

**DRAFT PROTOCOL**

**ON**

**PUBLIC PROCUREMENT**

**FOR THE CARIBBEAN COMMUNITY**

(As approved by the Twenty-Second Meeting of the Senior Officials of the Legal Affairs Committee on the 27<sup>th</sup> to the 29<sup>th</sup> of March 2017 and by the Forty-Fourth Meeting of the Council for Trade and Economic Development on the 8<sup>th</sup> to the 12<sup>th</sup> of May 2017)

May 12, 2017

# **ARRANGEMENT OF ARTICLES**

## **PREAMBLE**

### **PART ONE**

#### **GENERAL PROVISIONS**

#### **ARTICLE**

- 1 USE OF TERMS**
- 2 OBJECTIVES**
- 3 OPERATING PRINCIPLES**
- 4 IMPLEMENTATION**

### **PART TWO**

#### **SCOPE AND COVERAGE**

- 5 SCOPE OF APPLICATION**
- 6 THRESHOLD REVIEW**
- 7 CONTRACT VALUATION RULES**
- 8 RULES OF ORIGIN**
- 9 PROHIBITION OF OFFSETS**

**PART THREE**  
**INFORMATION AND COMMUNICATION TECHNOLOGIES**

- 10 COMMUNICATION MODALITIES**
- 11 COMMUNITY INFORMATION SYSTEMS**

**PART FOUR**  
**PROCUREMENT PROCEEDINGS**

- 12 COMMUNITY STANDARD BIDDING DOCUMENTS**
- 13 ANNUAL PROCUREMENT PLAN**
- 14 PUBLICATION OF PROCUREMENT OPPORTUNITIES**
- 15 PROCUREMENT METHODS**
- 16 TIME LIMITS**
- 17 SUBMISSION, RECEIPT AND OPENING OF BIDS**
- 18 EVALUATION OF BIDS AND AWARD OF CONTRACTS**
- 19 PUBLICATION OF CONTRACT AWARD NOTICES**
- 20 RECORD OF PROCUREMENT PROCEEDINGS**
- 21 CONTRACT ADMINISTRATION**
- 22 STATISTICAL REPORTING**

**PART FIVE**

**TRANSPARENCY, FAIRNESS AND SUPPLIER CHALLENGE**

- 23 TECHNICAL SPECIFICATIONS**
- 24 PRE-QUALIFICATION AND ELIGIBILITY OF SUPPLIERS**
- 25 LIMITATION ON DISCLOSURE OF INFORMATION**
- 26 ANTI-CORRUPTION AND CONFLICTS OF INTEREST**
- 27 NORMS AND STANDARDS**
- 28 PROTECTION OF ACTS DONE IN GOOD FAITH**
- 29 SUPPLIER CHALLENGE AND REVIEW**

**PART SIX**

**TECHNICAL COOPERATION AND ASSISTANCE**

- 30 TECHNICAL COOPERATION AND ASSISTANCE**

**PART SEVEN**

**INSTITUTIONAL ARRANGEMENTS**

- 31 THE PERMANENT JOINT COUNCIL ON PUBLIC PROCUREMENT**
- 32 COMMUNITY PUBLIC PROCUREMENT NOTICE BOARD**
- 33 SUPPLIERS REGISTERS**

**PART EIGHT**  
**SPECIAL PROVISIONS**

- 34 DISPUTE SETTLEMENT**
- 35 PUBLIC PROCUREMENT AND THE ENVIRONMENT**
- 36 GENERAL AND SECURITY EXCEPTIONS**

**PART NINE**  
**FINAL PROVISIONS**

- 37 SIGNATURE AND PROVISIONAL APPLICATION**
- 38 RATIFICATION**
- 39 ENTRY INTO FORCE**
- 40 AMENDMENTS**
- 41 RESERVATIONS**
- 42 ACCESSION**

**ANNEX A**

**ANNEX B**

**PREAMBLE**

**THE STATES PARTIES,**

**Recalling** the undertaking of the Member States in Article 239 of the Revised Treaty of Chaguaramas to elaborate a Protocol relating, *inter alia*, to government procurement;

**Recognising** the importance of the contribution of government procurement to the gross domestic product (GDP) of the Member States;

**Conscious** of the adjustment within the arrangements of Member States away from government procurement towards public procurement;

**Aware** that the Member States provide considerable procurement opportunities for CARICOM based suppliers of goods, services and works in the CARICOM Single Market and Economy (CSME);

**Conscious** that the Member States are likely to secure the best value for money if the procurement policies of their Governments are informed by policies of fair competition, non-discrimination and transparency;

**Desirous** of strengthening the regional supplier base and providing opportunities for micro, small and medium-sized enterprises to participate in procurement opportunities;

**Committed** to enhancing the quality of governance in the Caribbean Community through the promotion of fairness, transparency and accountability in the supply of goods and services in the CSME;

**Convinced** that a sound, efficient, transparent and credible policy of

May 12, 2017

public procurement by the Member States will contribute significantly to the achievement of the objectives of the CSME,

**Have agreed** as follows:

**PART ONE**

**GENERAL**

**ARTICLE 1**

**USE OF TERMS**

In this Protocol, unless the context otherwise requires:

**“bidder”** means a supplier who has submitted a bid;

**“bidding documents”** –

- (a) means documentation containing information in respect of a procurement opportunity; and
- (b) includes the invitation to bid, specific information concerning the item(s) to be procured including any technical or other specifications, conditions for supplier participation, the manner, date and time for the submission of bids, the form and format of the bid, evaluation criteria, the form of contract, the implementation period and any other relevant information;

**“CARICOM”** means the Caribbean Community;

**“Community”** means the Caribbean Community including the CARICOM Single Market and Economy as established by the Revised Treaty;

**“Community Council of Ministers”** or **“Community Council”** means the Organ of the Community so named in paragraph 1 (b) of Article 10 of the Revised Treaty;

**“Community Public Procurement Notice Board”** or **“Notice Board”** means the electronic notice board established in accordance with Article 32;

**“Community Suppliers Register”** has the meaning assigned in Article 33;

**“concession”** means a long-term contract for works in relation to which –

- (a) the consideration for the works to be carried out consists –
  - (i) solely of the right to exploit the activity; or
  - (ii) of a combination of the right set out in subparagraph (i) and the right to payment; and
- (b) the concessionaire bears the risk inherent in the exploitation by providing funding for the activity or otherwise;

**“Contracting Party”** means a Member State that is a Party to this Protocol;

**“Council for Trade and Economic Development” or “COTED”** means the Organ of the Community so named in paragraph 2 (b) of Article 10 of the Revised Treaty;

**“CSME”** means the regime established by the provisions of the Revised Treaty;

**“disadvantaged country, region or sector”** has the meaning assigned to it in Article 142 of the Revised Treaty;

**“force majeure”** -

- (a) means an event that is beyond the reasonable control of a person and which makes the person’s performance of its obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances; and
- (b) includes, but is not limited to –
  - (i) war, riots, civil disorder, strikes, lockouts, industrial action (except where such strikes, lockouts or industrial action are within the power

of the person invoking the *force majeure*), confiscation or any other action by Government agencies; and

(ii) earthquakes, fire, floods, storms or explosions;

**“green procurement”** means the acquisition of goods, services or works in a manner that causes minimal adverse environmental impact and includes –

- (a) improved recyclability;
- (b) high recycled content;
- (c) greater energy efficiency;
- (d) utilizing clean technology or clean fuels;
- (e) reduced water consumption;
- (f) reduced emissions of irritating or toxic substances during installation or use;
- and
- (g) reduced production of toxic substances during use or disposal;

**“in writing”** means any expression of information in words, numbers or other symbols, including electronic symbols which can be read, reproduced and stored;

**“Member State”** means a Member State of the Community, excluding an Associate Member within the meaning of Article 231 of the Revised Treaty;

**“national”** has the meaning assigned in paragraph 5 (a) of Article 32 of the Revised Treaty;

**“offsets”** means any conditions or undertakings that encourage local development or improve a Contracting Party’s balance of payments account, such as the application of margins of preference for the use of domestic content or domestic suppliers, requirements for the licensing or the transfer of technology, domestic investment requirements, counter trade and similar actions;

**“open bidding”** means a procurement method in which any interested supplier may submit a bid for a procurement contract;

**“Permanent Joint Council on Public Procurement”** means a Body of the Community established in accordance with Article 31;

**“private party”** in the context of Public-Private Partnerships, means a majority privately owned company or consortium;

**“procurement”** means the acquisition of goods, services or works or any combination thereof;

**“procurement method”** means the method to be used to engage in public procurement;

**“procurement opportunity”** means an opportunity for suppliers to participate in a bidding process in order to demonstrate their interest in supplying and capacity to supply goods, services or works under a public procurement contract;

**“procurement proceedings”** means the initiation and conduct of the process of effecting a public procurement up to the award of a contract;

**“procuring entity”** in relation to a Contracting Party, means all central, sub-central or local government entities, statutory bodies, state-owned companies and any other undertakings in a Contracting Party that use public funds to procure goods, services or works, the benefit of which would be for public use and not for commercial gain;

**“public asset”** means any new or existing infrastructure asset in which the procuring entity has an interest in such asset being provided for public use;

**"public funds"** means monies derived from:

- (a) revenue including all tolls, taxes, imposts rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale and all other receipts of the Contracting Party’s Government, from whatever sources arising, and over which Parliament has the power of appropriation, including the proceeds of all

loans raised; and

- (b) any trust or other monies held, whether temporarily or otherwise, in the name of a Contracting Party's Government;

**“public-private partnership”** means a long-term contract between a procuring entity and a private party –

- (a) for the development (possibly including significant upgrade or renovation) and management of a public asset;
- (b) in which the private party bears significant risk and management responsibility throughout the life of the contract;
- (c) in which the private party provides a significant portion of the finance at its own risk; and
- (d) where the remuneration is significantly linked to performance or the demand or use of the public asset or service so as to align the interests of the procuring entity and the private party;

**“public procurement”** means the acquisition of goods, services or works or any combination thereof, for or on behalf of procuring entities using public funds by way of purchase, rental, lease, concession or hire-purchase with or without an option to buy but not with a view to commercial resale or use in the production of goods and services by private commercial entities for commercial use;

**“public use”** means for use by or for the benefit of the public;

**“publish”** means to disseminate information in an electronic, paper or other medium that is distributed widely and is readily accessible to suppliers who are entitled to and interested in participating in a procurement opportunity;

**“Revised Treaty”** means the Revised Treaty of Chaguaramas signed by Heads of

Government of the Caribbean Community on July 5, 2001 at the Twenty-Second Meeting of the Conference in Nassau, The Bahamas;

**“Secretariat”** means the Secretariat of the Community referred to in Article 23 of the Revised Treaty;

**"standstill period"** means a period of ten working days that commences on the day following the dispatch of the contract award notice and during which time:

- (a) no contract may be signed with the successful bidder; and
- (b) the unsuccessful bidder(s) may challenge certain decisions or actions of the procuring entity;

**“supplier”** –

- (a) means a national of a Member State, whether a natural or legal person or group of persons, including any temporary association of undertakings, which offers the execution of works, the supply of goods or the supply of services on a market; but
- (b) does not include State-owned entities;

**“technical specification”** means a detailed description which –

- (a) specifies the characteristics of the goods, services or works to be procured or their related processes and production methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that a procuring entity prescribes; and
- (b) addresses quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labelling as they apply to a good, process, service, production or operating method;

**“third country”** means a country that is not a Member State;

**“traditional media”** includes television, radio, newspapers, magazines, newsletters and other print publications.

**“Treaty”** means the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973;

## **ARTICLE 2**

### **OBJECTIVES**

The objective of this Protocol is to set out the conditions and procedures necessary for the progressive integration of the national public procurement markets of the Contracting Parties into a single, unified and open area through the design and implementation of a regional best practice regime for public procurement and, in so doing, to:

- (a) create the necessary competitive and non-discriminatory conditions to facilitate achievement of best value for money;
- (b) provide opportunities for access to a single market with regional sales opportunities; and
- (c) strengthen the competitiveness of the regional supplier base in particular in relation to micro, small and medium-sized enterprises; and
- (d) encourage the rational use of scarce resources.

**ARTICLE 3**  
**OPERATING PRINCIPLES**

1. Consistent with the objectives of the public procurement regime of the Community, Contracting Parties, shall, in their public procurements to which this Protocol applies, give effect to the following principles:
  - (a) national treatment and most favoured nation treatment;
  - (b) transparency;
  - (c) accountability;
  - (d) best value for money; and
  - (e) procedural fairness.
  
2. In accordance with paragraph 1, Contracting Parties shall:
  - (a) ensure that procurement policies, administrative rules, guidelines, procedures and practices which are within the scope of application of this Protocol, as set out in Article 5, are not prepared, adopted or applied so as to afford protection or favour to, or bias against, the goods, services, works or suppliers of any other Contracting Party;
  - (b) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to domestic goods, services, works and suppliers;
  - (c) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to third countries' goods, services, works and suppliers;
  - (d) ensure that their procuring entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of affiliation to, or ownership by a person or persons of any other Contracting Party; and

- (e) ensure that adequate and relevant information is made accessible and widely available to suppliers in a consistent and timely manner at reasonable or no cost.

#### **ARTICLE 4**

##### **IMPLEMENTATION**

1. In the context of public procurement to which this Protocol applies, Contracting Parties shall enact, monitor and enforce appropriate public procurement legislation that is compatible with the provisions of this Protocol.
2. Contracting Parties shall not introduce in their territories any new restrictions, whether or not so expressly stated, the effect of which would prohibit or otherwise limit the participation of suppliers in public procurements to which this Protocol applies.
3. Contracting Parties shall establish, strengthen and maintain national institutional arrangements to ensure the enforcement of and compliance with public procurement legislation enacted in accordance with paragraph 1.

#### **PART TWO**

##### **SCOPE AND COVERAGE**

#### **ARTICLE 5**

##### **SCOPE OF APPLICATION**

1. Subject to paragraph 2, this Protocol applies to every public procurement of a value equal to or greater than the relevant threshold specified in Annex A to this Protocol.

2. The provisions of this Protocol shall not apply to:
  - (a) agreements between a Contracting Party and an international organisation which limit participation in public procurement due to permissible conditions and limitations stated in the agreement;
  - (b) agreements entered into between a Contracting Party and a third country intended for the joint implementation or exploitation of a project by the parties to the agreement and financed by the third country, which limit participation in public procurement because of specific permissible conditions and restrictions on nationality or other eligibility of suppliers;
  - (c) the hiring of government employees, whether by contracts of service or contracts for service, and related employment measures; or
  - (d) public procurements of the types specified in Annex B.

## **ARTICLE 6**

### **THRESHOLD REVIEW**

1. The Council for Finance and Planning (COFAP) shall review the thresholds specified in Annex A at least every two years and shall, having taken into account the considerations referred to in paragraph 3, where necessary and appropriate recommend to the Council for Trade and Economic Development (COTED) that the thresholds be amended. Recommendations by COFAP shall be made on the affirmative vote of two-thirds of the Contracting Parties.
2. Subject to paragraph (3) and on the recommendation of the COFAP, the COTED may, from time to time, amend Annex A in order to ensure the achievement of the objectives of this Protocol.
3. The COFAP and the COTED shall take into consideration the following in determining whether to recommend the amendment of the thresholds or to amend

- the thresholds, respectively –
- (a) the strength of the economies;
  - (b) the strength of the currencies; and
  - (c) such other factors as the COFAP and COTED consider appropriate.
4. Decisions of COTED on whether to amend Annex A shall be reached by an affirmative vote of all the Contracting Parties and such decision shall be binding.

## **ARTICLE 7**

### **CONTRACT VALUATION RULES**

1. The following provisions shall apply in determining the value of individual public procurement contracts to which this Protocol applies.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. Contracting Parties shall ensure that procuring entities do not select valuation methods or divide public procurement into multiple parts with the intention of avoiding the application of this Protocol.
4. Where the public procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, the basis for valuation shall be:
  - (a) where no similar recurring contracts have been concluded over the previous 12 months, the total maximum value of the procurement over its entire duration; or
  - (b) the actual value of similar recurring contracts concluded over the previous 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

- (c) the estimated value of recurring contracts in the 12 months subsequent to the initial contract.
5. Where the public procurement is to be conducted in a single lot and the total price is not known, the basis for estimating the value shall be, with respect to:
- (a) a fixed-term contract where:
    - (i) the term is 12 months or less, the total estimated contract value for the contract's duration; or
    - (ii) the term exceeds 12 months, the total estimated contract value, including the estimated residual value, where applicable; or
  - (b) a contract for an indefinite period, the estimated monthly instalment multiplied by 36.
6. In cases where an intended public procurement specifies the need for option clauses, the basis for valuation shall be the total value, inclusive of optional purchases.

## **ARTICLE 8**

### **RULES OF ORIGIN**

Contracting Parties shall apply the existing Community Rules of Origin to public procurement.

## **ARTICLE 9**

### **PROHIBITION OF OFFSETS**

Contracting Parties shall ensure that procuring entities do not seek to impose offsets

against suppliers in the:

- (a) qualification and selection of suppliers;
- (b) evaluation of bids; or
- (c) award of contracts.

**PART THREE**  
**INFORMATION AND COMMUNICATION TECHNOLOGIES**

**ARTICLE 10**  
**COMMUNICATION MODALITIES**

1. Unless otherwise required by this Protocol, and consistent with the requirements of the procuring entity and the conditions of the market, information dissemination and other communication shall be effected through electronic or paper media.
2. The Community shall promote the use of information technology taking into consideration:
  - (a) the high cost of paper publication;
  - (b) the volume of publication necessary in the operation of a Community public procurement regime;
  - (c) the complexities of intra-regional transport and delivery of documents;
  - (d) time constraints involved in the Community public procurement regime;  
and
  - (e) regional progress in the use of electronic data processing and telecommunication technologies.

**ARTICLE 11**

**COMMUNITY INFORMATION SYSTEMS**

1. The Community shall establish and maintain community information systems comprising traditional and electronic media which shall be accessible by procuring entities and suppliers for the enhancement of the Community regime for public procurement.
2. Among the electronic media to be established pursuant to paragraph 1, the Community shall establish an electronic Community Public Procurement Notice Board, in accordance with Article 32, to facilitate participation by suppliers in its public procurement regime.
3. The Community shall also establish an appropriate mechanism to promote and facilitate joint bidding by suppliers for the award of public procurement contracts.

**PART FOUR**

**PROCUREMENT PROCEEDINGS**

**ARTICLE 12**

**COMMUNITY STANDARD BIDDING DOCUMENTS**

1. The Community shall:
  - (a) develop Community Standard Bidding Documents, including:
    - (i) standard forms and content of the invitation to bid;
    - (ii) instructions to bidders;
    - (iii) form of bid;

- (iv) form and conditions of contract; and
  - (v) any necessary appendices, such as formats for bid securities; and
- (b) publish the Community Standard Bidding Documents on the Community Public Procurement Notice Board, established in accordance with Article 32.
2. Contracting Parties shall ensure that their procuring entities use the Community Standard Bidding Documents in public procurement to which this Protocol applies.
  3. Contracting Parties may submit requests for modifications and amendments of the Community Standard Bidding Documents to the Permanent Joint Council on Public Procurement (“Permanent Joint Council”), established in accordance with Article 31, for its consideration and approval.
  4. The Permanent Joint Council shall be responsible for considering and approving any modifications or amendments to the Community Standard Bidding Documents as well as ensuring the accuracy and currency of such documentation.

## **ARTICLE 13**

### **ANNUAL PROCUREMENT PLAN**

1. Each Contracting Party shall ensure that every procuring entity publishes an Annual Procurement Plan on the Notice Board as early as possible in every fiscal year.
2. A procuring entity’s Annual Procurement Plan shall contain information concerning its intended public procurement to which this Protocol applies for the relevant year, including the subject matter of the intended public procurements together with volumes and values, and the proposed dates or range of dates for the publication of relevant invitations to tender, where such information is

available.

3. Procuring entities shall employ their best endeavours to conduct their procurement proceedings in accordance with their Annual Procurement Plans, which shall not be binding on the relevant procuring entities.

## **ARTICLE 14**

### **PUBLICATION OF PROCUREMENT OPPORTUNITIES**

1. Subject to paragraph 3, Contracting Parties shall ensure that procuring entities publish tender notices of procurement opportunities on the Community Public Procurement Notice Board.
2. Where a method other than open bidding is being employed, nothing in paragraph 1 shall be construed as requiring Contracting Parties to ensure that procuring entities comply with that paragraph.

## **ARTICLE 15**

### **PROCUREMENT METHODS**

1. Subject to the provisions of this Article, Contracting Parties, through procuring entities therein, shall employ open bidding for public procurements valued at or above the relevant threshold.
2. Notwithstanding paragraph 1, Contracting Parties, through procuring entities therein, may employ procurement methods other than open bidding if –

- (a) there is an extremely urgent need for the subject matter of the procurement and an open and competitive method of procurement is impractical because of the time involved in using such a method;
- (b) in relation to a specific procurement opportunity, the procuring entity reasonably decides that only a limited number of suppliers can perform the contract for technical or artistic reasons or reasons connected with the protection of exclusive rights and no reasonable alternative or substitute exists;
- (c) additional goods, services or works which were not included in the initial procurement contract, but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to satisfactorily complete the procurement, provided that the total value of the contract awarded for additional goods, services or works does not exceed fifty per cent (50%) of the amount of the initial contract;
- (d) goods are purchased on commodity markets or where goods and services are made available under exceptionally advantageous conditions that only arise in the very short term;
- (e) no suitable bids were received in response to an earlier invitation to suppliers to participate in an open bid;
- (f) due to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in open bidding would be impractical because of the time involved in using other methods;
- (g) the procuring entity has –
  - (i) procured from a particular supplier goods, services or works which are, to the procuring entity's satisfaction, effective in meeting the needs of the procuring entity; and
  - (ii) determined the need for additional supplies to be procured from the supplier for reasons of standardisation or compatibility with existing goods, services or works;
- (h) the contract is awarded to the winner of a design or artistic contest; or

- (i) the procurement is between procuring entities.
- 3. Where the procuring entities within Contracting Parties employ a procurement method other than open bidding, Contracting Parties shall ensure that procuring entities select bidders in a non-discriminatory manner so as to maximise competition to the extent practicable.
- 4. In establishing procedures for procurement methods, Contracting Parties shall develop appropriate and effective rules and guidelines governing procurement planning, advertising media, e-procurement, security of bids, establishment of bid evaluation committees, regional reporting requirements concerning mechanisms, time-frames and content and fees for bidding documents.

## **ARTICLE 16**

### **TIME LIMITS**

- 1. Contracting Parties shall ensure that all time limits applied to procurement opportunities offered by their procuring entities under this public procurement regime are adequate to allow interested suppliers to prepare and submit bids and, where appropriate, applications for qualification.
- 2. Contracting Parties shall ensure that procuring entities take into account the complexity of the procurement opportunity, the possibility of publication delays and the implications of cross-border transport of relevant documentation consistent with the procuring entity's own reasonable needs when determining time limits mentioned in paragraph 1.
- 3. Contracting Parties shall ensure that where procuring entities use open bidding, they shall provide no less than forty (40) calendar days between the date of publication of the bid and the deadline for the submission of bids.

4. Contracting Parties shall ensure that, subject to paragraph 2, where a procuring entity uses a method other than open bidding, it provides a reasonable time limit consistent with the requirements of the procurement and the objectives of this Protocol.

## **ARTICLE 17**

### **SUBMISSION, RECEIPT AND OPENINGS OF BIDS**

1. Contracting Parties shall ensure that procuring entities:
  - (a) require the submission of bids in writing;
  - (b) receive and open bids under conditions and procedures that guarantee transparency, fairness and objectivity; and
  - (c) that receive bids after the closing date and time for submission return the unopened bids to the senders, subject to paragraph 2.
2. Notwithstanding paragraph 1(c), Contracting Parties shall ensure that their legislation permits procuring entities to accept late bids in circumstances where it can be ascertained that the submission of such bids was delayed by *force majeure*.
3. The Community shall elaborate procedures and conditions that guarantee transparency, fairness and objectivity pursuant to paragraph 1 (b).

## **ARTICLE 18**

### **EVALUATION OF BIDS AND NOTICE**

#### **OF SUCCESSFUL BID**

1. Contracting Parties shall ensure that procuring entities evaluate:
  - (a) only bids which, at the time of opening, materially comply with the requirements for participation as described in the bidding documents; and

- (b) bids fairly and objectively and solely on the basis of the evaluation criteria contained in the relevant bidding documents.
- 2. Contracting Parties shall ensure that where a bid is abnormally lower in price than other bids submitted, the procuring entity makes the necessary enquiries to satisfy itself that the bidder submitting that bid is capable of fulfilling the terms of the contract.
- 3. Contracting Parties shall ensure that procuring entities issue a notice of successful bid to the bidder whose bid is determined to be the most advantageous based on the criteria in the bidding documents. A notice of successful bid shall be issued, simultaneously, to all participating bidders.
- 4. Contracting Parties shall ensure that procuring entities provide reasons for rejecting a bid to the unsuccessful bidder who so requests. Such request must be received by the procuring entity within five (5) working days of notification of the successful bid. The procuring entity shall respond to such requests within ten (10) calendar days of receipt of same.
- 6. Contracting Parties shall ensure that where procuring entities cancel procurement opportunities under paragraph 5, they provide reasons for the cancellation, within a reasonable time, to any supplier who so requests.

## **ARTICLE 19**

### **PUBLICATION OF NOTICE OF CONTRACT AWARD**

- 1. In the context of public procurement to which this Protocol applies, Contracting Parties shall ensure that when procuring entities select successful bidders, the procuring entities:
  - (a) directly notify all bidders participating in the bid proceedings of the contract award;

- (b) submit to the Community Contact Point, through an electronic medium, a notice of contract award for publication on the Community Public Procurement Notice Board for general information; and
  - (c) ensure that notifications and submissions done pursuant to sub-paragraphs (a) and (b), respectively, are dispatched within three working days from the date of the contract award decision.
2. The Community shall ensure that such notices of contract award remain posted on the Community Public Procurement Notice Board for at least thirty (30) calendar days following the date of publication.

## **ARTICLE 20**

### **RECORD OF PROCUREMENT PROCEEDINGS**

1. Contracting Parties shall ensure that procuring entities document and maintain records of their procurement proceedings in the manner specified in paragraph 2 of this Article.
2. Without prejudice to the means of retention or storage employed, procuring entities shall ensure that their procurement records contain, at a minimum, the following information and are retained for a minimum period of five years:
- (a) a brief description of the works, goods or services procured;
  - (b) the names and addresses of the bidders;
  - (c) the procurement method employed;
  - (d) the name and address of the successful bidder employed;
  - (e) the date of contract award;
  - (f) the contract price and actual completion cost;
  - (g) the duration of the contract;
  - (h) information relating to the qualification of bidders;

- (i) a summary of the evaluation and comparison of bids;
- (j) the reasons for the rejection of any or all bids;
- (k) a summary of the requests for clarification or verification of the bid documents and any modifications thereof;
- (l) information relating to the successful bidder's performance on the contract; and
- (m) information relating to complaints, resolution decisions and appeals.

## **ARTICLE 21**

### **CONTRACT ADMINISTRATION**

1. Contracting Parties shall employ their best endeavours to ensure that procurement personnel are adequately trained and qualified to administer procurement and contract administration procedures.
2. The Community shall employ, on an ongoing basis, its best endeavours to design regional training programmes and to assist Contracting Parties with the implementation of such programmes.

## **ARTICLE 22**

### **STATISTICAL REPORTING**

1. The Community shall ensure the development, and encourage the use of an electronic database of statistical information and recording in the database of statistical data submitted by Contracting Parties in compliance with reporting requirements under the provisions of the Community public procurement regime.
2. The Community shall ensure access to the database in respect of information contained therein and facilitated by the Community Public Procurement Notice

Board.

3. Contracting Parties shall record, compile and store information relating to procurement proceedings and shall submit the information annually to the Community.
4. The Community shall ensure the development of common rules with respect to the maintenance, content and submission of annual reports and their dissemination as required in relation to the Community public procurement regime.

## **PART FIVE**

### **TRANSPARENCY, FAIRNESS AND SUPPLIER CHALLENGE**

#### **ARTICLE 23**

##### **TECHNICAL SPECIFICATIONS**

1. Contracting Parties shall ensure that procuring entities' use of design and technical specifications in their procurement proceedings is not intended to and does not have the effect of, unfairly limiting competition by directing the award of a contract to a particular supplier.
2. Contracting Parties shall ensure that where procuring entities prescribe technical specifications, such specifications:
  - (a) are included in the bidding documents;
  - (b) are worded in terms of performance, conformance and functional requirements, wherever possible, rather than design or descriptive characteristics;

- (c) are based on regional standards, where available, or on national standards or internationally recognized standards or codes;
- (d) do not refer to a particular trademark, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirements. Where this type of specification is unavoidable, words such as “equivalent” or “similar to” shall be included in the specification.

## **ARTICLE 24**

### **PRE- QUALIFICATION AND ELIGIBILITY OF SUPPLIERS**

1. Contracting Parties shall ensure that:
  - (a) any conditions for participation in a procurement opportunity that a procuring entity requires of an interested supplier are limited to conditions essential to ensuring that the supplier possesses the capabilities to fulfil the requirements of the procurement and the ability to execute the corresponding contract;
  - (b) procuring entities do not discriminate between national and non-national suppliers when identifying suppliers who are qualified to participate in a procurement opportunity;
  - (c) procuring entities’ decisions regarding the qualifications of suppliers are based solely on the conditions for participation specified in the bidding documents;
  - (d) where a supplier is rejected on the basis of qualifications, the procuring entity, at the request of the supplier, communicates to the supplier the reasons for its decision within a reasonable time.
2. Nothing in this Protocol shall prevent a procuring entity from disqualifying a supplier from a procurement opportunity on grounds of unfair competitive

- advantage, conflict of interest, bankruptcy, false declarations or conviction for criminal offences.
3. Contracting Parties shall ensure that procuring entities do not, as a prerequisite for award of a contract, impose artificial constraints that serve to limit procurement opportunities, such as conditions that require previous awards of contracts by the procuring entity or prior work experience in the territory of the procuring entity.
  4. The Community shall ensure the elaboration of common rules for the disqualification of suppliers mentioned in paragraph 2.
  5. The Community shall ensure the elaboration of a set of common rules and minimum standards for the use of procuring entities in their assessments of a supplier's eligibility to participate in procurement proceedings.

## **ARTICLE 25**

### **LIMITATION ON DISCLOSURE OF INFORMATION**

Contracting Parties shall ensure that unless ordered to do so by a court of competent jurisdiction, and subject to the conditions of such an order, procuring entities do not disclose information:

- (a) that prejudices legitimate commercial interests of bidders or inhibits fair competition; or
- (b) relating to the examination, evaluation and comparison of bids, other than the summary required by Article 20 (2)(i).

## **ARTICLE 26**

### **ANTI-CORRUPTION AND CONFLICTS OF INTEREST**

1. Contracting Parties shall create legal and administrative frameworks which require the

procurement personnel in procuring entities to:

- (a) discharge their duties impartially so as to ensure that responsible and qualified suppliers have fair and competitive access to procurement opportunities to which this Protocol applies; and
- (b) conduct themselves in such a manner as to foster public confidence in the integrity of the Community Public Procurement regime.

2. Notwithstanding the generality of paragraph 1, the legal and administrative frameworks shall require procurement personnel to:

- (a) abstain from attempting to realize personal gain from public office by conduct inconsistent with the proper discharge of duties;
- (b) avoid direct or indirect involvement in public procurement proceedings where:
  - (i) the officer or any member of his immediate family has a financial interest pertaining to the procurement;
  - (ii) a business or organization in which the officer or any member of his immediate family has a financial interest pertaining to the procurement; or
  - (iii) any other person, business or organisation with whom the officer or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement; and
- (c) abstain from soliciting or accepting from a supplier a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a procurement, influencing the content of any specification, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any public

procurement contract, sub-contract or activity;

(d) abstain from using confidential information for actual or anticipated personal gain or for actual or anticipated gain of any person.

3. Contracting Parties shall ensure that where an officer is involved in or about to become involved in public procurement proceedings under any of the circumstances referred to in paragraph 2 (b), the officer immediately declares his interest, in writing, and recuses himself from the procurement proceedings.

## **ARTICLE 27**

### **NORMS AND STANDARDS**

The Community shall develop and adopt norms and standards to be complied with by Contracting Parties' procurement personnel as well as by suppliers and bidders to be included in the Community public procurement regime for the implementation and enforcement by all Contracting Parties. Non-compliance with these norms and standards shall be subject to the laws of the Contracting Party where the non-compliance occurred.

## **ARTICLE 28**

### **PROTECTION OF ACTS DONE IN GOOD FAITH**

1. No suit, prosecution or other legal proceedings shall lie against the Government of a Contracting Party, any officer of the Government or any other person exercising any power or performing any duty under this Protocol in respect of anything which, in good faith, is done, intended to be done or omitted in pursuance of this Protocol or any rules or orders made thereunder, or in respect of any publication by or under the authority of the Government, such officer or such other person of any report, paper or proceedings.

2. No suit or their legal proceedings shall lie against a person referred to in paragraph 5 or the Government of a Contracting Party for any damage, loss or injury caused or likely to be caused by anything which, in good faith, is done, intended to be done or omitted in pursuance of this Act or any rule or order made thereunder.

## **ARTICLE 29**

### **SUPPLIER CHALLENGE AND REVIEW**

1. The Community shall ensure the development of common non-discriminatory, timely, transparent and effective challenge and review procedures.
2. Contracting Parties shall provide for the independent hearing and consideration of supplier challenges. Such hearings may be at the administrative or judicial levels. When an authority other than a court hears a supplier challenge, the supplier's right to seek judicial review shall not be prejudiced.
3. Contracting Parties shall ensure that the exercise of a supplier's right to challenge and seek review of the procurement decisions of their procuring entities does not prejudice that supplier's participation in ongoing or future procurement opportunities within the Contracting Party to which the procuring entity belongs.

## **PART SIX**

### **TECHNICAL COOPERATION AND ASSISTANCE**

## **ARTICLE 30**

### **TECHNICAL COOPERATION AND ASSISTANCE**

1. At the request of any disadvantaged country, region, sector or less developed country, the COTED shall provide technical cooperation and assistance for the

purpose of enabling any such disadvantaged or less developed country, region or sector to participate in the Community Public Procurement regime and to discharge relevant responsibilities thereunder.

2. The mode, scope and extent of such technical cooperation and assistance shall be agreed between the relevant Contracting Parties and notified to the Permanent Joint Council on Public Procurement.

## **PART SEVEN**

### **INSTITUTIONAL ARRANGEMENTS**

#### **ARTICLE 31**

#### **THE PERMANENT JOINT COUNCIL ON PUBLIC PROCUREMENT**

1. The Community shall establish the Permanent Joint Council on Public Procurement (Permanent Joint Council) before this Protocol enters into force.
2. At its first meeting, the Permanent Joint Council shall establish its rules of procedure which shall address, *inter alia*, the election and terms of office of its officials.
3. The Permanent Joint Council shall:
  - (a) be constituted as a Body of the Community consistent with Article 18 of the Revised Treaty;
  - (b) be comprised of Ministers of the COTED and the COFAP which may delegate authority to officials of those Bodies to

- take decisions in accordance with this Article; and
- (c) report to the Community Council on decisions and actions taken in relation to the operation of this Protocol.
4. Without prejudice to the generality of the foregoing paragraph, the Permanent Joint Council shall:
- (a) oversee the implementation of the Community Policy on Public Procurement and compliance with the provisions of this Protocol;
  - (b) have responsibility for the long-term monitoring of the Community public procurement regime with the assistance of the Caribbean Community Secretariat and shall draw the attention of the Community Council of Ministers to persistent breaches of this Protocol;
  - (c) review and report on the Community public procurement regime every two years, the report on which shall be made available to Contracting Parties at the earliest opportunity after completion of such review and shall include a report on the application of any provisions pursuant to Part Six of this Protocol and Chapter 7 of the Revised Treaty. The purpose of such a report shall be for the Community to adopt and take action, as necessary, designed to enhance the effectiveness of the Community public procurement regime;
  - (d) notwithstanding sub-paragraph (c), convene, as necessary, to examine and evaluate the operation of the Community public procurement regime and progress in achieving its objectives, including the performance of the periodic reviews in respect of the disadvantaged or less developed countries, sectors and regions;
  - (e) in its decision-making processes promote, as far as practicable, the use of electronic communications in light of the reasonableness of cost, scope and ease of access;
  - (f) coordinate the development of a Community database of government

public statistical information and make decisions relative to the accessibility of the information it contains;

- (g) coordinate and promote the design of training programmes, as necessary, to support the implementation processes at the Community level and in Contracting Parties; and
  - (h) coordinate, as necessary, the requests and provision of technical cooperation and assistance referred to in Article 30.
5. The Permanent Joint Council shall establish, as it considers necessary, ad hoc Working Groups comprised of trade and public procurement officials to assist in the discharge of its responsibilities detailed in this Protocol.

## **ARTICLE 32**

### **COMMUNITY PUBLIC PROCUREMENT**

#### **NOTICE BOARD**

1. The Community shall:
  - (a) establish a Community Public Procurement Notice Board before this Protocol enters into force, which shall be accessible to all interested stakeholders; and
  - (b) be responsible for maintaining the Community Public Procurement Notice Board.
  
2. For the purpose of facilitating the implementation of the Community Public Procurement Regime, Contracting Parties and the Community shall use the Community Public Procurement Notice Board to discharge the obligations set out in this Protocol, relating, *inter alia*, to:
  - (a) supplier exchange of information to facilitate joint bidding activities;
  - (b) publication of the following:

- (i) annual procurement plans;
  - (ii) procurement opportunities;
  - (iii) contract award notices;
  - (iv) designated national and Community contact points;
  - (v) Community Suppliers Register;
  - (vi) Community standard bidding documents; and
  - (vii) modifications or amendments to coverage;
- (c) accessibility to the electronic database of regional public procurement statistics.
3. The Community and Contracting Parties, as the case may require, shall employ the respective administrative and technical capacities required to utilize optimally, the Community Public Procurement Notice Board in accordance with relevant provisions of this Protocol.

### **ARTICLE 33**

#### **SUPPLIERS REGISTERS**

1. For the purpose of the Community Public Procurement regime, the Community shall establish and maintain a Community Suppliers Register, which shall –
- (a) consist of the names and contact and other information regarding registered suppliers in each Contracting Party;
  - (b) be published on the Community Public Procurement Notice Board; and
  - (c) to varying degrees, be accessible to procuring entities, suppliers, other suppliers and any member of the general public.
2. Each Contracting Party shall compile and maintain a national suppliers register of suppliers registered in that Contracting Party.

3. Contracting Parties shall be responsible for submitting their national suppliers register for publication on the Notice Board.

## **PART EIGHT**

### **SPECIAL PROVISIONS**

#### **ARTICLE 34**

##### **DISPUTE SETTLEMENT**

The dispute settlement procedures set out in Chapter Nine of the Revised Treaty shall apply, *mutatis mutandis*, to the resolution of disputes between Contracting Parties within the contemplation of this Protocol.

#### **ARTICLE 35**

##### **PUBLIC PROCUREMENT AND THE ENVIRONMENT**

Nothing in this Protocol shall be construed as precluding procuring entities from employing their best endeavours to incorporate green procurement considerations in their public procurement.

#### **ARTICLE 36**

##### **GENERAL AND SECURITY EXCEPTIONS**

The provisions contained in Articles 225 and 226 of the Revised Treaty shall apply to this Protocol, *mutatis mutandis*.

**PART NINE**

**FINAL PROVISIONS**

**ARTICLE 37**

**SIGNATURE AND PROVISIONAL APPLICATION**

This Protocol shall be open for signature by the Members of the Community and shall be provisionally applied upon signature by five Members of the Community.

**ARTICLE 38**

**RATIFICATION**

This Protocol shall be subject to ratification. Instruments of Ratification shall be deposited with the Caribbean Community Secretariat which shall transmit certified copies to the Government of each Contracting Party.

**ARTICLE 39**

**ENTRY INTO FORCE**

This Protocol shall enter into force one month after the date on which the fifth instrument of ratification is deposited with the Caribbean Community Secretariat.

**ARTICLE 40**

**AMENDMENTS**

1. Except as otherwise provided in Article 6, this Protocol may be amended by the unanimous decision of the Contracting Parties.
2. An amendment shall enter into force one month after the date on which the last instrument of ratification is deposited with the Caribbean Community Secretariat.

**ARTICLE 41**

**RESERVATIONS**

Reservations may be entered to this Protocol with the consent of the signatory Members of the Community.

**ARTICLE 42**

**ACCESSION**

1. After the entry into force of this Protocol, a Member of the Community may accede to this Protocol.
2. Instruments of Accession shall be deposited with the Caribbean Community Secretariat which shall transmit a certified copy to the Government of each Contracting Party.
3. Where a Member of the Community accedes to this Protocol, this Protocol shall enter into force for that Member one month after the date on which the Member deposits its instrument of ratification with the Caribbean Community Secretariat.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto by their respective Governments, hereby sign the present Protocol.

**DONE at**

on the            day of

Signed by

for the Government of Antigua and Barbuda on the            day of

at

Signed by

For the Government of the Bahamas on the            day of            at

Signed by

for the Government of Barbados on the            day of

at

Signed by

for the Government of Belize on the            day of

at



May 12, 2017

Signed by

for the Government of the Republic of Haiti on the

day of

at

Signed by the Government of Montserrat on the

day of

at

Signed by

for the Government of the Republic of Trinidad and Tobago on the day of

at

Signed by

for the Government of Saint Lucia on the

day of

at

Signed by

for the Government of St. Vincent and the Grenadines on the

day of

at

Signed by

for the Government of Suriname on the

day of

at

**ANNEX A**

**THRESHOLDS**

(referred to in Article 5 paragraph 1 (b))

This Annex specifies the threshold values at and above which public procurement contracts are governed by the Protocol on Public Procurement for the Caribbean Community.

***Thresholds***

- (a) Goods: USD \$150,000.00
- (b) Services: USD \$150,000.00
- (c) Works: USD \$3,000,000.00
- (d) A combination of goods and works or services and works USD \$3,000,000.00
- (e) A combination of goods and services USD \$150,000.00

**ANNEX B**

**EXCLUDED TYPES OF PUBLIC PROCUREMENT**

(referred to in Article 5 paragraph 2 (d))

1. The table, below, indicates the types of public procurement contracts for the procurement of goods, services and works that are excluded from the scope of the Protocol on Public Procurement for the Caribbean Community.
2. The table is composed of –
  - (a) three columns with the headings “Goods”, “Services” and “Works”, respectively; and
  - (b) rows in which types of public procurement contracts that are excluded from the scope of the Protocol are specified.

| <b>Goods Contracts</b>  | <b>Services Contracts</b>   | <b>Works Contracts</b> |
|---|---|------------------------|
| Works of art, cultural performances, products associated with creative expression for cultural performances   | Works of art, cultural performances, products associated with creative expression for cultural performances   |                        |
| Relating to the staging of productions in support of or associated with creative expression and cultural events, including – <ol style="list-style-type: none"> <li>(a) artistic coordination, direction and management;</li> <li>(b) management of artistic works and events;</li> <li>(c) management of intellectual property rights;</li> <li>(d) venue rental;</li> </ol> | Relating to the staging of productions in support of or associated with creative expression and cultural events, including – <ol style="list-style-type: none"> <li>(a) artistic coordination, direction and management;</li> <li>(b) management of artistic works and events;</li> <li>(c) management of intellectual property rights;</li> <li>(d) venue rental;</li> </ol> |                        |

|  |   |  |
|--|---|--|
| (e) infrastructure and technical effects;<br>(f) design and technical direction of cultural performances | (e) infrastructure and technical effects;<br>(f) design and technical direction of cultural performances                          |  |
|  | Legal advisory and legal representation   |  |
| Medallions and insignias for use in national honours and national awards                                 | Medallions and insignias for use in national honours and national awards  |  |
| Goods of a sensitive nature for use in or for the purpose of national defence or national security       | Services of a sensitive nature for use in or for the purpose of national defence or national security                             | Works of a sensitive nature for use in or for the purpose of national defence or national security |
| Relating to or connected with the operations of diplomatic missions or consulates                        | Relating to or connected with the operations of diplomatic missions or consulates   | Relating to or connected with the operations of diplomatic missions or consulates                  |
|  | Fiscal agency or depository services  |  |
|  | Liquidation and management services for regulated financial institutions  |  |
|  | Related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities |  |
|  | Co-sponsorship arrangements, trade and travel shows and   |  |

|   |  |   |
|---|--|---|
|   | cooperative advertising  |   |
|   |  | Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers or private economic operators |
|   | For research and development of a sensitive or confidential nature   |   |
|   | Relating to the management of employee pension funds   |   |
|   | Postal, courier and express courier services   |   |
|   | Utility services such as services for the supply of electricity, telecommunications and piped water                  |   |
|   |  | Immovable property or rights in relation thereto  |
|   | Contracts of service or contracts for service for the hiring of Government employees and related employment measures |   |
| In relation to privately funded charities | In relation to privately funded charities  | In relation to privately funded charities   |