are put on the register without undue delay, provided they meet all the requirements;
- c) where an entity rejects an application for registration, it shall provide to the interested party, without delay, the reasons for its decision;
- d) all suppliers of other Parties included in the registries are notified of their suspension or removal therefrom; and
- e) the purpose thereof shall be none other than to verify their eligibility to conduct business with the State, without raising impediments to their inclusion in the list of any suppliers of any other Party.

21.3. Registration will occur at the request of interested parties, who shall provide the required documentation. [Suppliers shall fulfill the requirements by means of the same documentation.]]

**Article 22. Submission, Receipt and Opening of Tenders**

22.1. A procuring entity shall receive and open all tenders under procedures that [guarantee the fairness and impartiality of the procurement process, that include] [are consistent with] the following:

- a) tenders shall be presented in writing;
- b) a procuring entity shall treat tenders in confidence [until the opening of tenders, subject to the Article 25 ([Non-Disclosureof] [Confidential] Information).] [In particular, it shall not provide information to suppliers that might prejudice fair competition between suppliers;]
- [c) a procuring entity shall open tenders in a public session and shall enter the details in a record;]
- d) [if the delay in the receipt of the tender is solely the responsibility of the procuring entity, the tenderer shall not be prejudiced by being prevented from presenting the tender;] [A procuring entity shall not [penalize] any supplier whose tender is received after the expiration of the time specified for receiving tenders if the delay is caused solely by the procuring entity;]

- [e) a procuring entity shall issue a record of the receipt of the tender indicating the date, place, and time of receipt;] and,
- f) a procuring entity may allow tenderers to correct errors of form, provided such corrections do not alter the previously established competitive conditions, and the entity provides the same opportunities to all participating suppliers.

### **Article 23. Evaluation of Tenders and Award of Contracts**

23.1. To be considered for award, a tender must, at the time of opening, comply with the [essential] requirements of the notices or tender documentation [and be from a supplier that satisfies all the conditions for participation].

23.2. [Unless a procuring entity determines that it is not in the public interest to award a contract,] a procuring entity shall award each contract to the tenderer:

- a) that the entity has determined to be fully capable of undertaking the contract; and
- b) whose tender is [the most suitable] [either the lowest price or the tender the entity has determined to be the most advantageous] solely on the basis of the requirements and evaluation criteria specified in the notices or tender documentation.

23.3. Where the procuring entity receives a tender that is abnormally lower in price than the other tenders submitted, the entity may make the necessary inquiries to ensure that the tenderer will be able to meet the conditions for participation and will be capable of fulfilling the terms of the contract. [Where the entity determines that the tenderer is incapable of fulfilling the terms of the contract, the tender shall be rejected.]

[23.4. A procuring entity may render a tendering procedure null and void for duly justified reasons of interest to the Administration, or cancel it for reasons of irregularity or illegality.]

23.5. No entity of a Party may make it a condition of the awarding of a contract that the [supplier] [tenderer] has previously been awarded one (1) or more contracts by an entity of that Party, or that the [supplier] [tenderer] has prior work experience in the territory of that Party.

[23.6. A procuring entity shall not cancel a procurement or modify awarded contracts in a manner that circumvents the obligations of this Chapter.]

### **Article 24. Dissemination and Publication of Information on Contract Awards**

24.1. The Parties shall ensure that their entities provide [effective] dissemination of [the results of government procurement process] [the awarding of the contract].

24.2. A procuring entity shall [promptly inform] [provide to] all tenderers [of the entity's contract award decisions] [information on the procurement procedure]. Subject to Article 25 ([Non-Disclosure of] [Confidential] Information), a procuring entity shall, on request, [provide] [make available] to an unsuccessful tenderer, if so explicitly requested, [an explanation of the reasons that the entity did not

select its tender and the relative advantages of the successful supplier's tender] [information on the procurement process].

[24.3. Not later than [seventy two (72)] days after the [award] [entry into force] of each contract covered by this Chapter, a procuring entity shall publish a notice in an officially designated publication listed in Annex XX (*no text*) that may be in an electronic or printed media. Where an electronic media is used, the information shall remain readily accessible for [one hundred twenty (120) days] [a reasonable period of time] from the date of publication. The notice shall include at least the following information:

- a) a description of the goods or services procured;
- b) the name and address of the procuring entity;
- c) the name and address of the successful tenderer;
- d) the value of the successful tender [or the highest or lowest bids that were taken into account to award the contract];
- [e) the [date of award] [term of the contract];]and
- [f) type of procurement method used [, and in cases where a [limited] tendering procedure was used pursuant to Article 14 (Limited Tendering), a description of the circumstances justifying the use of such procedure].]

[24.4. On request of any other Party, a Party shall provide promptly such information on the award of a contract, including information on the characteristics and relative advantages of the successful tender and on the contract price, as may be necessary to determine whether the procurement was conducted fairly, impartially and in accordance with this Chapter.]

24.5. A procuring entity shall maintain records and reports of tendering procedures and contract awards relating to procurement covered by this Chapter, [including the reports provided for in Article 14 (Limited Tendering), and shall retain such records and reports for a period of at least [three (3) years] from the award of the contract].

## **Article 25. [Non-Disclosure of] [Confidential] Information**

[25.1. No Party, procuring entity or review authority, referred to in Article 26 ([[Review][Challenge] Procedures]) may disclose information [that a person providing the information has] designated as confidential [, without the authorization of such person].]

[25.1. Nothing in this Agreement shall prevent a Party or a procuring entity from withholding the release of information under this Agreement where release might:

- a) impede law enforcement;
- [b) prejudice fair competition between suppliers;]
- [c) prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property;] or

d) otherwise be contrary to the public interest.]

[25.1. The Parties and their entities shall not disclose confidential information in the course of a procurement. However, the Parties must disclose this information where non-disclosure:

a) impedes law enforcement; or

b) is contrary to the public interest.]

**Article 26. [[Review] [Challenge] Procedures]**

[26.1. Each Party shall guarantee access for [suppliers] [tenderers] to review procedures that allow them to submit challenges relating to the [entity of] the Party's measures relative to the application of this Chapter [in connection with procurement covered by this Chapter,] without prejudice to the [supplier's] [tenderer's] participation in ongoing or future procurement activities. [To this end, each Party shall establish or designate [at least one] impartial administrative [or judicial] authority that is independent from its procuring entities to receive and review such challenges.]]

[26.2. Each Party shall encourage suppliers to seek resolution of complaints with the procuring entity prior to initiating a challenge. Procuring entities shall accord impartial and timely consideration to any such complaint.]

26.3. Each Party shall ensure that its review procedures are made generally available [in writing] and are consistent with due process principles.

[26.4. Where a body other than an authority referred to in paragraph 26.1 initially reviews a challenge, the Party shall ensure that the [supplier] [tenderer] may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.]

[26.5. Each Party shall authorize the authority [or authorities] that it establishes or designates under paragraph 26.1 to take prompt interim measures, pending the resolution of a challenge, to preserve the [supplier's] [tenderer's] opportunity to participate in the procurement and to ensure that the Party complies with the application of this Chapter, [including by][except in cases of urgency or where the delay would be contrary to the public interest, these interim measures may include] suspending the contract award or the performance of a contract that has already been awarded.]

[26.6. [Each Party shall ensure that its review procedures are conducted in accordance with] [Without prejudice to other review procedures provided or developed by each of the Parties, each Party shall guarantee that the established authorities or who are designated in conformity with paragraph 26.1; have at least] the following:

a) a [supplier] [tenderer] shall be allowed sufficient time [,which in no case shall be less than ten (10) days from the time when the basis of the complaint became known or reasonably should have become known to the [supplier] [tenderer],] to prepare and submit, a challenge in writing, at any stage of the procurement process;

- b) a procuring entity shall respond in writing to a [supplier's] [tenderer's] complaint and provide all relevant documents to the review authority;
- [c the review authority may not make a decision related to a challenge without providing the [supplier] [tenderer] [and any other interested party] with an opportunity to present its case;]
- d) the authority shall provide decisions relating to a supplier's challenge in a timely fashion, in writing, with an explanation of the basis for each decision; and
- e) no [supplier] [tenderer] [interested party] shall be prevented from registering appeals with other appellate bodies.]

## **Article 27. Exceptions<sup>6</sup>**

27.1. 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.]

[27.2. The Parties understand that paragraph 27.1.b) includes environmental measures necessary to protect human, animal or plant life or health.]

[27.3. 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 interests in matters of security relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.]

[27.4. Nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures linked to national defense, national security, public order, emergencies situations, urgency situations and other matters involving the protection of health and the environment] [as agreed to in Annex XX (*no text*), pertaining to exceptions].

[27.5. This Chapter does not bind Parties currently participating or that will be participating in deeper integration agreements to extend, to the Parties to this Agreement, rights and obligations stemming from the application of the Most Favored Nation and National Treatment clauses in said integration Agreements.]

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<sup>6</sup> The NGGP agreed to discuss the need for general exceptions to the Government Procurement Chapter at a later stage in the negotiations, in consultation with the FTAA Technical Committee on Institutional Issues (TCI).

[27.6. The limitations of national treatment and market access as established in the schedules of specific commitments in Chapter XX (Services) of this Agreement shall be applied in a complementary manner. Upon supplying public works services covered by this Chapter, the disciplines established in Chapter XX (Services) of this Agreement and in the list of specific commitments shall be observed.]

### **Section C Procedures and Institutions**

#### **[Article 28. Ensuring Integrity in Procurement Practices**

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

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

28.2. Each Party shall establish and maintain systems to declare ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On the request of another Party, a Party shall identify the suppliers determined to be ineligible under these systems, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.]

#### **[Article 29. Amendments, Modifications and Privatization**

##### **Amendments and Modifications**

29.1. A Party may modify its coverage [under] this Chapter provided that it:

- a) notifies the other Parties in writing [and no other Party objects in writing within [thirty (30)] days of the notification]; and
- b) offers within [thirty (30)] days acceptable compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing prior to the modification, where necessary, except as provided in paragraphs 29.2 and 29.3.



29.2. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, [or minor amendments] to its Annexes, provided that it notifies the other Parties in writing [and no other Party objects in writing within thirty (30) days of the notification.] A Party that makes such a rectification [or minor amendment] need not provide compensatory adjustments.

[29.3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control [or begins to operate in deregulated competitive markets] [or influence]. [Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party or Parties may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's status under this Chapter.]]

[29.3. No provision in this Chapter shall be interpreted as meaning that a Party is prohibited from [privatizing an entity covered in this Chapter] [[or] withdrawing an entity covered by this Chapter if such control is removed from the State or if the State's loses its effective control over the entity]. [In these cases, [another] a Party may [not] demand compensation of any kind.]]

[29.4. Where the Parties are in agreement on the proposed modification, rectification or minor amendment, the [Parties] shall modify the relevant Annex to reflect such agreement.]

[29.5. No Party may withdraw entities covered by this Chapter with the intention of avoiding compliance with the obligations herein contemplated].

### **Privatization**

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

[29.7. Where a Party considers that government control or influence over an entity listed in its Schedules to Annexes to this Chapter has been effectively eliminated, the Party may propose the removal of that entity from the relevant schedule by notifying the other Parties. Where no Party objects in writing to the removal of the entity within (...) days of the notification, the entity shall be immediately removed from the coverage of this Chapter.]

[29.8. Where any Party objects to the removal on the grounds that government control or influence has not been effectively eliminated, the objecting Party may request further information. Such requests for information shall be made in writing within (...) days of the objection.]

[29.9. Where the information provided does not result in the resolution of the issue; the objecting Party may seek consultations for the purpose of maintaining the balance of negotiated market access opportunities under this Chapter. Any such requests for consultations shall be made in writing within (...) days of the information being provided where

- a) , in the course of such consultations, compensation is requested, allowance shall be made for the market access opportunities resulting from the removal of government control or influence from the entity.
- b) a mutually acceptable solution is not reached during consultations, the Parties shall have recourse to the procedures under Chapter XX (Dispute Settlement) of this Agreement.]

[29.10. No Party shall modify the structure of its entities to avoid the obligations of this Chapter.]]

**[Article 30. Designation of Contact Points]<sup>7</sup>**

**[Article 31. Technical Cooperation [and Assistance]**

[31.1. The Parties shall provide each other with technical cooperation [and assistance], taking into account the specific needs of the Parties, 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 systems] [as well as better access to their respective markets and business opportunities in the field of government procurement].]

[31.1. Developed economies shall endeavor to provide technical cooperation [and assistance] to smaller and developing economies upon request to facilitate their fulfillment of commitments and obligations agreed to in this Chapter, including successful transitions to full compliance with obligations at the end of agreed transitory periods. The mode, scope and extent of application shall be agreed bilaterally among the relevant Parties.]

[31.2. The Parties shall make every effort to provide technical cooperation [and assistance] taking into account the specific needs of Parties upon request of one of the Parties, with a view to facilitating their fulfillment of the commitments and obligations agreed to in this Chapter. For that purpose, the differences in the levels of development and size of the economies of each of the Parties to the Agreement shall be taken into account.]

[31.3. Technical cooperation [and assistance] may include, *inter alia*, the following areas:

- a) consulting on the design and implementation of electronic government procurement systems;
- b) institutional strengthening and capacity building;
- c) training and development of human resources associated with government procurement management;
- [d) training aimed at increasing to maximum level of access to opportunities of government procurement for the suppliers, in particular, of small and medium enterprises in public markets of the other Parties;] and
- [e) explanation and description of specific aspects of the Parties' government procurement systems, such as their appeals mechanisms.]]

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<sup>7</sup> The NGGP agreed to defer the discussion on the designation of contact points.

**[Article 32. Dispute Settlement]<sup>8</sup>**

**[Article 33. Administration of the Chapter]<sup>9</sup>**

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

[33.2. 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 XX (Entities – *no text*) into the scope of this Chapter;]
- [e) promote the development and implementation of the [electronic] information and intermediation system referred to in Article 16 (Publication of Notice of Solicitation);]
- [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 31 (Technical Cooperation [and Assistance]); and]
- [i) promote opportunities for micro-enterprises and small and medium-scale enterprises, [among other activities] [of Parties].]

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

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

[33.5. The Committee on Government Procurement shall undertake the necessary steps to create within the Hemisphere, statistical systems and an information platform that would allow the systematization of the information on Government Procurement, with sufficient transparency and without discrimination.]

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<sup>8</sup> The NGGP agreed to defer the discussion on the Article on Dispute Settlement until progress has been analyzed at the level of the NGDS.

<sup>9</sup> The NGGP agreed to defer the discussion on this Article until further progress in the development of this Chapter is achieved.