

TITLE VI

GOVERNMENT PROCUREMENT

ARTICLE 172

Definitions

For the purposes of this Title:

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

- "commercial goods 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;
- "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 (hereinafter referred to as "CPPC");
- "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;
- "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;
- "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity, relating to a covered procurement;
- "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;

- "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;
- "offset" means any condition or undertaking that encourages local development or improves balance-of-payments accounts of a Party, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- "open tendering" means a procurement method whereby all interested suppliers may submit a tender;
- "procuring entity" means an entity of a Party listed in Appendix 1 of Annex XII (Government Procurement);
- "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- "services" includes construction services, unless otherwise specified; and

- "technical specification" means a tendering requirement that:
 - (a) sets out the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
 - (b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 173

Scope of Application

1. This Title applies to any measure adopted by a Party regarding covered procurement.
2. For the purposes of this Title, "covered procurement" means procurement for governmental purposes of goods, services, or any combination thereof as specified, with respect to each Party, in Appendix 1 of Annex XII (Government Procurement):
 - (a) 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, hire purchase, lease or rental, with or without an option to buy, build-operate-transfer contracts and public works concession contracts;
- (c) for which the value equals or exceeds the relevant threshold specified for each Party in Appendix 1 of Annex XII (Government Procurement), at the time of publication of a notice in accordance with Article 176;
- (d) by a procuring entity; and
- (e) that is not otherwise excluded from the scope of application of this Title.

3. Except where provided otherwise, this Title 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, subsidies, equity infusions, guarantees, endorsements 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 securities¹;
- (d) public employment contracts and related measures; and
- (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:
 - (A) the stationing of troops; or
 - (B) the joint implementation of a project by the countries signatory to such agreement;
 - (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 Title.

¹ For greater certainty, this Title does not apply to procurement of banking, financial, or specialised services related to the following activities:

- (a) the incurring of public indebtedness; or
- (b) public debt management.

4. Each Party shall specify the following information in its corresponding Subsection of Appendix 1 of Annex XII (Government Procurement):

- (a) in Subsection 1, the central government entities whose procurement is covered by this Title;
- (b) in Subsection 2, the sub-central government entities whose procurement is covered by this Title;
- (c) in Subsection 3, all other entities whose procurement is covered by this Title;
- (d) in Subsection 4, the goods covered by this Title;
- (e) in Subsection 5, the services, other than construction services, covered by this Title;
- (f) in Subsection 6, the construction services covered by this Title; and
- (g) in Subsection 7, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under Appendix 1 of Annex XII (Government Procurement) of a Party to procure in accordance with particular requirements, Article 175 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 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 Title.

7. A procuring entity shall 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 premiums, fees, commissions, and interest. Where the procurement provides for the possibility of option clauses, the procuring entity shall include the estimated maximum total value of the procurement, inclusive of optional purchases.

8. 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 (hereinafter referred to as "recurring procurements"), the calculation of the estimated maximum total value shall be based on:

- (a) the total maximum value of the procurement over its entire duration; or
- (b) the value of recurring procurements of the same type of good or service awarded during the preceding 12 months or preceding fiscal year of the procuring entity, adjusted, where 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

- (c) the estimated value of recurring procurements of the same type of good or service to be awarded during the 12 months following the initial contract award or the fiscal year of the procuring entity.

9. Nothing in this Title shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided that they are consistent with this Title.

ARTICLE 174

Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on international trade, nothing in this Title shall be construed to prevent a Party from adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health, including the respective environmental measures;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

ARTICLE 175

General Principles

1. With respect to any measure related to covered procurement:
 - (a) the EU Party, including its procuring entities², shall accord immediately and unconditionally to the goods and services of the signatory Andean Countries and to the suppliers of the signatory Andean Countries offering such goods or services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers;
 - (b) each signatory Andean Country, including its procurement entities, shall accord immediately and unconditionally to the goods and services of the EU Party and the suppliers of the EU Party offering such goods or services, treatment no less favourable than the treatment they accord to their 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 another Party.

² "procuring entities" of the EU Party includes "procuring entities" of the Member States of the European Union as established in Appendix 1 of Annex XII (Government Procurement).

Conduct of procurement

3. A procuring entity shall conduct covered procurement in a transparent and impartial manner that avoids conflicts of interest and prevents corrupt practices.

Tendering procedures

4. A procuring entity shall use methods such as open, selective and limited tendering procedures according to its national legislation, in compliance with this Title.

Use of electronic means

5. 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 the establishment of the time of receipt and the prevention of inappropriate access.

Rules of origin

6. For the purposes of covered procurement, no Party may apply rules of origin to goods or services imported from, or supplied by, another 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 same Party.

Offsets

7. Subject to the provisions contained in this Title or the Annex pertaining thereto, no Party shall seek, take account of, impose or enforce offsets.

Measures not specific to procurement

8. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 176

Publication of Procurement Information

1. Each Party shall:
 - (a) promptly publish any measure of general application regarding covered procurement, and any modifications thereof, in officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public;
 - (b) provide an explanation thereof to another Party, on request;
 - (c) list in Appendix 2 of Annex XII (Government Procurement), the electronic or paper media in which the Party publishes the information described in subparagraph (a); and
 - (d) list in Appendix 3 of Annex XII (Government Procurement), the electronic media in which the Party publishes the notices required by this Article and Articles 177, 180, paragraph 1 and 188, paragraph 2.
2. Each Party shall promptly notify the other Parties of any modification to its information listed in Appendices 2 or 3 of Annex XII (Government Procurement).

ARTICLE 177

Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 185, a procuring entity shall publish a notice of intended procurement in the appropriate media listed in Appendix 3 of Annex XII (Government Procurement). Each such notice shall include the information set out in Appendix 4 of Annex XII (Government Procurement). These notices shall be accessible by electronic means free of charge through a single point of access.

Notice of Planned Procurement

2. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans. The notice should include the subject-matter of the procurement and the planned date of publication of the notice of intended procurement.

3. A procuring entity listed in Subsection 3 of Appendix 1 of Annex XII (Government Procurement) may use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in Appendix 4 of Annex XII (Government Procurement) as is available and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 178

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 assessing whether a supplier satisfies the conditions for participation, a procuring entity shall evaluate the financial, commercial and technical abilities of a supplier on the basis of the business activities of that supplier both inside and outside the territory of the Party of the procuring entity, and may 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 given Party or that the supplier has prior work experience in the territory of a given Party.
3. In making the assessment referred to in paragraph 2, a procuring entity shall base its evaluation on the conditions that it has specified in advance in notices or tender documentation.
4. A procuring entity may exclude a supplier on grounds such as bankruptcy, false declarations, significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts, judgments in respect of serious crimes or other judgments in respect of serious public offences, professional misconduct or failure to pay taxes.

5. A procuring entity may ask the tenderer to indicate in the tender any share of the contract the tenderer may intend to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the liability of the principal contractor.

ARTICLE 179

Selective Tendering

1. 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 Appendix 4 of Annex XII (Government Procurement), paragraphs (a), (b), (d), (e), (h), and (i) and invite suppliers to submit a request for participation; and
 - (b) provide to the qualified suppliers, by the commencement of the time-period for tendering, at least the information in Appendix 4 of Annex XII (Government Procurement), paragraphs (c), (f), and (g).
2. A procuring entity shall recognise as a qualified supplier any domestic supplier and any supplier of another Party that meets the conditions for participation 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.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, a procuring entity shall ensure that those documents are made available at the same time to all qualified suppliers selected in accordance with paragraph 2.

ARTICLE 180

Multi-Use List³

1. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion in the list is published annually and, where published by electronic means, made available continuously in the appropriate medium listed in Appendix 3 of Annex XII (Government Procurement). Such a notice shall include the information set out in Appendix 5 of Annex XII (Government Procurement).

2. Notwithstanding paragraph 1, where a multi-use list is valid for three years or less, a procuring entity may publish a notice referred to in that paragraph only once, at the beginning of the period of validity of the list, provided that the notice states the period of validity and that further notices will not be published.

3. 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.

³ For Colombia, and for the purposes of paragraphs 3 and 4(c) of this Article, in the case of the "concurso de méritos", the multi-use lists with a maximum duration of one year, have a specific time limit for its establishment determined by the procuring entity. Once this time limit is over, the inclusion of new suppliers will not be possible. Only suppliers included in the list may present tenders.

4. A procuring entity may use a notice inviting suppliers to apply for inclusion in a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 1 and includes the information required under Appendix 5 of Annex XII (Government Procurement) and as much of the information required by Appendix 4 of Annex XII (Government Procurement) as is available, and contains a statement that it constitutes a notice of intended procurement;
- (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required under Appendix 4 of Annex XII (Government Procurement) to the extent that such information is available; and
- (c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 3 may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for participation.

5. 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 its decision with respect to the request.

6. Where a procuring entity rejects a request by a supplier to participate in a procurement or an 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, upon request of the supplier, provide the supplier with a written explanation of the reasons for its decision.

ARTICLE 181

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 international trade.

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

- (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specifications on international standards, where this 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 fulfil the requirements of the procurement by including such words 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. Each 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.

ARTICLE 182

Tender Documentation

1. A procuring entity shall provide 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 the requirements set out in Appendix 8 of Annex XII (Government Procurement).
2. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.
3. Where, 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 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 the information is amended, if known, and in all other cases, in the same manner as the original information; and
 - (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 183

Time Periods

A procuring entity shall, in accordance with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation in a procurement and responsive tenders, taking into account such factors as the nature and complexity of the procurement, the extent of subcontracting anticipated, and the time for transmitting tenders from foreign as well as domestic points where electronic means are not used. The applicable time periods are set out in Appendix 6 of Annex XII (Government Procurement).

ARTICLE 184

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations:
 - (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
 - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices 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 notices or tender documentation; and
 - (b) when applicable, where negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

ARTICLE 185

Limited Tendering

A procuring entity may use limited tendering and may choose not to apply Articles 177 to 180, 182 to 184, 186 and 187 only under the following conditions:

- (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 because the procurement relates to a work of art; because of the protection of patents, copyrights or other exclusive rights; or because of the absence of competition for technical reasons, as in the case of the procurement of *intuitu personae* services;
- (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 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) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen 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;
- (g) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals, such as arising from liquidation, receivership or bankruptcy, and not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest, provided that the contest has been organised in a manner that is consistent with the principles of this Title, and the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

ARTICLE 186

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 187

Treatment of Tenders and Award of Contracts

1. A procuring entity shall receive, open and treat all tender according to procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. They also shall treat tenders in confidence until at least the opening of the tenders.

2. To be considered for an award, a tender shall be 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.
3. 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 the most advantageous tender or, where price is the sole criterion, the lowest price.
4. Where 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.

ARTICLE 188

Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on request, shall do so in writing. Subject to Article 189 paragraphs 2 and 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 tender of the successful supplier.

2. Not later than 72 days after the award of each contract covered by this Title, a procuring entity shall publish a notice of the award that shall include at least the information set out in Appendix 7 of Annex XII (Government Procurement) in the appropriate paper or electronic medium listed in Appendix 2 of Annex XII (Government Procurement). Where only an electronic medium is used, the information shall remain readily available for a reasonable period of time.

3. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurements, including the reports provided for in Appendix 7 of Annex XII (Government Procurement), and shall retain such reports and records for a period of at least three years after the award of a contract.

ARTICLE 189

Disclosure of Information

1. A Party, upon request of another Party, shall provide promptly any information necessary to determine whether the procurement was conducted fairly, impartially and in accordance with this Title, including information on the characteristics and relative advantages of the successful tender. In cases where release of this information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and agreement of, the Party that provided the information.

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

3. Nothing in this Title shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure would impede law enforcement, might prejudice fair competition between suppliers, would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property, or would otherwise be contrary to the public interest.

ARTICLE 190

Domestic Review Procedures

1. Each Party shall maintain or establish a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier which has or has had an interest in a covered procurement may challenge:

(a) a breach of this Title; or

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

arising in the context of such a covered procurement.

2. The procedural rules for all challenges pursuant to paragraph 1 shall be in writing and made generally available.

3. 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 set out in paragraph 1, the Party concerned shall encourage its procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring 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 his/her right to seek corrective measures under the administrative or judicial review procedure.

4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

5. 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 by a supplier arising in the context of a covered procurement.

6. Where a body other than an authority referred to in paragraph 5 initially reviews a challenge, the corresponding 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. A review body which is not a court, shall either be subject to judicial review or shall have procedures which provide that:

- (a) the procuring entity responds in writing to the challenge and discloses all relevant documents to the review body;
- (b) participants to the proceedings (hereinafter referred to as "participants") have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) participants have the right to be represented and accompanied;
- (d) participants have access to all proceedings;
- (e) participants have the right to request that the proceedings take place in public and that witnesses may be present; and
- (f) decisions or recommendations relating to challenges by suppliers are provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. 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) correction of a breach of this Title or compensation for the loss or damages suffered, where a review body has determined that there has been a breach or a failure as set out in paragraph 1. Such correction or compensation may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 191

Modifications and Rectifications of Coverage

1. Where a Party modifies its coverage of procurement under this Title, such Party shall:
 - (a) notify the other Parties in writing; and
 - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), a Party does not need to provide compensatory adjustments where:

- (a) the modification in question is a minor amendment or rectification of a purely formal nature;
or
- (b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If another Party does not agree that:

- (a) the adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;
- (b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a);
or
- (c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b);

such other Party must object in writing within 30 days of the receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Title XII (Dispute Settlement).

4. Where the Parties within the Trade Committee agree on any proposed modification, rectification or minor amendment, including where a Party has not objected within 30 days under paragraph 3, the Parties shall modify forthwith the relevant Annex.

5. The EU Party may at any time engage in bilateral negotiations with any signatory Andean Country with a view to broadening the market access mutually granted under this Title.

ARTICLE 192

Micro, Small and Medium Enterprises Participation

1. The Parties recognise the importance of the participation of Micro and SMEs in government procurement.

2. The Parties also recognise the importance of business alliances between suppliers of the Parties, and in particular of Micro and SMEs, including the joint participation in tendering procedures.

3. The Parties agree to exchange information and work jointly with the aim of facilitating access by Micro and SMEs to government procurement procedures, methods and contracting requirements, focused on their special needs.

ARTICLE 193

Cooperation

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for micro, small and medium suppliers.
2. The Parties shall endeavour to cooperate in matters such as:
 - (a) exchange of experiences and information, such as regulatory frameworks, best practices and statistics;
 - (b) development and use of electronic communications in government procurement systems;
 - (c) capacity building and technical assistance to suppliers with respect to access to the government procurement market;
 - (d) institutional strengthening for the implementation of the provisions of this Title, including training to government personnel; and
 - (e) capacity building to provide multilingual access to procurement opportunities.

3. The EU Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers from the signatory Andean Countries in submitting their tenders and selecting the goods or services which are likely to be of interest to the procuring entities of the European Union or its Member States. Likewise, the EU Party shall assist them to comply with technical regulations and standards relating to goods or services which are the subject of the intended procurement.

ARTICLE 194

Sub-committee on Government Procurement

1. The Parties hereby establish a Sub-committee on Government Procurement comprising representatives of each Party.
2. The Sub-committee shall:
 - (a) evaluate the implementation of this Title, including the use of the opportunities offered by increased access to government procurement and recommend to the Parties the appropriate activities;
 - (b) evaluate and follow up the activities related to cooperation that the Parties submit; and
 - (c) without prejudice of Article 191, paragraph 5, consider further negotiations aimed at broadening the coverage of this Title.

3. The Sub-committee on Government Procurement shall meet at request of any Party in a place and date that will be agreed, and shall keep a written record of its meetings.