

ARTICLE 208

Final Provisions

1. With respect to this Title, the Parties confirm the rights and obligations established by the International Monetary Fund or any other agreements between the Members States of the European Union and a Republic of the CA Party.
2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.

TITLE V

GOVERNMENT PROCUREMENT

ARTICLE 209

Introduction

1. The Parties recognise the contribution of transparent, competitive and open tendering to sustainable economic development and set as their objective the effective, reciprocal and gradual opening of their respective procurement markets.

2. For the purposes of this Title:

- (a) "commercial goods and services" means goods and 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) "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled;
- (c) "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;
- (d) "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;
- (e) "in writing" or "written" means any worded or numbered expression that can be read, reproduced or later communicated. It may include electronically transmitted and stored information;

- (f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (g) "List of suppliers" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list and/or formal requirements to be included in such list, and that the procuring entity intends to use more than once;
- (h) "measure" means any law, regulation, procedure, administrative guidance or practice, of a procuring entity relating to a covered procurement;
- (i) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both, according to each Party's legislation;
- (j) "offset" means any condition or undertaking that encourages local development or improves a Party's balance of payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- (k) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

- (l) "procuring entity" means an entity covered under a Party's Section A, B or C to Appendix 1 (Coverage) to Annex XVI (Government Procurement);
- (m) "qualified supplier" means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (n) "selective tendering" means a procurement method whereby only qualified or registered suppliers are invited by the procuring entity to submit a tender;
- (o) "services" includes construction services, unless otherwise specified; and
- (p) "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 210

Scope and Coverage

1. This Title applies to any measure regarding covered procurement. For the purposes of this Title, covered procurement means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
 - (i) as specified by each Party in the relevant sections of Appendix 1 (Coverage) to Annex XVI; 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 equals or exceeds the relevant threshold specified by each Party in Appendix 1 (Coverage) to Annex XVI, at the time of publication of a notice in accordance with Article 213;
- (d) by a procuring entity; and

(e) that is not otherwise excluded from coverage.

2. Except where provided, this Title does not apply to:

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

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives, government provision of goods and services to state, regional, or local government entities;

(c) the procurement or acquisition of fiscal agency or depositary 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 and related employment measures;

(e) procurement conducted:

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

- (ii) under the particular procedure or condition established by an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project;
 - (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;
- (f) purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by companies that normally are not suppliers, or disposals of assets of businesses in liquidation or receivership.

3. Each Party shall specify the following information in Appendix 1 (coverage) to Annex XVI as follows:

- (a) in Section A, the central government entities whose procurement is covered by this Title;
- (b) in Section B, the sub-central government entities whose procurement is covered by this Title;
- (c) in Section C, all other entities whose procurement is covered by this Title;
- (d) in Section D, the services, other than construction services, covered by this Title;

(e) in Section E, the construction services covered by this Title; and

(f) in Section F, any general notes.

4. Where domestic legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons, the provisions of this Title shall equally apply.

5.(a) No procuring entity may prepare, design, or otherwise structure or divide any procurement in order to avoid the obligations under this Title;

(b) Where procurement may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or exceeds a Party's thresholds as set out in the relevant Section, this Title shall apply to the awarding of such lots, with the exception of those lots the value of which is less than EUR 80 000.

6. Nothing in this Title shall be construed to prevent any Party from adopting or maintaining measures relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour, or measures necessary to protect public morals, order, or safety; human, animal, or plant life or health including environmental measures, and intellectual property.

The Republics of the CA Party shall be able to adopt, develop, maintain or implement measures to promote opportunities or programs for procurement policies for the development of its minorities and its MSMEs including preferential rules, such as:

- (a) identifying MSMEs, registered as suppliers of the State;
- (b) establishing criteria of tiebreak allowing procuring entities to adjudicate a contract to a domestic MSME, which, participating individually or in consortium has submitted an offer of equal ranking as other suppliers.

7. Nothing in this Title shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Title.

ARTICLE 211

General Principles

1. With respect to any measure and any covered procurement, each Party, including its procuring entities, shall accord to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic 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 degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. Any EU Party supplier or service provider established in one Republic of the CA Party shall be accorded in all other Republics of the CA Party treatment no less favourable than the treatment the latter accord to their own suppliers or service providers with respect to any measure regarding a covered procurement.

Any supplier or service provider from a Republic of the CA Party established in one Member State of the European Union shall be accorded in all other Member States of the European Union treatment no less favourable than the treatment the latter accord to their own suppliers or service providers with respect to any measure regarding a covered procurement.

The Parties shall not introduce new requirements on the local establishment or registration of suppliers and service providers wishing to submit a tender in a covered procurement that would set suppliers and service providers of the other Party at a competitive disadvantage. Existing requirements will be subject to a review within ten years from the entry into force of this Agreement³².

Use of Electronic Means

4. If a procuring entity conducts a covered procurement by electronic means, it shall:
 - (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
 - (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time and receipt and the prevention of inappropriate access.

³² For greater certainty, nothing in this Article shall affect trade in services covered by Title III (Establishment, Trade in Services and Electronic Commerce), and its Annexes on Lists of Commitments on Establishment, Lists of Commitments on Cross-Border Supply of Services, Reservations on Key Personnel and Graduate Trainees of the EU Party, Lists of Commitments of the Republics of the CA Party on Business Service Sellers and List of Commitments of the Republics of the CA Party on Key Personnel and Graduate Trainees.

Conduct of Procurement

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner, that avoids conflicts of interest and prevents corruptive practices and that is consistent with this Title using methods such as open tendering, selective tendering and limited tendering. Additionally, the Parties shall establish or maintain sanctions against such corruptive practices.

Rules of Origin

6. For purposes of covered procurement, no Party shall 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 exceptions contained in this Title or the annexes pertaining thereto, no Party shall seek, take account of, impose or enforce offsets.

ARTICLE 212

Publication of Procurement Information

1. Each Party shall:
 - (a) promptly publish any law, regulation, judicial decision or administrative ruling of general application, standard contract clauses that are mandated by a law or regulation and incorporated by reference in notices and tender documentation and procedures regarding covered procurement, and any modifications thereof, in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public;
 - (b) provide, if so requested by any Party, further information concerning the application of such provisions;
 - (c) list in Appendix 2 (Media for Publication of Procurement Information) to Annex XVI, the electronic or paper media in which the Party publishes the information described in paragraph (a); and
 - (d) list in Appendix 3 (Media for Publication of Notices) to Annex XVI, the media in which the Party publishes the notices required by Articles 213, 215, paragraph 4, and Article 223, paragraph 2.

2. The CA Party shall perform all reasonable efforts in order to develop a single point of access at regional level. The EU Party shall provide technical and financial assistance in order to develop, establish and maintain such a single point of access. This cooperation is addressed in Title VI (Economic and Trade Development) of Part III of this Agreement. The implementation of this provision is subject to the materialisation of the initiative on technical and financial assistance for the development, establishment and maintenance of a single point of access at Central American level.

3. Each Party shall promptly notify the other Party of any modification to the Party's information listed in Appendix 2 (Media for Publication of Procurement Information) or 3 (Media for Publication of Notices) to Annex XVI.

ARTICLE 213

Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 220, a procuring entity shall publish a notice of intended procurement in the appropriate media listed in Appendix 3 (Media for Publication of Notices) to Annex XVI. Each notice shall include the information set out in Appendix 4 (Notice of Intended Procurement) to Annex XVI. These notices shall be accessible by electronic means free of charge through a single point of access at regional level, if and where they exist.

Notice of Planned Procurement

2. Procuring entities are encouraged to publish, as early as possible, each year, a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice shall include the subject-matter of the procurement and the approximate date of the publication of the notice of intended procurement or in which the procurement may be held.

3. A procuring entity may, if domestic legislation so foresees, use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in Appendix 4 (Notice of Intended Procurement) as available and a statement that interested suppliers shall express their interest in the procurement to the procuring entity.

ARTICLE 214

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 the supplier on the basis of that supplier's business activities both in and out of the territory of the Party of the procuring entity, and it may not impose the condition that, in order for a supplier to participate in a procurement, that supplier must have previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier must have prior work experience in the territory of a given Party.
3. In making this assessment, the 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 deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts, judgments regarding crimes or other judgments regarding serious public offences, professional misconduct, failure to pay taxes or similar reasons.

Each Party may adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has found to have engaged in fraudulent or other illegal actions in relation to procurement. Upon request of the other Party, a Party shall identify, to the extent practicable, the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

5. The 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 of questioning the principal economic operator's liability.

ARTICLE 215

Qualification or Registration of Suppliers

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 paragraph 1 of Appendix 4 (Notice of Intended Procurement), to Annex XVI 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 paragraph 2 of Appendix 4 (Notice of Intended Procurement) to Annex XVI to the qualified or registered suppliers.
2. A procuring entity shall recognise as qualified suppliers any domestic suppliers and any suppliers of the other Party that meet 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.

List of Suppliers

4. A procuring entity may maintain a 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 (Media for Publication of Notices) to Annex XVI. Such a notice shall include the information set out in Appendix 5 (Notice Inviting Interested Suppliers to Apply for Inclusion in a List of Suppliers) to Annex XVI.

5. Notwithstanding paragraph 4, where a list of suppliers will be valid for three years or less, a procuring entity may publish the 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.

6. A procuring entity shall allow suppliers to apply at any time for inclusion on a list of suppliers and shall include on the list within a reasonable short time all suppliers that have complied with the corresponding requirements.

7. A procuring entity may, if so foreseen by the Party's legislation, use a notice inviting suppliers to apply for inclusion in a list of suppliers as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 4 and includes the information required by Appendix 5 (Notice Inviting Interested Suppliers to Apply for Inclusion in a List of Suppliers) and as much of the information required by Appendix 4 (Notice of Intended Procurement) to Annex XVI as is available, and contains a statement that it constitutes a notice of intended procurement;
- (b) the procuring 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 by Appendix 4 (Notice of Intended Procurement) to Annex XVI, to the extent that such information is available; and
- (c) a supplier having applied for inclusion on a list of suppliers in accordance with paragraph 6, 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.

8. A procuring entity shall promptly inform any supplier that submits a request for participation or application for inclusion on a list of suppliers of the procuring entity's decision with respect to the request.

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

10. The Parties shall indicate in Section F (General Notes) to Appendix 1 (Coverage) to Annex XVI, which entities may use lists of suppliers.

ARTICLE 216

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 these exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall 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. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 217

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 issues set out in Appendix 8 (Tender Documentation) to Annex XVI.
2. A procuring entity shall promptly provide, upon request, the tender documentation to any supplier participating in the procurement; and reply to any reasonable request for relevant information made by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement and that the request was presented within the corresponding time limits.
3. Where, in the course of a procurement, a procuring entity modifies or amends the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, it shall transmit in writing all such modifications:
 - (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 218

Time Periods

A procuring entity shall, consistent with its own needs, provide sufficient time for suppliers to prepare and submit requests for participation 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. Such time-periods, including any extension of the time periods, shall be the same for all interested or participating suppliers. The applicable time periods are set out in Appendix 6 (Time Periods) to Annex XVI.

ARTICLE 219

Negotiations

1. Each Party may provide for its procuring entities to conduct procurements through the negotiations procedure, in the following cases:
 - (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) where negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

ARTICLE 220

The Use of Limited Tendering or other equivalent Tendering Procedures

1. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by limited tendering or other equivalent tendering procedures in 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, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) for additional deliveries by the original supplier of goods and 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) for goods purchased on a commodity market;
- (e) 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. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to this Title;
- (f) where additional construction services that were not included in the initial contract but fell under the objectives of the original tender documentation, have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed fifty per cent of the amount of the initial contract;
- (g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party;
- (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; or

- (i) in the cases established by each Party in Section F (General Notes) of Appendix 1 (Coverage) to Annex XVI.

2. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 1.

ARTICLE 221

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 222

Treatment of Tenders and Award of Contracts

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. 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 tender documentation and, where applicable, in the notices, 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 223

Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, upon request, shall do so in writing. Subject to paragraphs 2 and 3 of Article 224, a procuring entity shall, upon 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.
2. After the award of each contract covered by this Title, a procuring entity shall, as early as possible, according to the time limits established in each Party's legislation, publish a notice in the appropriate paper or electronic media listed in Appendix 3 (Media for Publication of Notices) to Annex XVI. Where only an electronic medium is used, the information shall remain readily available for a reasonable period of time. The notice shall include at least the information set out in Appendix 7 (Award Notices) to Annex XVI.

ARTICLE 224

Disclosure of Information

1. Upon request of the other Party, each Party shall promptly provide all relevant information about the adjudication of a covered procurement, in order to determine if the procurement was made in accordance with the rules of this Title. 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 225

Domestic Review Procedures

1. Each Party shall establish or maintain timely, effective, transparent and non-discriminatory administrative or judicial review procedures through which a supplier may present a challenge with respect to the obligations of a Party and its entities under this Title that may arise in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.
2. Each Party may foresee in its domestic legislation, that in the event of a complaint by a supplier arising in the context of a covered procurement, it shall encourage its procuring entity and the supplier to seek resolution of the complaint through consultation. 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 right to seek corrective measures under the administrative or judicial review procedure.
3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

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

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge. A review body that is not a court shall either be subject to judicial review or have procedural guarantees that provide for:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings (hereinafter referred to as "the participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings; and
- (e) decisions or recommendations relating to challenges by suppliers shall be provided, within a reasonable time, in writing, with an explanation of the basis for each decision or recommendation.

6. Each Party shall adopt or maintain procedures that provide for:
 - (a) prompt 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) corrective action or compensation for the loss or damages suffered, in accordance with each Party's legislation, in cases where a review body has determined that there has been a breach or a failure as set out in paragraph 1.

ARTICLE 226

Modifications and Rectifications of Coverage

1. The EU Party shall address modifications and rectifications of coverage through bilateral negotiations with each Republic of the CA Party concerned. Inversely, each Republic of the CA Party shall address modifications and rectifications of coverage through bilateral negotiations with the EU Party.

Where a Party has the intention of modifying its coverage of procurement under this Title, the Party shall:

- (a) notify the other Party or Parties concerned in writing; and
- (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

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 refers to an entity over which the Party has effectively eliminated its control or influence.

The Parties may make minor amendments or rectifications of a purely formal nature to their coverage under this Title, in accordance with the provisions of Title XIII (Specific Tasks in Trade Matters of the Bodies established under this Agreement) of Part IV of this Agreement.

3. If the EU Party or the Republic of the CA Party concerned 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 refers to an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b),

it must object in writing within thirty days of 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 X (Dispute Settlement) of Part IV of this Agreement.

4. Where the Parties concerned have agreed on the proposed modification, rectification, or minor amendment, including where no objection has been made within thirty days under paragraph 3, the modifications shall be made in conformity with the provisions of paragraph 6.

5. The EU Party and each Republic of the CA Party may at any time engage in bilateral negotiations concerning the broadening of the market access mutually granted under this Title, in conformity with the relevant institutional and procedural arrangements foreseen in this Agreement.

6. The Association Council shall modify the relevant parts of Sections A, B or C of Appendix 1 (Coverage) to Annex XVI in order to reflect any modification agreed by the Parties, technical rectification, or minor amendment.

ARTICLE 227

Cooperation and Technical Assistance on Government Procurement

The Parties agree that it is in their common interest to promote mutual cooperation and technical assistance initiatives on issues related to government procurement. In this sense, the Parties have identified a number of cooperation activities which are set out in Article 58 of Title VI (Economic and Trade Development) of Part III of this Agreement.