

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 realisation by whatever means of civil or building works, based on Division 51 of the *United Nations Provisional Central Product Classification* (“CPC”)¹;
- (c) “**electronic auction**” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (d) “**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;
- (e) “**limited tendering**” means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (f) “**measure**” means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (g) “**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;
- (h) “**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;
- (i) “**offsets**” 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;

¹ In the case of Sri Lanka, the term “Works” is used in Sri Lanka’s domestic law to describe Construction Service.

- (j) “**open tendering**” means a procurement method whereby all interested suppliers may submit a tender;
- (k) “**privatised**” means an entity that has been reconstituted from a procuring entity or part thereof to be a legal person acting in accordance with commercial considerations in the procurement of goods or services and that is no longer entitled to exercise governmental authority, even though the government possesses holdings thereof or appoints members of the Board of Directors thereto;

For greater certainty, where the government possesses holdings thereof or appoints a government official to the Board of Directors of a privatised entity, the entity is deemed to act in accordance with commercial considerations in its purchase of goods or services, such as with regard to the availability, price and quality of the goods or services, if the government or the Board of Directors so appointed does not, directly or indirectly, influence or direct the decisions of the Board in the entity’s procurement of goods or services;

- (l) “**procuring entity**” means an entity covered under a Party’s Annexes 11-A (Central Entities) or 11-C (Other Entities);
- (m) “**qualified supplier**” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- (n) “**selective tendering**” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (o) “**services**” includes construction services, unless otherwise specified;
- (p) “**standard**” means a document approved by a recognised 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;
- (q) “**supplier**” means a person or group of persons that provides or could provide goods or services;
- (r) “**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

1. In the case of Singapore, this Chapter shall apply to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means. In the case of Sri Lanka, this Chapter shall apply to any measure regarding covered procurement under International Competitive Bidding², 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 goods, services, or any combination thereof:
 - (i) as specified in each Party's Annexes; and
 - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services 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 to 8 of this Article, equals or exceeds the relevant threshold specified in a Party's Annexes at the time of publication of a notice in accordance with Article 11.7 (Notices);
 - (d) by a procuring entity; and
 - (e) that is otherwise not excluded from coverage in paragraph 3 of this Article or in a Party's Annexes.
3. Except where provided otherwise in a Party's Annexes, this Chapter shall 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 co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

² International Competitive Bidding will be as defined under Sri Lankan domestic law.

- (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) 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 where the applicable procedure or condition would be inconsistent with this Chapter.
4. Each Party shall specify the following information in its Annexes to this Chapter:
- (a) in Annex 11-A (Central Entities), the central government entities whose procurement is covered by this Chapter;
 - (b) in Annex 11-B (This Annex is intentionally left blank);
 - (c) in Annex 11-C (Other Entities), all other entities whose procurement is covered by this Chapter;
 - (d) in Annex 11-D (Goods), the goods covered by this Chapter;
 - (e) in Annex 11-E (Services), the services, other than construction services, covered by this Chapter;
 - (f) in Annex 11-F (Construction Services), the construction services covered by this Chapter;
 - (g) in Annex 11-G (General Notes and Derogations), any General Notes; and
 - (h) in Annex 11-H (Means of Publication), means of publications.
5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's Annexes to procure in accordance with particular requirements, Article 11.4 (General Principles) 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) where the procurement provides for the possibility of options, the total value of such options.
7. Where 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 twelve (12) months or the procuring entity’s preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following twelve (12) months; or
 - (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the twelve (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 goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:
 - (a) in the case of a fixed-term contract:
 - (i) where the term of the contract is twelve (12) months or less, the total estimated maximum value for its duration; or
 - (ii) where the term of the contract exceeds twelve (12) months, the total estimated maximum value, including any estimated residual value;
 - (b) where the contract is for an indefinite period the estimated monthly installment multiplied by forty-eight (48); and

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

Article 11.3

Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. Subject to the requirement 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 international trade, nothing in this Chapter shall be construed to prevent any 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, philanthropic institutions or prison labour.

Article 11.4

General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.³
2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

³ For greater certainty, the requirement of registration or the creation of a local establishment as a pre-condition to bidding shall not be deemed to be non-compliant with Article 11.4 (General Principles).

- (a) treat a locally established supplier of the other Party less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

- 3. 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 inter-operable 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.

Conduct of Procurement

- 4. 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.

Rules of Origin

- 5. For the sole purpose of determining customs duties applicable to goods imported for purposes of government procurement, the Parties shall apply the same rules of origin that are used to determine customs duties applicable to imports of goods for other purposes.

Measures Not Specific to Procurement

- 6. Paragraphs 1 and 2 of this Article shall not apply to:
 - (a) customs duties and charges of any kind imposed on, or in connection with, importation;
 - (b) the method of levying such duties and charges; and

- (c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Article 11.5 Industry Development

1. Subject to paragraphs 2, 3, and 4 of this Article, considering the development needs and circumstances of the Parties, and notwithstanding paragraphs 1 and 2 of Article 11.4 (General Principles), Sri Lanka may:
 - (a) provide a price preference to the suppliers of domestic goods and domestic suppliers of services; and
 - (b) impose or enforce offsets.
2. With effect from ten (10) years from the date of the entry into force of this Agreement, Sri Lanka shall apply paragraphs 1 and 2 of Article 11.4 (General Principles) in relation to:
 - (a) suppliers of Singapore-originating products, as defined in Protocol 1 (Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Co-operation); and
 - (b) service suppliers of Singapore, which have substantive business operations in the territory of Singapore, as defined by Chapter 7 (Cross-Border Trade in Services).
3. Sri Lanka shall not increase the maximum margin of price preference in force at the date of the entry into force of this Agreement.
4. In the event that Sri Lanka implicitly or explicitly, extends more favourable treatment to any third party or parties, with regard to price preference or offsets in any international agreement, or ceases to provide for price preference or offsets within its domestic legislation after the entry into force of this Agreement, Sri Lanka shall automatically extend the same benefit to Singapore.

Article 11.6 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) provide an explanation thereof to the other Party, on request.
2. Each Party shall list in Annex 11-H (Means of Publication):
 - (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 Article 11.7 (Notices), paragraph 8 of Article 11.9 (Qualification of Suppliers), and paragraph 2 of Article 11.16 (Transparency of Procurement Information).
 3. Each Party shall promptly notify the other Party any modification to the Party's information listed in Annex 11-H (Means of Publication).

Article 11.7 **Notices**

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Annex 11-H (Means of Publication), except in the circumstances described in Article 11.13 (Limited Tendering). Such medium shall be widely disseminated and such notice shall remain readily accessible to the public, at least until the expiration of the time-period indicated in the notice. Parties, including their procurement entities covered under Annex 11-C (Other Entities), are encouraged to publish their notices by electronic means and make them accessible free of charge through a single point of access.
2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:
 - (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, where 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) where 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; and
- (k) where, pursuant to Article 11.9 (Qualification of Suppliers), 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, where applicable, any limitation on the number of suppliers that will be permitted to tender.

Summary Notice

3. 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, where 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

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Annex 11-H (Means of Publication), as early as possible in each fiscal year, a notice regarding their future procurement plans (“notice of planned procurement”). The notice of planned procurement should include the subject matter of the procurement and the planned date or indicative period of the publication of the notice of intended procurement.
5. A procuring entity covered under Annex 11-C (Other Entities) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 of this Article as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 11.8 **Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a 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 that Party; and
 - (b) may require relevant prior experience where essential to meet the requirements 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. Where 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 11.9 Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
 - (a) its procuring entities make efforts to minimise differences in their qualification procedures; and
 - (b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.
3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. Where 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 sub-paragraphs 2(a), (b), (f), (g), (j) and (k) of Article 11.7 (Notices) 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 specified in sub-paragraphs 2(c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in sub-paragraph 3(b) of Article 11.11 (Time Periods).

5. 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.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4 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 5 of this Article.

Multi-Use Lists

7. A procuring entity, where the domestic legislation permits, may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
 - (a) published annually; and
 - (b) where published by electronic means, made available continuously, in the appropriate medium.
8. The notice provided for in paragraph 7 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;
 - (d) the period of validity of the list and the means for its renewal or termination, or where 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; and
 - (e) an indication that the list may be used for procurement covered by this Chapter.
9. Notwithstanding paragraph 7 of this Article, where a multi-use list will be valid for three (3) years or less, a procuring entity may publish the notice referred to in paragraph 7 of this Article only once, at the beginning of the period of validity of the list, provided that the notice:
 - (a) states the period of validity and that further notices will not be published; and

- (b) is published by electronic means and is made available continuously during the period of its validity.
- 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 reasonably short time.
- 11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in paragraph 2 of Article 11.11 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Entities covered under Annex 11-C (Other Entities)

- 12. A procuring entity covered under Annex 11-C (Other Entities) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:
 - (a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required under paragraph 2 of Article 11.7 (Notices) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
 - (b) the procuring entity promptly provides to suppliers that have expressed an interest in a given procurement to the procuring entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 2 of Article 11.7 (Notices), to the extent such information is available.
- 13. A procuring entity covered under Annex 11-C (Other Entities) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 of this Article to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

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

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the procuring 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 11.10 **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, where 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, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill 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.
6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

7. 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, where 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 procuring entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
 - (d) where 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) where 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) where there will be a public opening of tenders, the date, time and place for the opening and, where 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.
8. 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.
9. 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.

10. A procuring entity shall:
- (a) promptly make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
 - (b) promptly provide, on request, the tender documentation to any interested supplier; and
 - (c) without undue delay, 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

11. Where, prior to:
- (a) in the case of Singapore, the award of a contract; or
 - (b) in the case of Sri Lanka, the closing of bids,
- 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, where 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) within adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

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 where electronic means are not used.

Such 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 twenty-five (25) days from the date of publication of the notice of intended procurement. Where 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 ten (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 forty (40) days from the date on which:
 - (a) in the case of open tendering, the notice of intended procurement is published; or
 - (b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.
4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 of this Article to not less than ten (10) days where:
 - (a) the procuring entity has published a notice of planned procurement as described in paragraph 4 of Article 11.7 (Notices) at least forty (40) days and not more than twelve (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 paragraph 2 of Article 11.7 (Notices), 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 (5) 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 entity accepts tenders by electronic means.
- 6. The use 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 ten (10) days from the date on which the notice of intended procurement is published.
- 7. Notwithstanding any other provision in this Article, where 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 thirteen (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, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 of this Article to not less than ten (10) days.
- 8. Where a procuring entity that is covered under 11-C (Other Entities) has selected all or a limited number of qualified suppliers, as permitted by domestic legislation, the time period for tendering may be fixed by agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than ten (10) days.

Article 11.12

Negotiations

- 1. A Party may provide for its procuring entities to conduct negotiations:
 - (a) where the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 11.7

(Notices); or

- (b) in the case of Singapore, where 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) where 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 Article 11.7 (Notices), Article 11.8 (Conditions for Participation), Article 11.9 (Qualification of Suppliers), paragraphs 7 to 11 of Article 11.10 (Technical Specifications and Tender Documentation), Article 11.11 (Time Periods), Article 11.12 (Negotiations), Article 11.14 (Electronic Auctions) and Article 11.15 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

- (a) where:
 - (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) where 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 where a change of supplier for such additional goods or services:
 - (i) cannot be made for economic or technical reasons such as requirements of inter-changeability or inter-operability 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) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. 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) where 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.

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

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall 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 where 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 in accordance with procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. In the case of Singapore, a procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders, but before the award of the tender if the delay is due solely to mishandling on the part of the procuring entity.
3. Where allowed by a Party, its procuring entity may provide a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract on the condition that the procuring entity 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 from 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 in terms of price and non-price criteria; or
 - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted or the estimated procurement value, 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.

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 paragraph 2 and paragraph 3 of Article 11.17 (Disclosure of Information), 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.⁴

Publication of Award Information

2. Not later than seventy-two (72) 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 Annex 11-H (Means of Publication). Where the 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;

⁴ For Sri Lanka, "on request" may not be applicable because the explanation of the reasons for the selection and the relative advantages are already provided at the point where the participating suppliers are informed of the procuring entity's decision.

- (b) the name and address 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 (Limited Tendering), 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 (3) 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 (Limited Tendering); and
 - (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

- 4. Each Party shall communicate to the other Party the available and comparable statistics relevant to the procurement covered by this Chapter.

Article 11.17
Disclosure of Information

Provision of Information to Parties

- 1. On request of a Party, the other 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 agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not 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 where 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. In the event of a complaint by a supplier of a Party that there has been a breach of this Chapter in the context of procurement by the other Party, that Party may encourage the supplier to first seek resolution of its complaint in consultation with the procuring entity of the other Party.
2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective administrative or judicial procedures to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.
3. Each Party shall provide its challenge procedures in writing and make them generally available.
4. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.
5. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which:
 - (a) in the case of Singapore, shall not be less than ten (10) days; and
 - (b) in the case of Sri Lanka, shall not be less than seven (7) days;from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

6. Each Party shall adopt or maintain administrative or judicial procedures that provide for 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.
7. In the case of Singapore, the total liability for any breach of this Chapter or compensation for loss or damages suffered by a supplier shall be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement.

Article 11.19 **Modifications and Rectifications to Coverage**

Notification of Proposed Modification

1. A Party shall notify the other Party of any proposed rectification, transfer of an entity from one Annex to another, withdrawal of an entity or other modification of its Annexes ("modification") in writing.
2. For any proposed withdrawal of an entity from any Party's Annexes on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, the Party proposing the modification ("modifying Party") shall include in the notification evidence that such government control or influence has been effectively eliminated. Government control or influence over the covered procurement of entities listed in its Annexes is deemed to be effectively eliminated if the procuring entity has been privatised or where the majority of shares of the entity is not held by government or other public bodies.
3. Where government control or influence over the covered procurement of an entity of a Party has been effectively eliminated, the other Party shall not be entitled to compensatory adjustments.
4. For any other proposed modification, the modifying Party shall include in the notification information as to the likely consequences of the change for the coverage provided in this Chapter. Where the modifying Party proposes to make minor amendments or technical rectifications of a purely formal nature not affecting covered procurement, it shall notify these modifications at least every two (2) years.

Resolution of Objection

5. In case of objection by the other Party (“objecting Party”) to the notification by the modifying Party, the Parties shall seek to resolve the objection through bilateral consultations. In such consultations, the Parties shall consider:
 - (a) evidence pertaining to the effective elimination of government control or influence over an entity’s covered procurement in the case of a notification under paragraph 2 of this Article;
 - (b) evidence that the proposed modification does not affect coverage in the case of a notification under paragraph 4 of this Article; and
 - (c) any claims relating to the need for or level of compensatory adjustments, arising from modifications notified according to paragraph 1 of this Article. The adjustments may consist of either compensatory expansion of coverage by the modifying Party or a withdrawal of equivalent coverage by the objecting Party, with a view to maintaining a balance of rights and obligations and a comparable level of agreed coverage provided in this Chapter.
6. Where the objecting Party, after bilateral consultations under paragraph 5 of this Article, considers that one or more of the following situations exist:
 - (a) in the case of sub-paragraph 5(a) of this Article, government control or influence over an entity’s covered procurement has not been effectively eliminated;
 - (b) in the case of sub-paragraph 5(b) of this Article, a modification does not meet the criteria in paragraph 4 of this Article and which affects coverage, and should be subject to compensatory adjustments; or
 - (c) in the case of sub-paragraph 5(c) of this Article, compensatory adjustments proposed during the consultation between the Parties are not adequate to maintain a comparable level of agreed coverage,

the Parties may have recourse to the dispute settlement mechanism under Chapter 16 (Dispute Settlement).

Implementation

7. A proposed modification shall become effective only where:
 - (a) the other Party has not submitted to the modifying Party a written objection to the proposed modification within forty-five (45) days from the date of the notification of the proposed modifications;
 - (b) the objecting Party has notified the modifying Party of the withdrawal of its objection;

- (c) the Parties have reached an agreement after due consultations under paragraph 5 of this Article; or
- (d) the objection has been resolved through the dispute settlement mechanism under Chapter 16 (Dispute Settlement) pursuant to paragraph 6 of this Article.

Article 11.20
Review

In the event that Sri Lanka

- (a) commits an entity not listed in Annexes 11-B to 11-G; or
- (b) provides more favourable treatment in respect of its commitments in Annexes 11-B to 11-G;

to a non-Party in an international agreement that is in force or signed after the date of the entry into force of this Agreement, the Parties shall enter into consultations to review Sri Lanka's commitments in Annexes 11-B to 11-G.