

**PROTOCOL**

**ON**

**PUBLIC PROCUREMENT**

**FOR THE CARIBBEAN COMMUNITY**

# **ARRANGEMENT OF ARTICLES**

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## **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 Member States' transition from government procurement to 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;

**Acknowledging** that the Less Developed Countries are disadvantaged by reason of the size, structure and vulnerability of their economies and require a greater policy space in the context of public procurement contracts for the procurement of works in order to facilitate adjustment to competition in the Community public procurement regime;

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

**Convinced** that a sound, efficient, transparent and credible policy of public procurement by the Member States will contribute significantly to the achievement of the objectives of the Caribbean Single Market,

**Have agreed** as follows:

**PART ONE**  
**GENERAL PROVISIONS**

**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 established by Article 2 of the Revised Treaty and includes the CSME 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”** means the electronic notice board established by the Contracting Parties pursuant to Article 31;

**“Community public procurement regime”** means the regime operated among Contracting Parties in which public procurements to which this Protocol applies are conducted;

**“Community Rules of Origin”** means the Rules of Origin set out in Article 84 of the Revised Treaty, in so far as they may be applicable, and as amended from time to time;

**“Community Suppliers Register”** means the register described in paragraph 1 of Article 32;

**“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 replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and

Tobago on 4 July 1973;

**“disadvantaged country, region or sector”** means a country, region or sector so designated under paragraph 2 of Article 142 of the Revised Treaty;

**“effectively controlled”** in the context of a company or other legal entity, means the power to name a majority of its directors or to otherwise legally direct its actions;

**“force majeure”:**

- (a) means an event that is beyond the reasonable control of a person and which makes the person’s performance of his or her obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances; and
- (b) includes –
  - (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) utilising 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;

**“less developed countries”** means the countries referred to as less developed countries in Article 4 of the Revised Treaty;

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

**“more developed countries”** means the countries referred to as more developed countries in Article 4 of the Revised Treaty;

**“national of a Contracting Party”** means:

- (a) an individual who:
  - (i) is a citizen of a Contracting Party; or
  - (ii) has a connection with a Contracting Party of a kind which entitles him to be regarded as belonging to it or as being a native or resident of a Contracting Party for the purposes of the laws of the respective Contracting Party relating to immigration; or
- (b) a company or other legal entity constituted in a Contracting Party in conformity with the laws thereof and which that Contracting Party regards as belonging to it, provided that such company or other legal entity:

- (i) has its registered office and central administration, and carries on substantial activity within a Contracting Party; and
- (ii) is substantially owned and effectively controlled by an individual mentioned in paragraph (a);

**“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 an interested supplier may submit a bid for a procurement contract;

**“Permanent Joint Council”** means the Permanent Joint Council on Public Procurement established under Article 30;

**“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 procurement proceedings;

**“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 a central, sub-central or local government entity, statutory body, state-owned entity or other undertaking in a Contracting Party that engages in public procurement;

**“public asset”** means any new or existing infrastructure 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 a 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) to develop (possibly by significant upgrade or renovation) and to manage a public asset or to provide a service on behalf of the procuring entity;
- (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 to the private party is significantly linked to performance or the demand for or use of the public asset or service

related to, or offered by means of, the public asset so as to align the interests of the procuring entity and the private party;

**“public procurement”** means procurement for or on behalf of a procuring entity 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 participate and are interested in participating in a procurement opportunity;

**“Revised Treaty”** means the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001;

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

**“substantially owned”** in the context of a company or other legal entity, means having a beneficial ownership of more than 50 per cent of the equity interest therein;

**“supplier”** means a national of a Contracting Party, who offers the execution of works or the supply of goods or services on a market but 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; and

**“Treaty”** means the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and Tobago on 4 July 1973;

## **ARTICLE 2**

### **OBJECTIVES**

This Protocol establishes the conditions and procedures for the progressive integration of the national public procurement market of each Contracting Party 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:

- (a) creates the necessary competitive and non-discriminatory conditions to facilitate achievement of best value for money;
- (b) provides opportunities for access to a single market with regional sales opportunities;
- (c) strengthens the competitiveness of the regional supplier base in particular in relation to micro, small and medium-sized enterprises; and

- (d) encourages the rational use of scarce resources.

### **ARTICLE 3**

#### **OPERATING PRINCIPLES**

1. Consistent with the objective of this Protocol, each Contracting Party shall, in its 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, each Contracting Party 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 the goods, services, works and suppliers of a Member State not party to this Protocol or a third country;

- (d) ensure that 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 on public procurement and procurement opportunities is made accessible and widely available to suppliers in a consistent and timely manner at reasonable or no cost.

#### **ARTICLE 4 IMPLEMENTATION**

In the context of public procurements to which this Protocol applies, each Contracting Party:

- (a) shall enact, monitor and enforce appropriate public procurement legislation that is compatible with the provisions of this Protocol;
- (b) shall establish, strengthen and maintain national institutional arrangements to ensure the enforcement of and compliance with public procurement legislation enacted in accordance with paragraph (a); and
- (c) shall not introduce in its territory any new restrictions, whether or not so expressly stated, the effect of which would be to prohibit or otherwise limit the participation of suppliers in public procurements to which this Protocol applies.

#### **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.
2. The provisions of this Protocol shall not apply to public procurements:
  - (a) under agreements between a Contracting Party and an international organisation which limit participation in public procurement;
  - (b) under agreements between a Contracting Party and:
    - (i) a Member State that is not party to this Protocol; or
    - (ii) a third country,  
  
for the joint implementation or exploitation of a project by the parties which are financed by the Member State or third country and limit participation in public procurement; or
  - (c) of the types specified in Annex B.

**ARTICLE 6**  
**THRESHOLD REVIEW**

1. Subject to paragraph 2, the Contracting Parties may, from time to time, amend Annex A in accordance with Article 39, in order to ensure the achievement of the objectives of this Protocol.
2. The Permanent Joint Council shall review the thresholds specified in Annex A at

- least every two years, taking into account the considerations referred to in paragraph 4 and shall, where necessary and appropriate, recommend to the Contracting Parties that the thresholds be amended.
3. Recommendations of the Permanent Joint Council shall be made on the affirmative vote of two-thirds of the members of the Permanent Joint Council, present and voting.
  4. The Permanent Joint Council and the Contracting Parties shall take the following into consideration to determine 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 Permanent Joint Council and the Contracting Parties consider appropriate.

## **ARTICLE 7**

### **CONTRACT VALUATION RULES**

1. Paragraphs 2 to 6 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. Each Contracting Party shall ensure that its 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

- (hereinafter referred to as “recurring contracts”), the basis for calculating the estimated total maximum value shall be:
- (a) where no similar recurring contracts have been concluded over the previous 12 months, the estimated value of similar recurring contracts to be concluded during the 12 months subsequent to the initial contract; 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;
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 the term:
    - (i) is 12 months or less, the total estimated contract value for the contract’s duration; or
    - (ii) 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**

Each Contracting Party shall apply the Community Rules of Origin to public procurements under this Protocol.

**ARTICLE 9**  
**PROHIBITION OF OFFSETS**

Each Contracting Party shall ensure that its 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. Each Contracting Party shall employ its best endeavours in 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 the 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**  
**INFORMATION SYSTEMS**

Each Contracting Party shall establish information systems comprising traditional and electronic media which shall be accessible by procuring entities and suppliers.

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

**ARTICLE 12**  
**COMMUNITY STANDARD BIDDING DOCUMENTS**

1. The Community Standard Bidding Documents shall include:
  - (a) standard forms and content of the invitation to bid;
  - (b) instructions to bidders;
  - (c) form of bid;
  - (d) form and conditions of contract; and
  - (e) any necessary appendices, such as formats for bid securities.
2. The Community Standard Bidding Documents shall be published on the Community Public Procurement Notice Board.
3. Subject to paragraph (6), each Contracting Party shall ensure that its procuring entities use the Community Standard Bidding Documents in public procurements to

which this Protocol applies.

4. The Permanent Joint Council shall be responsible for considering and approving any modifications of or amendments to the Community Standard Bidding Documents as well as ensuring the accuracy and currency of such documentation.
5. Each Contracting Party may submit requests for modifications of and amendments to the Community Standard Bidding Documents to the Permanent Joint Council for its consideration and approval.
6. Notwithstanding paragraph 3, the Permanent Joint Council may approve the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies.

### **ARTICLE 13**

#### **ANNUAL PROCUREMENT PLAN**

1. Each Contracting Party shall ensure that its procuring entities publish their Annual Procurement Plans on the Community Public Procurement 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 procurements 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 related invitations to bid, where such information is available.
3. Each Contracting Party shall employ its best endeavours to ensure that its procuring entities conduct procurement proceedings in accordance with their Annual Procurement Plans.

4. Annual Procurement Plans shall not be binding on the procuring entities that publish them.

#### **ARTICLE 14**

##### **PUBLICATION OF PROCUREMENT OPPORTUNITIES**

1. Subject to paragraph 2, each Contracting Party shall ensure that its procuring entities publish invitations to bid on the Community Public Procurement Notice Board.
2. Where a method which does not require the publication of an invitation to be bid is being employed, paragraph 1 shall not apply.

#### **ARTICLE 15**

##### **PROCUREMENT METHODS**

1. Subject to paragraph 2, each Contracting Party, shall ensure that its procuring entities employ open bidding for public procurements valued at or above the relevant threshold.
2. Notwithstanding paragraph 1, a Contracting Party may permit its procuring entities to 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 for the goods, services or works to be procured 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 such 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 such a method;
- (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 public procurement 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 a Contracting Party employ a procurement method other than open bidding, the Contracting Party 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, each Contracting Party shall develop appropriate and effective rules and guidelines governing procurement planning, advertising media, e-procurement, security of bids, establishment of bid evaluation committees, time-frames and content and fees for bidding documents.

## **ARTICLE 16**

### **TIME LIMITS**

Each Contracting Party shall ensure that:

- (a) all time limits applied to procurement opportunities offered by procuring entities under this Protocol are adequate to allow interested suppliers to prepare and submit bids;
- (b) its 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;
- (c) where its 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; and

- (d) when its procuring entities use procurement methods other than open bidding they comply with paragraph (b) and provide reasonable time limits consistent with the requirements of the procurement and the objectives of this Protocol.

## **ARTICLE 17**

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

1. Each Contracting Party shall ensure that procuring entities:
  - (a) require the submission of bids in writing;
  - (c) receive and open bids under conditions and procedures that guarantee transparency, fairness and objectivity; and
  - (c) subject to paragraph 2, return unopened to the senders, bids received after the closing date and time for submission.
2. Notwithstanding paragraph 1(c), each Contracting Party shall ensure that its 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. Each Contracting Party shall elaborate procedures and conditions that guarantee transparency, fairness and objectivity in the receiving and opening of bids.

## **ARTICLE 18**

### **EVALUATION OF BIDS AND NOTICE OF SUCCESSFUL BID**

1. Each Contracting Party shall ensure that procuring entities:

- (a) evaluate only bids which, at the time of opening, materially comply with the requirements for participation as described in the bidding documents; and
  - (b) evaluate bids fairly and objectively and solely on the basis of the evaluation criteria contained in the relevant bidding documents.
- 2. Subject to paragraph 4, each Contracting Party 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. The notice of successful bid shall be transmitted simultaneously to all participating bidders.
- 3. Each Contracting Party 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.
- 4. Each Contracting Party shall ensure that where its procuring entities cancel procurement opportunities:
  - (a) such cancellations are done prior to an award of contract; and
  - (b) the procuring entities provide reasons for cancellations, 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, each Contracting Party shall ensure that when its procuring entities award procurement contracts, the

procuring entities:

- (a) immediately notify all bidders participating in the procurement proceedings of the contract award;
  - (b) publish a notice of contract award on the Community Public Procurement Notice Board for general information; and
  - (c) ensure that notifications and publications done pursuant to sub-paragraphs (a) and (b), respectively, are dispatched within three (3) working days from the date of the award of contract.
2. Notices of contract award shall 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. Each Contracting Party shall ensure that its procuring entities establish, 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, each Contracting Party shall ensure that its procuring entities' procurement records are retained for a period of at the least five (5) years and contain, at the minimum:
  - (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;

- (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 any complaints and their determination including their determination on appeal.

## **ARTICLE 21**

### **CONTRACT ADMINISTRATION**

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

## **ARTICLE 22**

### **STATISTICAL REPORTING**

1. Each Contracting Party shall record, compile and store information relating to public procurement proceedings and shall submit the information annually to the Secretariat for inclusion in the database referred to in paragraph 3.

2. The Contracting Parties shall develop common rules with respect to the content, submission, maintenance and accessibility of the information to be submitted pursuant to paragraph 1.
3. An electronic database of statistical information shall be developed for the storage of information submitted by each Contracting Party pursuant to paragraph 1.
4. Subject to paragraph 2, each Contracting Party shall have access to the database.

**PART FIVE**  
**TRANSPARENCY, FAIRNESS AND SUPPLIER CHALLENGE**

**ARTICLE 23**  
**TECHNICAL SPECIFICATIONS**

1. Each Contracting Party shall ensure that its 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. Each Contracting Party shall ensure that where its 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 recognised standards or codes; and

- (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.
3. Where a specification referred to in paragraph 2 (d) is unavoidable, words such as “equivalent to” or “similar to” shall be included in the specification.

## **ARTICLE 24**

### **QUALIFICATION AND ELIGIBILITY OF SUPPLIERS**

1. Each Contracting Party 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 necessary to ensure that the supplier possesses the capabilities to fulfil the requirements of the procurement contract;
  - (b) its procuring entities do not discriminate between suppliers who are their own nationals and suppliers who are nationals of other Contracting Parties when identifying suppliers who are qualified to participate in a procurement opportunity;
  - (c) its 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 Contracting Party from permitting a procuring entity to disqualify a supplier from a procurement opportunity on the grounds of unfair competitive advantage, conflict of interest, bankruptcy, false declarations or conviction for criminal offences.
3. Each Contracting Party shall ensure that its 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 Contracting Parties shall establish common rules for the disqualification of suppliers mentioned in paragraph 2.
5. The Contracting Parties shall establish common rules and minimum standards for procuring entities' use in their assessments of a supplier's eligibility to participate in procurement proceedings.

## **ARTICLE 25**

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

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

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

**ARTICLE 26**  
**ANTI-CORRUPTION AND CONFLICTS OF INTEREST**

1. Each Contracting Party shall establish legal and administrative frameworks which require the procurement personnel of its procuring entities to:
  - (a) discharge their duties impartially so as to ensure that 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 realise 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) an officer or a member of the officer's immediate family has a financial interest pertaining to the procurement;
    - (ii) a business or organisation in which the officer or any member of the officer's immediate family has a financial interest is involved in the procurement; or
    - (iii) any other person, business or organisation with whom the officer or

any member of the officer's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement;

- (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; and
  - (d) abstain from using confidential information for their actual or anticipated personal gain or for the actual or anticipated gain of any other person.
3. Each Contracting Party shall ensure that where an officer is involved in or is about to become involved in procurement proceedings under any of the circumstances referred to in paragraph 2 (b), the officer immediately declares his or her interest, in writing, and recuses himself from the procurement proceedings.

## **ARTICLE 27**

### **NORMS AND STANDARDS**

The Contracting Parties shall develop and adopt norms and standards to be complied with by the procuring entities' 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**  
**SUPPLIER CHALLENGE AND REVIEW**

1. The Contracting Parties shall develop common non-discriminatory, timely, transparent and effective challenge and review procedures.
2. Each Contracting Party shall provide for the independent hearing and consideration of supplier challenges. Such hearings may be at the administrative or judicial levels. Where an authority other than a court hears a supplier challenge, the Contracting Party shall ensure that the supplier's right to seek judicial review is not prejudiced.
3. Each Contracting Party shall ensure that the exercise of a supplier's right to challenge and seek review of a procuring entity's procurement decisions 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 29**  
**TECHNICAL COOPERATION AND ASSISTANCE**

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

- disadvantaged 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 determined by the COTED and notified to the Permanent Joint Council.

**PART SEVEN**  
**INSTITUTIONAL ARRANGEMENTS**

**ARTICLE 30**  
**THE PERMANENT JOINT COUNCIL ON**  
**PUBLIC PROCUREMENT**

1. There is hereby established, for the purposes of this Protocol, the Permanent Joint Council on Public Procurement which 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 breaches of this Protocol;
  - (c) in accordance with Article 6, at least every two years review the thresholds specified in Annex A and, where necessary and appropriate, recommend that the Contracting Parties amend Annex A;
  - (d) convene, as necessary, to examine and evaluate the operation of the Community public procurement regime and its progress in achieving its objectives, including performance of the periodic reviews in respect of

the disadvantaged countries, regions and sectors;

- (e) report to COTED on the Community public procurement regime every two (2) years to enable COTED to take action, as necessary, pursuant to Article 29;
  - (f) pursuant to Article 12 paragraph 4, be responsible for considering and approving modifications of and amendments to the Community Standard Bidding Documents;
  - (g) pursuant to Article 12 paragraph 6, be responsible for approving the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies;
  - (h) 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;
  - (i) coordinate the development of an electronic database of statistical information relating to public procurement proceedings for use by the Contracting Parties and make recommendations to the Contracting Parties regarding common rules for the content, submission, maintenance and accessibility of the information it contains; and
  - (j) coordinate and promote the design of training programmes, as necessary, and support the implementation processes in Contracting Parties.
2. The report referred to in paragraph 1(e) shall include information on the application of any provisions pursuant to Part Six of this Protocol and Chapter 7 of the Revised Treaty and shall be made available to the Contracting Parties at the earliest opportunity after its completion.

3. The Permanent Joint Council shall consist of senior public procurement officials or senior trade officials designated by the Contracting Parties. Each Contracting Party shall designate one senior public procurement official or senior trade official as its representative on the Permanent Joint Council.
4. At its first meeting, the Permanent Joint Council shall determine its rules of procedure.
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 31**  
**COMMUNITY PUBLIC PROCUREMENT**  
**NOTICE BOARD**

1. There shall be, for the purposes of this Protocol, a Community Public Procurement Notice Board which shall be:
  - (a) established by the Contracting Parties;
  - (b) used for the purposes of displaying the information relating to the obligations specified in paragraph 2; and
  - (c) accessible to all interested stakeholders.
2. Each Contracting Party shall use the Community Public Procurement Notice Board to discharge their obligations under this Protocol, including those relating 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; and
    - (vi) Community standard bidding documents;
  - (c) the electronic database of regional public procurement statistics.
3. Each Contracting Party shall employ the respective administrative and technical capacities required to utilise optimally the Community Public Procurement Notice Board in accordance with the provisions of this Protocol.

## **ARTICLE 32**

### **COMMUNITY AND NATIONAL SUPPLIERS REGISTERS**

1. The Contracting Parties shall establish a Community Suppliers Register, which shall –
  - (a) consist of the names and contact and other information of suppliers registered in the national register of 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 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. Each Contracting Party shall be responsible for submitting its national suppliers register for publication on the Community Public Procurement Notice Board.

**PART EIGHT  
SPECIAL PROVISIONS**

**ARTICLE 33  
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 34  
PUBLIC PROCUREMENT AND THE ENVIRONMENT**

Nothing in this Protocol shall be construed as precluding a Contracting Party from employing its best endeavours to incorporate green procurement considerations in its public procurement.

**ARTICLE 35  
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 36**

#### **SIGNATURE AND PROVISIONAL APPLICATION**

1. A Member State may, upon the signing of this Protocol or at any later date before it enters into force, declare its intention to apply it provisionally.
2. Upon such declaration by five (5) Member States, the provisions of this Protocol shall be applied provisionally pending its entry into force in accordance with Article 38.

### **ARTICLE 37**

#### **RATIFICATION**

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

### **ARTICLE 38**

#### **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 Secretariat.

### **ARTICLE 39**

#### **AMENDMENTS**

1. 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 Secretariat.

**ARTICLE 40**  
**RESERVATIONS**

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

**ARTICLE 41**  
**ACCESSION**

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

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

**DONE at**

on the            day of

Signed by









## ANNEX A

### THRESHOLDS

(referred to in Article 5 paragraph 1)

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*

TYPE OF CONTRACT	CONTRACT VALUES	
	More Developed Countries (USD)	Less Developed Countries (USD)
Goods	150,000.00	150,000.00
Services	150,000.00	150,000.00
Works	3,000,000.00	4,000,000.00
Combination of goods and works or services and works	\$3,000,000.00	4,000,000.00
Combination of goods and services	150,000.00	150,000.00

## ANNEX B

### EXCLUDED TYPES OF PUBLIC PROCUREMENT

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

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> <li>(e) infrastructure and technical effects;</li> <li>(f) design and technical direction of cultural performances</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> <li>(e) infrastructure and technical effects;</li> <li>(f) design and technical direction of cultural performances</li> </ol>	

	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	Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers
	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