Disclaimer: *In view of the European Commission's transparency policy, the Commission is publishing the texts of its Comprehensive Economic Partnership Agreement with Indonesia following the Ministerial announcement on 23 September 2025. These texts are published for information purposes only and may undergo further modifications including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and Indonesia. The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.*

CHAPTER 11

GOVERNMENT PROCUREMENT

ARTICLE 11.1

Definitions

For the purposes of this Chapter:

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

(b) "construction service" means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(c) "days" means days means calendar days, unless otherwise specified

(d) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of new prices and/or, where applicable, new values for quantifiable non-price elements of the tender related to the evaluation criteria resulting in a ranking or re-ranking of tenders;

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

(f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement

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

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

(j) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(k) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(l) "person" means a natural person or a juridical person;

(m) "procuring entity" means an entity covered under a Party's market access schedule Section 1, 2 or 3 to Annex X

(n) "publish" means to disseminate information in paper format or by electronic means that is distributed widely and is readily accessible to the general public;

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

(p) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(q) "services" includes construction services, unless otherwise specified;

(r) "standard" means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

(s) "supplier" means a person or group of persons that provides or could provide goods or services to procuring entity; and

(t) "technical specification" means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 11.2

Scope and coverage

Application of Agreement

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

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

(a) of a good, a service, or any combination thereof:

(i) as specified in each Party's Market Access Schedule provided in Annex 11; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's Market Access Schedule provided in Annex 11, at the time of publication of a notice in accordance with Article 11.6;

(d) by a procuring entity as specified in each Party's Market Access Schedule provided in Annex 11; and

(e) that is not otherwise excluded from coverage in paragraph 3 or a Party's Market Access Schedule provided in Annex 11.

3. Except as otherwise provided in a Party's Market Access Schedule provided in Annex 11, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) goods or services that are procured by a covered entity internally; and

(f) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance.

4. A procurement subject to this Chapter shall be all procurement covered by the Market Access Schedules of Indonesia and the European Union provided in Annex 11, in which each Party's commitments are set out as follows:

(a) in Sub-Section 1, the central government entities whose procurement is covered by this Chapter

(b) in Sub-Section 2, the sub-central government entities whose procurement is covered by this Chapter

(c) in Sub-Section 3, all other entities whose procurement is covered by this Chapter;

(d) in Sub-Section 4, the goods covered by this Chapter;

(e) in Sub-Section 5, the services, other than construction services, covered by this Chapter;

(f) in Sub-Section 6, the construction services covered by this Chapter;

(g) in Sub-Section 7, any General Notes, including transitional measures for the application of this Chapter; and

(h) in Sub-Section 8, the media in which the Party publishes its procurement notices, award notices, and other information related to its public procurement system as set out in this Chapter.

5. If a procuring entity, in the context of covered procurement, requires other entities or a person whose procurement is not covered under a Party's Market Access Schedule provided in Annex 11 to procure in accordance with particular requirements, Article 11.4 shall apply mutatis mutandis to such requirements.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) if the procurement provides for the possibility of options, the total value of such options

7. If an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ('recurring contracts') the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, if possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

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

(a) in the case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

ARTICLE 11.3

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or from not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement:

(a) of arms, ammunition or war material;

(b) or to procurement indispensable for national security; or

(c) for national defence purposes.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

ARTICLE 11.4

General principles

Non-discrimination

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

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Local establishment

3. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a legal person are accorded national treatment with regard to any government procurement of the Party in its territory. This obligation applies irrespectively of whether or not the procurement is covered by the Parties' annexes to this Agreement. However, the general exceptions set forth in Article 11.3 shall be applied.

Use of electronic means

4. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

5. The Parties shall conduct covered procurement by electronic means to the widest extent possible and shall endeavour to cooperate in developing and expanding the use of electronic means in government procurement systems.

When conducting covered procurement by electronic means, a procuring entity shall use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and shall use electronic means for the submission of tenders to the widest extent practicable.

6. Each Party shall endeavour to establish single electronic system to facilitate procurement process which covers procurement planning, procurement preparation, selection of suppliers, contract management, and awarding of contract.

Conduct of procurement

7. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Development of new procurement policy

8. Nothing in this Chapter shall prevent a Party, including its procuring entities, from developing new procurement policies, procedures, or contractual means, provided that they are not inconsistent with this Chapter.

Rules of origin

9. For the purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the Party.

Offsets

10. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset, unless stated in Each Party's Market Access Schedule.

Measures not specific to procurement

11. Paragraphs 1 and 2 of this Article shall be without prejudice to each Party commitments under Chapters 2 and 8 of this Agreement [National Treatment and Market Access for Goods and Chapter Services and Investment], and for greater certainty, shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 11.5

Information on the procurement system

1. Each Party shall:

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

(b) on the request of the other Party, provide an explanation thereof to the other Party.

2. Each Party shall list, in Sub-Section 8 of its Market Access Schedule provided in Annex 11:

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1 of this Article;

(b) the electronic or paper media in which the Party publishes the notices required by Articles 11.6, 11.8(8) and 11.16(2); and

(c) the website address or addresses where the Party publishes: its notices concerning awarded contracts pursuant to Article 11.16(2).

3. Each Party shall promptly notify the Specialised Committee on Services and Investment, Digital Trade, Government Procurement, Intellectual Property of any modification to the Party's information listed in Sub-Section 8 of Annex 11.

ARTICLE 11.6

Notices

1. All notices (notices of intended procurement, summary notice and notice of planned procurement) shall be directly accessible by electronic means free of charge through a single point of access on the internet. In addition, the notices may also be published in an appropriate paper medium which shall be widely disseminated and shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice. In case, notices are not written in English, at least summary notice shall be made available in English.

2. The appropriate paper and electronic medium is listed by each Party in its Sub-Section 8 of Annex 11.

Notice of intended procurement

3. For each covered procurement a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 11.13.

4. Except as otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation

that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, if the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of options, if any;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) if, pursuant to Article 11.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary notice

5. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

(b) the final date for the submission of tenders or, if applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of planned procurement

6. Procuring entities are encouraged to publish in the appropriate electronic and, if available, paper medium listed in Sub-Section 8 of Annex 11 as early as possible in each fiscal year a notice regarding their future procurement plans (‘notice of planned procurement’). The notice of planned procurement shall also be published in the single point of access site listed in Sub-Section 8 of Annexe 11, subject to paragraph 2 of this Article. The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

7. A procuring entity covered under Sub-Sections 2 or 3 of Annex 11 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the

entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 11.7

Conditions for participation

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

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

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience if essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

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

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

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

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 11.8

Qualification of suppliers

Registration systems and qualification procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information, to the extent possible, through electronic means.

2. Where a Party or one of its procuring entities, pursuant to paragraph 1 of this Article, maintains a supplier registration system, it shall endeavour to ensure that interested suppliers have access to information on the registration system, if possible through electronic means, and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

3. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

4. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective tendering

5. If a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article 11.6(4) (a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in Article 11.6(4)] (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article 11.11(3)(b).

(c) address invitation to submit a tender to a number of suppliers that is sufficient to ensure effective competition.

6. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

7. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5 of this Article, a procuring entity shall ensure that those documents

are made available at the same time to all the qualified suppliers selected in accordance with paragraph 6 of this Article.

Multi-use lists

8. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is made available in the appropriate medium listed in Sub-Section 8 of Annex 11.

9. The notice provided for in paragraph 8 of this Article shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

(d) the period of validity of the list and the means for its renewal or termination, or if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonable period of time.

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

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

ARTICLE 11.9

Technical specifications and tender documentation

Technical specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, if appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, if they exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. If design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, if appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as ‘or equivalent’ in the tender documentation.

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

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical

specification for a specific procurement from a person that may have a commercial interest in the procurement.

Tender documentation

6. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

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

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, unless price is the sole criterion, the relative importance of that criteria;

(d) if the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

7. In establishing any date for the delivery of goods or the supply of services 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 point of supply or for supply of services.

8. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery. Such criteria, where applicable, shall be based on relevant and mutually recognized international standards.

9. A procuring entity shall promptly:

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

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

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

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

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

ARTICLE 11.10

Market consultation

1. Before launching a procurement, procuring entities may conduct market consultations with a view to preparing the procurement, notably for the development of technical specifications.

2. For that purpose, procuring entities may seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in violation of the principles as established in Article 11.4.

ARTICLE 11.11

Time-periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

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

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 of this Article, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 of this Article to not less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in Article 11.6(6) at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 11.6(4), as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 of this Article impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 of this Article by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

6. The application of paragraph 5 of this Article, in conjunction with paragraph 4 of this Article, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 of this Article to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 of this Article to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the entity accepts tenders for commercial

goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

8. If a procuring entity covered under Sections 2 or 3 of Annex 11 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

ARTICLE 11.12

Negotiation

1. A Party may provide for its procuring entities to conduct negotiations with suppliers:

(a) if the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 11.6(4); or

(b) if it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) if negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 11.13

Limited tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 11.6 to 11.8, paragraphs (6) to (10) of Article 11.9, and Articles 11.11, 11.12, 11.14 and 11.15 under any of the following circumstances:

(a) if, in response to a notice of intended procurement:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

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

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) only when strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) if a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) if a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; and

(i) consultancy services in the area of law including a legal consultant or advocacy or provision of an arbitrator that is previously not planned, to deal with any claim or legal proceedings

from certain parties, which by the nature or performance of work or defence must be prompt and cannot be postponed

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1 of this Article. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 of this Article that justified the use of limited tendering.

ARTICLE 11.14

Electronic auctions

If a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall, where applicable, provide each participant before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender if the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 11.15

Treatment of tenders and awarding of contracts

Treatment of tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of contracts

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

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

6. If a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

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

8. The Parties shall, as a general rule, provide for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

ARTICLE 11.16

Transparency of procurement information

Information provided to suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Articles 11.17(2) and 11.17(3), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of award information

2. Not later than 30 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Sub-Section 8 of Annex 11. If the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 11.13, a description of the circumstances justifying the use of limited tendering.

Maintenance of documentation, reports and electronic traceability

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

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 11.13; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Exchange of statistics

4. The Parties shall exchange statistics on procurement on a regular basis.

ARTICLE 11.17

Disclosure of information

Provision of information to parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

Non-disclosure of information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 11.18

Domestic review procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of the Chapter; or

(b) if the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which shall be at least 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge concerning the result of procurement process by a supplier arising in the context of a covered procurement.

5. If a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings ('participants') shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

8. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered.

ARTICLE 11.19

Cooperation on government procurement

1. The Parties shall cooperate, on mutually agreed terms, on matters relating to government procurement with a view to:

(a) increase the understanding of their respective government procurement systems and markets; and

(b) improve the capacity of procurement stakeholders from both Parties.

2. The cooperation mentioned in paragraph 1 shall include, but not be limited to:

(a) sharing information on government procurement best practices including on electronic procurement system, fostering participation of small medium enterprises; and

(b) exchanging information on Parties' laws, regulations, and procedures, and any modifications thereof

(c) to the extent possible – provision of training, technical assistance and/or capacity building to Parties; and sharing information on these initiatives

ARTICLE 11.20

Modifications and rectifications to coverage

1. A Party may modify or rectify its Market Access Schedules provided for in Annex 11.

Modifications

2. When a Party modifies its Market Access Schedule provided in Annex 11, the Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph 2 (b) of this Article, a Party need not provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of entities listed in Market Access Schedules provided in Annex 11 is deemed to be effectively eliminated if the procuring entity performs a competitive activity.

4. If the other Party disputes that:

(a) an adjustment proposed under subparagraph 2 (b) of this Article is appropriate; or

(b) the modification covers an entity over which the Party has effectively eliminated its control or influence under paragraph 3 of this Article;

it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2 (a) of this Article. If no such objection is submitted, the Party shall be deemed to have accepted the proposed adjustment or modification.

Rectifications

5. The following changes to a Party's Market Access Schedules provided in Annex 11 shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in the Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed within an Annex; and

(c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

6. In the case of proposed rectifications to a Party's Market Access Schedules provided in Annex 11 , the Party shall notify the other Party every two years, following the entry into force of this Chapter.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5 of this Article, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

Consultations and dispute resolution

8. If a Party objects to the proposed modification or the proposed compensatory adjustments referred to in Article xx or to the proposed rectification referred to in Article xx, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 120 days of receipt of the objection, the Party seeking to modify or rectify its Market access schedule may refer the matter to dispute settlement in accordance with Chapter 22 [dispute settlement], to determine whether the objection is justified.

Amendment of Party's Market Access Schedules provided in Annex 11

9. The proposed modification or rectification shall take effect only when both Parties have agreed or on the basis of a final decision of a panel established under Chapter 22(dispute settlement).

ARTICLE 11.21

Specialised Committee on Services and Investment, Digital Trade, Government Procurement, Intellectual Property

For the purposes of the effective implementation and operation of this Chapter, the [Committee on Services and Investment, Digital Trade, Government Procurement, Intellectual Property (hereinafter referred to in this Article as "the Committee")] established in accordance with Article 24.4 shall have the following functions:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) exchanging views on laws and regulations, policies and practices, and other mutually agreed issues regarding government procurement;

(c) discussing ways to facilitate cooperation between relevant entities of the Parties in the field of government procurement;

(d) reporting the findings of [the Committee] to the [Trade Committee]; and

(e) carrying out other functions as may be delegated by the [Trade Committee] in accordance with Article 24.2(2)(b).

ARTICLE 11.22

Dispute settlement[1]

Pending discussions pursuant to Article 11.23 [Further negotiations], Chapter 22 [Dispute Settlement] shall not apply to any dispute or differences arising from the interpretation and application of this Chapter in relation to covered procurement.

ARTICLE 11.23

Further negotiations

The Parties shall enter into negotiations on market access between the Parties, no later than 5 years and not sooner than 3 years from the entry into force of this agreement, unless the Parties agree otherwise.

ARTICLE 11.24

Technical consultation

[1] For greater certainty, negotiation as provided in Article 23 (Further negotiation), includes on the application of dispute settlement chapter to any dispute or differences arising from the interpretation and application of this Chapter in relation to covered procurement.

1. The Parties shall seek to resolve any concerns arising from the implementation of this Section through technical consultations pursuant to this Article prior to initiating dispute settlement pursuant to Chapter 22 (Dispute settlement). The technical consultations shall endeavour to arrive at mutually satisfactory resolution of the concerns[2].

2. For the purposes of paragraph 1 of this Article, a Party may make a request (hereinafter referred to as "requesting Party") to the other Party (hereinafter referred to as "requested Party") to hold technical consultations The request shall be made in writing[3] and identify:

(a) the matter or measure at issue;

(b) provisions of this Section to which the concerns are related to; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measures or matters.

3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or by any technological means available to the Parties. If the meeting is held in person, it shall be held in the capital of the requested Party, unless the Parties agree otherwise.

4. The Parties shall endeavour to resolve the matter as expeditiously as possible within 60 calendar days from the date of receipt of the request. If the requesting Party believes that the matter is urgent and require immediate settlement, it may request a shorter time frame. In such cases, the requested Party shall give positive consideration to such request.

5. A Party may request or exchange further information relevant to paragraph 2 of this Article, and the information obtained or communications between the Parties under this Article shall be confidential unless the Parties agreed otherwise.

[2] For greater certainty, technical consultations pursuant to this Article shall not replace consultations under Article XX (Article on Consultations under the Dispute Settlement Chapter), unless the Parties agree otherwise.
[3] In the case the request is sent by electronic means, the requested Party shall promptly confirm the receipt of such a request and no later than within 14 calendar days of receipt.

6. Any resolution reached between the Parties as a result of technical consultations under this Article shall be notified to the Trade Committee and shall be without prejudice to the rights of the parties in any further proceedings, and only be used in the framework of this agreement.

ARTICLE 11.25

International assistance

Notwithstanding provisions in points (f)(i) and (f)(ii) of the Article 11.2(3), with regard to any procurement or part of it funded by international grants, loans or other assistance of the other Party, Parties shall grant national treatment to suppliers, goods and services of both Parties, unless otherwise agreed by the parties to a relevant grant or loan agreement. This obligation applies irrespectively of whether or not the procurement is covered by the Parties' Market Access Schedules provided in Annex 11 .