Draft of Model Law on Offsets into International Public Procurement

FOR COMMENTS

Context:

A standalone Community of Practice (CoP) dedicated to the compensatory measures in international government procurement contracts was created on the 29th October 2013 in the framework of the GFLJD (Global Forum on Law, Justice and Development). The GFLJD is a permanent, global forum, with its Secretariat housed at the World Bank, which seeks to connect experts and stakeholders from around the world, and which provides a mechanism for continual and efficient knowledge exchange as well as for the cogeneration of innovative solutions to development challenges based on efficiency, equity and justice.

The GFLJD aims to facilitate the identification, discussion, production and/or sharing of innovative and customized legal and institutional tools to address global, regional or national development challenges.

After submitted a concept note on offsets practices as a major development challenge, the standalone COP on compensatory measures in international government procurement contracts was created with the commitment to produce targeted knowledge products representing innovative legal solutions to the challenges identified.

The aim of the working group on the compensatory measures into international public procurement is to understand how globalization is creating a new legal normativity in order ultimately to make a proposal to frame this globalization. Indeed, economic compensation is probably one of the most important forms of international cooperation, development and regulation of globalization.

The purpose of the CoPs on offsets issues is to develop fruitful and constructive dialogue between the different methodological trends and to propose a
comprehensive draft to create a model law (UNCITRAL).

To date, the working group brings together several international partners (ECCO, OECD, American Bar, IHEJ, law firms, Nagoya-Japan University, London University).

There are 2 phases to this project:

- Phase 1: Carry out a cross analysis on offset practices (done, draft published on LDJ site)
- Phase 2: Draft a model law on offset based on the UNCITRAL Model law for public procurement (the actual texte below)

Since the beginning in October 29, 2013, the CoP has held twenty six work sessions.

This CoP is under the leadership of the European Club for Countertrade and Offset (ECCO). The main role of the leader is to ensure that the project progresses adequately, facilitating the participation of the members of the CoP.
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CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

This Law applies to all offset contracts (direct, indirect, semi-direct) into international public procurement in the field of civil, defence, security.

Article 2. Definitions

For the purposes of this Law:

(a) “Offset means any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement.\(^2\)

(b) “offset contract” means a counterpart of a main export sales contract in a high technology sector where the government imposes on its overseas supplier an obligation to perform direct offset, or indirect offset, or semi-direct offset. The offset contract sets the value as well as the schedule of the offset obligation to be met by the supplier in line with the proportions set in the applicable offset legislation. The offsets contract maybe signed before or after, the main contract come into force.

(b’) direct offsets involved the transfert of value added attached to the prime contract that are directly related to the goods or services being sold in the contract, such as transfert of technology, localization, license, coproduction or local subcontracting.

(b’’) indirect offsets are conditions (creation of Value Added) that are not linked to the subject matter of the prime contract

(b’’’) semi-direct offsets are conditions (creation of value added) related to the industry in the buyer country but not only directly on the products

\(^2\) Definition based on Article 11 – Marrakesh Agreement revised 2012 – applicable April 2014
or services sold. In this context, offsets can be a combination of obligations from direct offset and indirect offset.

(c) “offset obligation” means the obligation generated when a main export sales contract is signed with a public purchaser in a foreign country, under the terms of which the foreign salers accepted a bounding obligations from the sales to satisfy offset requirements imposed by the foreign purchaser.

(d) “Obligor” means the foreign supplier which enters into the offset contract with the buyer’s government to perform obligations and may include, depending upon the rules of the buying country, tier-1 vendors who undertake a portion of the offset obligations.

(e) “Main contract” means the government procurement contract, source of the offset contract.

(f) «Government procurement» means that in the context of international offset, contracts are awarded by government agencies, ministries or state-owned companies and involve infrastructure or high technology assets, goods and services.

(g) ‘Economic stabilization clause‘: this stipulates that the host state will not enact any legislation or take any administrative measures which have the effect of aggravating the costs of the project.

(h) “Currency” includes the monetary unit of account;

(i) “Direct solicitation” means solicitation addressed directly to one supplier or contractor or a restricted number of suppliers or contractors. This excludes solicitation addressed to a limited number of suppliers or contractors following pre-qualification or pre-selection proceedings;

(j) “Domestic procurement” means procurement limited to domestic suppliers or contractors;

(k) “Electronic reverse auction” means an online real-time purchasing
Technique utilized by the procuring entity to select the successful submission, which involves the presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;

(i) "Procuring entity" means:

Option I

(i) Any governmental department, agency, organ or other unit, or any subdivision or multiplicity thereof, that engages in procurement, except ...; [and]

Option II

(i) Any department, agency, organ or other unit, or any subdivision or multiplicity thereof, of the [Government] [other term used to refer to the national Government of the enacting State] that engages in offset

(ii) [The enacting State may insert in this subparagraph and, if necessary, in subsequent subparagraphs other entities or enterprises, or categories thereof, to be included in the definition of “procuring entity”];

(m) “Solicitation” means a requirement coming from procuring entity

(n) “Solicitation document” means a document issued by the procuring entity

(o) “A submission (or submissions)” means, a proposal (or proposals), an offer (or offers), a quotation (or quotations) and a bid (or bids) referred to collectively or generically, including, where the context so requires, an initial or indicative submission (or submissions);

(p) “Supplier or contractor” means, according to the context, any potential party or any party to the offset procurement proceedings with the procuring entity;
“Offset proposal” means a proposal furnished by a prospective seller to a Foreign purchaser by the terms of which the seller commits to satisfy the offset requirements of the purchaser and provides the information required by the purchaser in accordance with applicable offset requirements; offset proposals may be included with the supply contract submission or may be separately submitted, depending upon national requirements.

“offset security” to be defined

Article 3. International obligations of [this State] relating to offset obligations [and intergovernmental agreements within [this State]]

To the extent that this Law conflicts with an obligation of this State under or arising out of any:

(a) Treaty or other form of agreement to which it is a party with one or more other States; [or]

(b) Agreement entered into by this State with an intergovernmental international financing institution; [or]

(c) Agreement between the federal Government of [name of federal State] and any subdivision or subdivisions of [name of federal State] or between any two or more such subdivisions,

Article 4. Procurement regulations

The [name of the organ or authority authorized to promulgate the procurement regulations] is authorized and encourage to promulgate offsets regulations to fulfill the objectives and to implement the provisions of this Law.

Article 5. Publication of legal texts

Edited by the Working group “Offsets” within the World Bank Global Forum of Justice Development, lead by European Club of Countertrade and Offsets (ECCO)
1. This Law, the offset regulations and other legal texts of general application in connection with offsets covered by this Law, and all amendments thereto, shall be promptly made accessible to the public and systematically maintained.

2. Judicial decisions and administrative rulings with precedent value in connection with offsets covered by this Law shall be made available to the public.

**Article 6. Information on possible forthcoming public procurement with offsets**

Procuring entities are encouraged to publish information regarding prospective supply requirements where they expect suppliers to satisfy offset obligations. Where information regarding a future supply contract and expected offset obligations are published, the procuring entity should inform all known interested suppliers of any changes to applicable offset requirements.

**Article 7. Communications on procurement with offsets**

1. Offsets will fall under the remit of one or several relevant government agencies (e.g., Ministry / Department...) depending upon national law and practice. Such agency or agencies are those responsible for setting offset policies aligned to national economic objectives, for promulgation of offset rules, procedures and practices in accordance with national law, for the negotiation and approval of offset proposals, and for the administration of offset contracts. Collectively, these are referenced herein as the national Offset Authority (“OA”).

2. National rules vary with respect to offset process, requirements and necessary documentation. For purposes of illustration, a representative process for offset projects is as follows:

   - Suppliers receive notice of supply contract with offset requirement;
. Suppliers identify and conceptualize project(s) to satisfy offset requirements;
. Suppliers identify prospective offset partners and (where required) submit for approval;
. Offset Authority reviews and provides concept approval for specific project(s);
. Offset Authority reviews and provides approval for identified offset partners;
. Offset Authority may conduct feasibility study for project(s);
. Offset Authority may carry out due diligence for all parties;
. Offset Authority may require drafting of business plan including financials or other documentation to establish business commitments to offset partners;
. Offset Authority approves, where necessary, proposed offset partners and approves supplier’s business plan or offset business proposal
. Supplier and Offset Authority negotiate and conclude offset contract;
. Supplier performs offset contract subject to reporting and documentation requirements;
. Ongoing review and monitoring of project
. Offset Authority reviews proposed submissions for offset credit award;
. Supplier earns offset credit by performance of offset contract and discharges obligation upon full satisfaction.

3. Any document, notification, decision or other information generated in the course of an offset and communicated as required by this Law, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.

4. The procuring entity and the Offset Authority shall put in place measures to assure that competition-sensitive and proprietary
information of each supplier is protected against dissemination to unauthorized persons or disclosure to any other supplier. Examples of competition-sensitive and proprietary information include offset project plans, supply partners and prospective investments, joint ventures and tie-ups, and other trade secrets. The integrity of the offset process depends upon the protection of such information.

5. The procuring entity, Offset Authority and supplier shall have in place appropriate measures to secure the authenticity, integrity and confidentiality of information exchanged during the offset process.

Article 8 Participation by suppliers or contractors

1. The application of offset requirements to government procurement programs is determined by national law and practice. Suppliers have experienced offset requirements in both defense and civil sectors.

2. Suppliers or contractors shall be permitted to participate in offset proceedings without regard to nationality, except where the national law required otherwise.

3. Except when authorized or required to do so by the procurement regulations or other provisions of law of this State, the procuring entity shall establish no other requirement aimed at limiting the participation of suppliers or contractors in procurement proceedings that discriminates against or among suppliers or contractors or against categories thereof.

4. The procuring entity or offset authority shall make available to any person, upon request, its reasons for limiting the participation of suppliers or contractors in the offsets proceedings pursuant to this article.

Article 9 Qualifications of suppliers and contractors

1. This article applies to the ascertainment by the procuring entity of the qualifications of suppliers or contractors at any stage of the procurement proceedings.
Suppliers or contractors shall meet such of the following criteria as the procuring entity determines relevant and applicable, in the circumstances of the particular procurement, and as are disclosed by the laws, regulations or policies of the procuring entity, or stated in the solicitation or qualifying documents for the procurement:

(a) That they have the necessary professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contract;

(b) That they meet ethical and other standards as established and applicable in this State;

(c) That they acting through representatives or entities which have the legal capacity to enter into the procurement contract

(d) That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial of cer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;

(e) That they have fulfilled, to the satisfaction of the procuring State, applicable obligations to pay taxes, social security contributions or other fees required by the procuring State;

(f) That they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional or business conduct, as concerns the performance of public contracts, compliance with public integrity laws, or in the making of false statements or misrepresentations as to their qualifications to enter into a public procurement contract, within a period of ... years [the enacting State species the period of time] preceding the commencement of the procurement proceedings, or and that they have not been otherwise disqualified by the purchasing State from eligibility to bid on, receive or perform public contracts, pursuant to administrative suspension or debarment proceedings, within a period of >>> years [the enacting State species the period of time].
2. Subject to the right of suppliers or contractors to protect their intellectual property, trade secrets or proprietary information, as may accompanied by non-disclosure commitments to the extent authorized by the law of the procuring State, the procuring entity may require suppliers or contractors participating in procurement proceedings to provide appropriate documentary evidence or other information to satisfy itself that the suppliers or contractors, and proposed lower tier subcontractors or other vendors, are qualified in accordance with the criteria referred to in paragraph 1 of this article, and as may be established under the national laws or regulations of the procuring State or by other disclosed requirements.

3. Any requirement established pursuant to this article shall be set out undisclosed national laws or regulations, in the pre-qualification or pre-selection documents, if any, and in the solicitation documents, and shall apply equally to all suppliers or contractors. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those provided for in this Law.

4. The qualifications of suppliers or contractors shall be evaluated in accordance with the disclose national law qualification criteria and procedures set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents.

5. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof, or that is not objectively justifiable.

6. The procuring entity may require the legalization of documentary evidence provided by the supplier or contractor presenting the successful submission so as to demonstrate its qualifications for the particular procurement. In doing so, the procuring entity shall not impose any requirements as to the legalization of the documentary evidence other than those provided for in the laws of this State relating to the
7. (a) The procuring entity shall disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was false or constituted a misrepresentation; (b) A procuring entity may disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was materially inaccurate or materially incomplete; (c) Other than in a case to which subparagraph (a) of this paragraph applies, a procuring entity may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in a non-material respect. The supplier or contractor may, however, be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity; (d) The procuring entity may require a supplier or contractor that was pre-qualified in accordance with article 18 of this Law to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify such supplier or contractor. The procuring entity shall disqualify any supplier or contractor that fails to demonstrate its qualifications again if requested to do so. The procuring entity shall promptly notify each supplier or contractor requested to demonstrate its qualifications again as to whether or not the supplier or contractor has done so to the satisfaction of the procuring entity.

Article 10. Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement contract or framework agreement

1. (a) The pre-qualification or pre-selection documents, if any, shall set out a description of the subject matter of the procurement; (b) The procuring entity shall set out in the solicitation documents the detailed description of the subject matter of the procurement that it will use in the examination of submissions, including the minimum requirements that submissions must meet in order to be considered
responsive and the manner in which those minimum requirements are to be applied.

2. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, no description of the subject matter of a procurement that may restrict the participation of suppliers or contractors in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification or pre-selection documents, if any, or in the solicitation documents.

3. The description of the subject matter of the procurement may include specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology.

4. To the extent practicable, the description of the subject matter of the procurement shall be objective, functional and generic. It shall set out the relevant technical, quality and performance characteristics of that subject matter. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as “or equivalent” are included.

5. (a) Standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the subject matter of the procurement shall be used, where available, in formulating the description of the subject matter of the procurement to be included in the pre-qualification or pre-selection documents, if any, and in the solicitation documents;

(b) Due regard shall be had for the use of standardized trade terms and standardized conditions, where available, in formulating the terms and conditions of the procurement and the procurement contract or the framework agreement to be entered into in the procurement proceedings, and in formulating other relevant aspects of the pre-
qualification or pre-selection documents, if any, and solicitation documents.

Article 11. Rules concerning evaluation criteria and procedures

1. Except for the criteria set out in paragraph 3 of this article, the evaluation criteria shall relate to the subject matter of the procurement.

2. The evaluation criteria relating to the subject matter of the procurement may include:
   (a) Price;
   (b) The cost of operating, maintaining and repairing goods or of construction;
   (c) The time for delivery of goods, completion of construction or provision of services;
   (d) the characteristics of the subject matter of the procurement, such as the functional characteristics of goods or construction and the environmental characteristics of the subject matter;
   (e) and the terms of payment and of guarantees in respect of the subject matter of the procurement;
   (f) Where relevant in procurement, the experience, reliability and professional and managerial competence of the supplier or contractor and of the personnel to be involved in providing the subject matter of the procurement.

3. In addition to the criteria set out in paragraph 2 of this article, the evaluation criteria may include:
   (a) Any criteria that the procurement regulations or other provisions of law of this State authorize or require to be taken into account;
   (b) A margin of preference for the benefit of domestic suppliers or contractors or for domestically produced goods, or any other preference, if authorized or required by the procurement regulations or other provisions of law of this State. The margin of preference shall be calculated in accordance with the procurement regulations.

4. To the extent practicable, all non-price evaluation criteria shall be
objective, quantifiable and expressed in monetary terms.

5. The procuring entity shall set out in the solicitation documents:
   (a) Whether the successful submission will be ascertained on the basis of
       price or price and other criteria;
   (b) All evaluation criteria established pursuant to this article, including
       price as modified by any preference;
   (c) The relative weights of all evaluation criteria, except where the
       procurement is conducted under article 49 of this Law, in which case the
       procuring entity may list all evaluation criteria in descending order of
       importance;
   (d) The manner of application of the criteria in the evaluation procedure.

6. In evaluating submissions and determining the successful submission,
   the procuring entity shall use only those criteria and procedures that
   have been set out in the solicitation documents and shall apply those
   criteria and procedures in the manner that has been disclosed in those
   solicitation documents. No criterion or procedure shall be used that has
   not been set out in accordance with this provision.

   Article 12. Rules concerning estimation of the value of procurement

1. A procuring entity shall neither divide its procurement nor use a
   particular valuation method for estimating the value of procurement so
   as to limit competition among suppliers or contractors or otherwise
   avoid its obligations under this Law.

2. In estimating the value of procurement, the procuring entity shall
   include the estimated maximum total value of the procurement contract
   or of all procurement contracts envisaged under a framework agreement
   over its entire duration, taking into account all forms of remuneration.

   Article 13. Rules concerning the language of documents

1. The pre-qualification or pre-selection documents, if any, and the
   solicitation documents shall be formulated in English and national
   language.
2. Applications to pre-qualify or for pre-selection, if any, and submissions may be formulated and presented in English language and national language.

*Article 14. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions*

1. The procurement or Offset entity shall organise a preliminary meeting to introduce to all the bidders of the offsets requirements.

2. The manner, place and deadline for presenting applications to pre-qualify or for pre-selection shall be set out in the invitation to pre-qualify or for pre-selection and in the pre-qualification or pre selection documents, as applicable. The manner, place and deadline for presenting submissions shall be set out in the solicitation documents.

3. Deadlines for presenting applications to pre-qualify or for pre-selection or for presenting submissions shall be expressed as a specific date and time and shall allow sufficient time for suppliers or contractors to prepare and present their applications or submissions, taking into account the reasonable needs of the procuring or offset entity.

4. If the procuring or offset entity issues a clarification or modification of the pre-qualification, pre-selection or solicitation documents, it shall, prior to the applicable deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, in order to afford suppliers or contractors sufficient time to take the clarification or modification into account in their applications or submissions.

5. When the envelope is open, the procurement or offset entity will organise a second meeting to open in a full transparency to all the offsets proposals of the bidders and the public.

6. In case of force majeur, notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring or offset entity provided the pre-qualification, pre-selection or solicitation.
documents.

7. If the procuring or offset entity convenes a meeting of offset suppliers, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all suppliers to which the procuring or offset entity provided the solicitation documents, so as to enable those suppliers to take the minutes into account in preparing their submissions.

   Article 15. Clarifications and modifications of solicitation documents

1. A supplier or contractor may request a clarification of the solicitation documents that concern offset requirements from the procuring or offset entities. The procuring or offset entities shall respond to any request by a supplier or contractor for clarification that is received by the procuring or offsets entities within a reasonable time prior to any deadlines set for receipt of such inquiries or for presenting submissions. The procuring or offsets entities shall communicate all changes or clarifications of offset requirements to all suppliers or contractors to which the procuring entity has provided the solicitation or offset requirement documents.

2. If the procuring or offsets entities convenes a meeting of suppliers or contractors that concerns offset requirements, it shall prepare minutes of the meeting reflecting the presentation made by the offsets entity and containing the requests submitted at the meeting for change to or clarification of the offset requirements documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all suppliers or contractors to which the procuring or offsets entities provided the offset requirement documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their offset submissions.
Article 16. Clarification of qualification information and of submissions

1. No substantive change on the offsets guidelines or as concern the qualification of potential offset partners will occur during the negotiations or award process that precedes the selection decision of the awardee for the supply contract, or during such period as applies to qualification, negotiation and execution of the corresponding offset agreement, unless the procuring or offsets entities informs all companies then participating of the change and affords each due opportunity to revise their proposals in recognition of such change(s).

2. All communications generated under this article shall be included in the record of the procurement proceedings.

Article 17. Tender securities

1. When the procuring or offsets entities requires suppliers or contractors presenting submissions to provide a tender security:

(a) The requirement shall apply to all suppliers or contractors;

(b) the solicitation or offset requirements documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring or offsets entities. In cases of domestic procurement, the solicitation documents may in addition stipulate that the tender security shall be issued by an issuer in this State if this necessary required by the law of this state;

(c) Prior to presenting a submission, a supplier or contractor may request the procuring or offsets entities to confirm the acceptability of a proposed issuer of a tender security or of a proposed confirmer, if required; the procuring entity shall respond promptly to such a request;
(d) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy;

(e) Requirements as concern a tender security that apply to satisfaction of offset requirements shall be disclosed to all suppliers and contractors who may execute offset contracts with the procuring or offset entity and changes made for the benefit of any one or several suppliers or contractors shall be made available or applicable to all other participants;

(f) The procuring or offsets entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to the conduct of the supplier or contractor presenting the submission may relate only to:

(i) Withdrawal or modification of the submission after the deadline for presenting submissions, or before the deadline if so stipulated in the solicitation documents;

(ii) Failure to sign a procurement contract if so required by the solicitation documents; and

(iii) Failure to provide a required security for the performance of the contract after the successful submission has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.

2. The procuring or offsets entities shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the security document after the earliest of the following events:

(a) The expiry of the tender security;
(b) The award to a different entity of the procurement or supply contract and the related offset contract; or
(c) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents, where no distinct or separate security is required for any accompanying offset contract;

**Article 18. Cancellation of the procurement**

1. The procuring entity may cancel the procurement at any time prior to the acceptance of the successful submission and, after the successful submission is accepted, under the circumstances referred to the article 20 of this Law. The procuring entity shall not open any tenders or proposals after taking a decision to cancel the procurement.

a. In the ordinary course, the cancellation of a procurement shall result in the corresponding cancellation, *in pari passu*, of the related offset proposal, and the offset proposal (together with all supporting documentation) shall be returned to the proposing supplier. In such event, the procuring entity shall keep all aspects of the offset proposal confidential in order to respect the trade secrets and proprietary business strategies of the supplier.

b. Where a procurement has been cancelled, prior to award and execution of a contract, the proposing supplier shall not be held to perform to the offset proposal that it submitted for the cancelled procurement.

c. Notwithstanding the foregoing, with the consent of the supplier, the procuring entity may retain an offset proposal and applied to satisfy the offset requirements of a different procurement.

d. Expenses incurred by a supplier in the preparation of an offset proposal shall not be reimbursable, except if the procuring entity has indicated in the procurement documents and offset requirements that it intends to pay such expenses in the event of cancellation.
e. In the event that a purchasing entity makes a decision to cancel a procurement that is considered by a proposing supplier to have been made in bad faith or violation of the laws of the country conducting the procurement, the proposing supplier may seek reimbursement from national authority of the costs that it incurred in the preparation of the bid for the main supply contract and of the offset proposal.

f. A material modification of requirements for a supply contract shall not be treated as cancellation but shall be accompanied by notification to potential contracting parties and opportunity to make modifications to supply as well as offset contract proposals reflective of such modification.

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Article 19. Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage, conflicts of interest or other violation of national laws that concern the integrity of the procurement process.

1. Suppliers shall conform to all national laws that concern integrity of procurement and ethical business conduct in the preparation of offset proposals and in all dealings with the procuring entity that concern the submission, requirements, review, evaluation, approval or credit for the offset proposal.

2. A procuring entity shall exclude a supplier or contractor from the procurement proceedings if, in connection with an offset proposal:
   (a) The supplier or contractor offers, gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procuring entity or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the official processing of the offset proposal; or
   (b) The supplier or contractor has obtained an unfair competitive advantage or a benefitted from a conflict of interest in violation of the law of the procuring State.
3. Subject to the laws of the procuring State, where the procuring entity intends to take action under this Article against a supplier or contractor, arising from misconduct associated with an offset proposal, the supplier or contractor shall be informed of the allegations that concern it, be afforded access to the evidence that may support such allegations, and provided an opportunity to respond or defend itself.

4. Any decision of the procuring entity to exclude a supplier or contractor from the procurement proceedings under this article and the reasons therefor shall be included in the record of the procurement proceedings and promptly communicated to the supplier or contractor concerned. If and to the extent afforded by the national laws of the procuring State, the affected supplier or contractor shall have rights to seek judicial redress in courts of competent jurisdiction.

Article 20. Acceptance of the successful submission and entry into force of the procurement contract

1. The procuring entity shall accept the successful submission unless:
   (a) The supplier or contractor presenting the successful submission is disqualified in accordance with article 9 of this Law;
   (b) The procurement is cancelled in accordance with paragraph 1 of article 18 of this Law; or
   (c) The supplier or contractor presenting the successful submission is excluded from the procurement proceedings on the grounds specified in article 19 of this Law.

2. The procuring entity shall promptly notify each supplier or contractor that presented submissions of its decision to accept the successful submission at the end of the standstill period. The notice shall contain, at a minimum, the following information:
   (a) The name and address of the supplier or contractor presenting the successful submission;
   (b) The contract price or, where the successful submission was ascertained on the basis of price and other criteria, the contract price and a summary of other characteristics and relative advantages of the successful submission; and
   (c) The duration of the standstill period as set out in the solicitation
documents and in accordance with the requirements of the procurement regulations. The standstill period shall run from the date of the dispatch of the notice under this paragraph to all suppliers or contractors that presented submissions.

3. Paragraph 2 of this article shall not apply to awards of procurement contracts:
   (a) Under a framework agreement procedure without second-stage competition;
   (b) Where the contract price is less than the threshold amount set out in the procurement regulations; or
   (c) Where the procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period. The decision of the procuring entity that such urgent considerations exist and the reasons for the decision shall be included in the record of the procurement proceedings.

Article 21. Public notice of the award of an offset contract

1. Upon the entry into force of an offset contract, the procuring entity shall promptly publish notice of the agreement upon the offset contract, specifying the name of the supplier (or suppliers) or contractor (or contractors) entering into the offset contract, identifying the procurement contract to which the offset contract is related, and describing the general terms of the offset commitment, subject to the requirements or limitations of the law of the purchasing State.
2. The procuring entity is encouraged to publish periodic notices of cumulative offset commitments, from time to time, but at least once a year.
3. The offset regulations shall provide for the manner of publication of the notices required under this article.

Article 22. Confidentiality

1. In its communications with suppliers or contractors or with any person, the procuring entity shall not disclose any identified proprietary or business confidential information (including intellectual property) provided by suppliers or contractors except where (i) disclosure is required by national law or regulation, (ii) where disclosure is required by order of a court of the
purchasing State, or (iii) failure to disclose the information would be harmful to the national security interests of the purchasing State. It is the responsibility of each supplier or contractor to clearly identify information which it asserts is proprietary or confidential or which constitutes its intellectual property. The State shall respect the legitimate commercial interests of the suppliers or contractors and avoid any disclosure as would reasonably be expected to impede fair competition and shall provide such notice as is permitted under national law to the potentially affected supplier or contractor prior to making any disclosure of proprietary or competition-sensitive information (including intellectual property).

2. Subject to the foregoing paragraph 1 of this Article, and other than when providing or publishing information pursuant to paragraphs 2 and 10 of Article 20 and to Articles 21, 23 and 42 of this Law, the procuring entity shall treat as confidential the following examples of offset-related submissions by potential suppliers or contractors: (i) applications to pre-qualify domestic offset partners (including subcontractors); (ii) substantiation of the credentials of proposed offset partners (or subcontractors); (iii) plans of performance of offset requirements; (iv), negotiated teaming, joint venture, tie-up or other agreements, contracts or subcontracts ; (v) proposed workshare or contracting assignments; (vi), matters that concern transfer or licensing of technology; and (vii) potential investments in commercial entities domiciled in the purchasing State. The enumerated items may be considered by the procuring State in its determination of what information is proprietary and competition-sensitive information which the procuring State shall not disclose to any competing suppliers or contractors or to any other third party person not authorized to have access to this type of information.

3. All discussions, communications, negotiations or dialogue between the procuring entity and a supplier or contractor, for purposes of concluding an offset agreement, shall be confidential and kept by all parties in strictest confidence unless (i) disclosure is required by national law or regulation, (ii) disclosure is required by order of a court of the purchasing State, or (iii) failure to disclose the information would be harmful to the national security interests of the purchasing State. No party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party. Unless the procuring entity imposes rules or requirements to the contrary, there shall be a presumption that a a supplier or contractor may disclose such matters to
agents, prospective offset business partners or other supporting third parties
where the respective private parties have entered into a Non-Disclosure
Agreement intended to assure the continuing confidentiality of such
information.

4. Subject to the requirements in paragraph 1 of this Article, in procurement
involving sensitive but unclassified defence technical information, or
classified information, the procuring entity may:
(a) Limit access to such information for purposes of proposing or performing
an offset agreement unless the procuring entity is satisfied that applicable
laws, regulations and policies regarding the security of such information are
satisfied by the suppliers or contractors; and
(b) Demand that suppliers or contractors assure that their offset partners and
subcontractors comply with such security requirements.

Article 23. Documentary record of offset proceedings

1. The procuring entity shall maintain a record of the offset agreement
proceedings which, subject to national law and regulation, includes the
following information:
(a) A brief description of the subject matter of the related supply contract and
of the contemplated offset agreement;
(b) The names and addresses of suppliers or contractors that made offset
submissions;
(c) The name and address of any offset partner or proposed offset supplier
included in the offset plan as submitted for consideration or action by the
requiring activity of the State;
(d) A statement of the reasons and circumstances relied upon by the procuring
entity for its decision(s) as concern the suitability of offset proposals, the
eligibility or qualifications of proposed offset partners, and as regards the
satisfaction of requirements and terms and conditions of any offset agreement;
(e) The requirements, conditions, term, value and and other principal terms
and conditions of the offset agreement, where authorized and offered to the
supplier or contractor;
(f) A summary of the communications between the supplier or contractor and
the requiring activity with respect to the offset agreement and any
understandings reached that concern the performance of such agreement;
(g) The reasons and circumstances for any non-disclosure of information where
the requiring activity invoked paragraph 1 of Article 22 of this law; and
(h) Other information required to be included in the record of the offset agreement action in accordance with the provisions of this Law or other procurement law or regulation of the purchasing State.

2. The documentary record described in paragraph 1 of this Article shall be treated as "Confidential" in accordance with Article 22.

3. The procuring entity shall record, file and preserve all documents and communications relating to the offset proceedings, according to procurement laws and regulations of the State.

**Article 24. Code of conduct**

For the solicitation, negotiation, execution and administration of offset agreements, a documented code of conduct for officers or employees of procuring entities shall be established. The code of conduct shall address, inter alia, (i) the prevention of conflicts of interest in procurement and as concerns the offset agreement; and (ii) where appropriate, measures to employ with respect to the assignment and qualification of State personnel responsible for offset agreements, such as declarations of interest, financial disclosures (where required) screening procedures and training measures. The code of conduct so implemented shall be promptly made accessible to the public and to prospective suppliers and contractors and shall be systematically maintained.
Chapter II: Procedures requests for proposals with dialogue, requests for proposals with consecutive negotiations, competitive negotiations and single source procurement

Article 25. Request for proposals with dialogue

1. As provided by national law or regulation, procuring or offsets entity may employ methods of dialogue (here defined to me dialogue, discussions, competitive negotiations and post-selection negotiations) with suppliers or contractors who seek award of a supply contract with related offset obligations.

(a) Approvals for dialogue and documented constraints upon what may be negotiated shall precede the use of any negotiation authority. Records shall be kept of the use of negotiation authority;

(b) Potential suppliers and contractors shall be informed, prior to the due date for supply or offset contract proposals, what subjects may be the subject of dialogue, if any, and the procuring or offset entity shall reasonably inform potential suppliers and contractors of how and at what point in the process it shall exercise dialogue authority;

(c) In use of dialogue authority, purchasing or offset entities shall be guided by a principals that all forms of dialogue are to reduce risks and improve success by both parties to a contract and that the authority to conduct dialogue shall not be mis-used in such a fashion as to frustrate or circumvent competition; and

(d) Communications exchanged during each form of dialogue shall be kept in strictest confidence and the procuring or offset entity shall not use for the benefit of one competitor information that it learned during any dialogue with another competitor.

2. When a procuring or offset entity contemplates the use of any of the
above-referenced methods of dialogue, for the offset contract, it shall promptly inform potentially interested suppliers or contractors of:
(a) The name and address of the procuring or offset entity;
(b) A description of the subject matter of the procurement and the nature of the corresponding offset requirement;
(c) How, under what authority, and by what means the procuring or offset entity intends to utilize a dialogue process, and how it will determine which parties will be asked to participate in any form of dialogue (and which form(s));
(d) the subject areas for dialogue (such as, for example, statement of work, eligible offset partners, credit for offsets already achieved, application of multipliers; measurement of earned offset credits; and
(e) when and to the extent known, the desired or required time and location for the form(s) of dialogue, and subject matter(s) to be addressed.

3. Where multiple proposals are under consideration for the supply contract and associated offset contract, a procuring or offset entity may determine to limit the number of suppliers or contractors with whom it is willing to engage in a dialogue process; there shall be no appeal by any party excluded from such dialogue unless and to the extent authorized by the national law of the purchasing entity.

4. A procuring or offset entity may elect to evaluate the offset proposals of suppliers or companies it deems eligible to satisfy the offset requirement and whom it determines, in its sole judgment, to be in the “competitive range” suitable for inclusion in a dialogue process. At its election, the procuring or offset entity may establish selection criteria that it uses to determine the responsibility of each offset offeror and each offset partner proposed by an offeror and evaluate and score the relative merits of offset proposals. With respect to such selection criteria, the proposing or offset entity may:
   (a) elect to share those criteria with the suppliers or companies to be invited to participate in an evaluation and dialogue process;
   (b) be guided by the principle of consistency in the use of established selection criteria;
   (c) consider whether to inform suppliers and contractors of the
results of evaluation; and
(d) consider whether to prepare an offset selection report that
documents, for use internal to the procuring or offset entity, how
selection criteria were employed and what resulted in the
application of these criteria to the offset proposals under
consideration.

5. A procuring or offset entity may engage in proceedings to pre-qualify
a contractor or supplier, or prospective offset partners identified by such
contractors or suppliers, in order to facilitate determinations as to
eligibility for future offset requirements and to expedite the process of
offset proposal solicitation, evaluation, dialogue and award.

(a) Where an invitation is made to participate in pre-qualification
proceedings, the procuring or offset authority shall disclose and
inform to all prospective offset suppliers its requirements and the
procedures and methods it shall employ for pre-qualification.
(b) When pre-qualification procedures and requirements are made
available to prospective offset contractors, and potential offset
partners, the procuring or offset entity shall endeavor in good faith
to apply fairly the procedures and requirements to each supplier,
contractor or prospective offset partner;
(c) Procuring or offset entities are encouraged to inform suppliers,
contractors and prospective offset partners of any identified
deficiency capable of correction.
(d) Unless disclosed in advance to prospective participants,
procuring or offset entities shall not charge any fee to suppliers,
contractors or prospective offset partners for the pre-qualification
process and, should a fee be charged, it shall be limited only to
amounts reasonably reflecting the costs to the procuring or offset
entity.

6. When a procuring or offset entity makes a request for offset proposals,
it shall consider the extent to which it can provide to all potential or
prospective offerors (and offset partners, if applicable), the following
categories of information to aid in the preparation of responsive
proposals:

(a) Instructions for preparing and presenting proposals;
(b) If suppliers or contractors are permitted to present proposals for only a portion of the subject matter of the offset requirement, a description of the portion or portions for which proposals may be presented;
(c) The currency or currencies in which the offset proposal is to be formulated and expressed, the currency that will be used for the purpose of evaluating proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution and prevailing on a specified date will be used;
(d) The manner in which the offset proposal composition and value is to be formulated and expressed, including a statement as to whether the value is to cover elements other than the price paid to offset partners for work they are to perform as subcontractors or vendors to the offset prime contractor;
(e) How proposals should express value-added and eligibility for multipliers or other special consideration as may be required by the procurement or offset authority;
(f) The means by which, pursuant to article __ of this Law, suppliers or contractors may seek clarification of the request for offset proposals and a statement as to whether the procuring or offset entity intends to convene a meeting of suppliers or contractors at this stage;
(g) Any element of the description of the subject matter of the offset procurement or term or condition of the offset contract that will not be the subject of dialogue during the procedure;
(h) Whether the procuring entity intends to limit the number of suppliers or contractors that it will invite to participate in any dialogue process, and if so, the criteria and procedure, in conformity with the provisions of this Law, that will be followed in selecting participants;
(i) The criteria and procedure for evaluating the offset proposals and proposed offset partners in accordance with article __ of this Law;
(j) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the offset proceedings, including those applicable to offset requirements involving
industrial participation objectives or access to or use of classified information, and the place where those laws and regulations may be found;

(k) The name, functional title and address of one or more officers or employees of the procuring or offset entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the offset proceedings without the intervention of an intermediary;

(l) Notice of the right provided under article ___ of this Law to challenge or appeal decisions or actions taken by the procuring or offset entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period (in the event of any such appeal) and, if none will apply, a statement to that effect and the reasons therefor;

(m) Any formalities that will be required, once the successful offset proposal has been accepted, for an offset contract to enter into force, including, where applicable, the execution of a related, written procurement contract, and execution of an offset contract, and approval by another authority pursuant to article ___ of this Law, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;

(n) Any other requirements that may be established by the procuring or offset entity in conformity with this Law and the procurement laws and regulations relating to the preparation and presentation of proposals and to the offset proceedings.

7. (a) The procuring or offset entity shall examine all proposals received against the established minimum requirements for the offset requirement and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive;

(b) Where a maximum limit on the number of suppliers or contractors that can be invited to participate in a dialogue process has been established and the number of responsive proposals exceeds that limit, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals;
(c) A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective supplier or contractor whose offset proposal was rejected.

8. Any requirements, guidelines, documents, clarifications or other information generated during a dialogue process that is communicated by the procuring or offset entity to a supplier or contractor shall be communicated at the same time and on an equal basis to all other participating suppliers or contractors eligible for the same dialogue process, unless such information is specific or exclusive to that supplier or contractor or such communication would be in breach of the confidentiality provisions of article 24 of this Law. [overlaps with earlier content]

9. Following a dialogue process, the procuring or offset entity may request all suppliers or contractors remaining in the proceedings to present a “best and final offer” with respect to those aspects of their offset proposals which are the subject of the dialogue. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers. The procuring or offset entity may specify that no negotiations or other form of dialogue shall take place between the procuring entity and suppliers or contractors with respect to their best and final offers.

10. An acceptable offset proposal shall be one that meets the needs of the procuring or offset entity as determined in accordance with the criteria and procedure for evaluating offset proposals set out in the Request For Proposals.

Article 26. Request for proposals with consecutive negotiations

1. Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals and shall:
   (a) Promptly communicate to each supplier or contractor presenting a responsive proposal the score of the technical, quality and performance
characteristics of its respective proposal and its ranking;
(b) Invite the supplier or contractor that has attained the best ranking, in accordance with those criteria and procedure, for negotiations on the financial aspects of its proposals; and
(c) Inform other suppliers or contractors that presented responsive proposals that their proposals may be considered for negotiation if negotiations with the supplier (or suppliers) or contractor (or contractors) with a better ranking do not result in an offset contract.

2. If it becomes apparent to the procuring entity that the negotiations with the supplier or contractor invited pursuant to paragraph 1 (b) of this article will not result in a offset contract, the procuring entity shall inform that supplier or contractor that it is terminating the negotiations.

3. The procuring entity shall then invite for negotiations, the supplier or contractor that attained the second-best ranking; if the negotiations with that supplier or contractor do not result in a offset contract, the procuring entity shall invite the other suppliers or contractors still participating in the procurement proceedings for negotiations on the basis of their ranking until it arrives at a offset contract or rejects all remaining proposals.

4. During the course of the negotiations, the procuring entity shall not modify the subject matter of the procurement; any qualification, examination or evaluation criterion, including any established minimum requirements; any element of the description of the subject matter of the procurement; or term or condition of the offset contract other than financial aspects of proposals that are subject to the negotiations as specified in the request for proposals.

6. The procuring entity may not reopen negotiations with any supplier or contractor with which it has terminated negotiations.

**Article 27. Competitive negotiations**

1. Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that is communicated by the procuring entity to a supplier or contractor before or during the negotiations shall be communicated at the same time and on an equal basis to all other suppliers or contractors engaging in negotiations with the procuring entity relative to the offset contract, unless such information is specific or exclusive to that supplier or contractor or such communication would be in breach of the confidentiality
provisions of article 22 of this Law.

2. Following completion of negotiations, the procuring entity shall request all suppliers or contractors remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals.

3. No negotiations shall take place between the procuring entity and suppliers or contractors with respect to their best and final offers.

4. The successful offer shall be the offer that best meets the needs of the procuring entity.

**Article 28. Single-source procurement**

Paragraphs 1 to 10 of article 25 of this Law shall apply to the procedure preceding the solicitation of a proposal or price quotation from a single supplier or contractor. The procuring entity shall engage in negotiations with the supplier or contractor from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.

**CHAPTER III. CHALLENGE PROCEEDINGS**

**Article 29. Right to challenge and appeal**

1. A supplier or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.
2. Challenge proceedings may be made by way of an application for reconsideration to the procuring entity, an application for review to the [name of the independent body] under article 32 of this Law or an application or appeal to the [name of the court or courts].

3. A supplier or contractor may appeal any decision taken in challenge proceedings [name of the court or courts]

Article 30. Effect of a challenge

1. The procuring entity shall not take any step that would bring into force a offset contract or framework agreement in the offset proceedings concerned:

   (a) Where it receives an application for reconsideration within the time limits specified in paragraph 2 of article 31;

   (b) Where it receives notice of an application for review from the [name of the independent body] under paragraph 5 (b) of article 32; or

   (c) Where it receives notice of an application or of an appeal from the [name of the court or courts].

2. The prohibition referred to in paragraph 1 shall lapse ... working days [the enacting State specifies the period] after the decision of the procuring entity, the [name of the independent body] or the [name of the court or courts] has been communicated to the applicant or appellant, as the case may be, to the procuring entity, where applicable, and to all other participants in the challenge proceedings.

3. (a) The procuring entity may at any time request the [name of the independent body] or the [name of the court or courts] to authorize it to enter into the offset contract or framework agreement on the ground that urgent public interest considerations so justify;

   (b) The [name of the independent body], upon consideration of such a request [, or of its own motion,] may authorize the procuring entity to enter into the offset contract or framework agreement where it is satisfied that urgent public interest considerations so justify. The decision of the [name of the independent body] and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant, to all other participants in the challenge proceedings and to all other participants in the offset proceedings.
Article 31. Application for reconsideration before the procuring entity

1. A supplier or contractor may apply to the procuring entity for a reconsideration of a decision or an action taken by the procuring entity in the procurement proceedings.

2. Applications for reconsideration shall be submitted to the procuring entity in writing within the following time periods:
   (a) Applications for reconsideration of the terms of solicitation, pre-qualification or pre-selection or decisions or actions taken by the procuring entity in pre-qualification or pre-selection proceedings shall be submitted prior to the deadline for presenting submissions;
   (b) Applications for reconsideration of other decisions or actions taken by the procuring entity in the procurement proceedings shall be submitted within the standstill period applied pursuant to paragraph 2 of article 20 of this Law, or, where none has been applied, prior to the entry into force of the procurement contract or the framework agreement.

3. Promptly after receipt of the application, the procuring entity shall publish a notice of the application and shall, not later than three (3) working days after receipt of the application:
   (a) Decide whether the application shall be entertained or dismissed and, if it is to be entertained, whether the procurement proceedings shall be suspended. The procuring entity may dismiss the application if it decides that the application is manifestly without merit, the application was not submitted within the deadlines set out in paragraph 2 of this article or the applicant is without standing. Such a dismissal constitutes a decision on the application;
   (b) Notify all participants in the procurement proceedings to which the application relates about the submission of the application and its substance;
   (c) Notify the applicant and all other participants in the procurement proceedings of its decision on whether the application is to be entertained or dismissed;
   (d) If the application is to be entertained, the procuring entity shall in addition advise whether the procurement proceedings are suspended and, if so, the duration of the suspension;
   (e) If the application is to be dismissed or the procurement proceedings are not suspended, the procuring entity shall in addition advise the applicant of the reasons for its decision.

4. If the procuring entity does not give notice to the applicant as required in paragraphs 3 (c) and 8 of this article within the time-limit specified in paragraph 3 of this article, or if the applicant is dissatisfied with the decision so
notified, the applicant may immediately thereafter commence proceedings [in the [name of the independent body] under article 67 of this Law or in the [name of the court or courts]]. Where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

5. In taking its decision on an application that it has entertained, the procuring entity may overturn, correct, vary or uphold any decision or action taken in the procurement proceedings to which the application relates.

6. The decision of the procuring entity under paragraph 5 of this article shall be issued within ... working days [the enacting State specifies the period] after receipt of the application. The procuring entity shall immediately thereafter communicate the decision to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

7. If the procuring entity does not communicate its decision to the applicant in accordance with the requirements of paragraphs 6 and 8 of this article, the applicant is entitled immediately thereafter to commence proceedings [in the name of the independent body] under article 32 of this Law or in the [name of the court or courts]]. Where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

8. All decisions of the procuring entity under this article shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the procurement proceedings, together with the application received by the procuring entity under this article.

Article 32. Application for review before an independent body

1. A supplier or contractor may apply to the [name of the independent body] for review of a decision or an action taken by the procuring entity in the procurement proceedings, or of the failure of the procuring entity to issue a decision under article 31 of this Law within the time limits prescribed in that article.

2. Applications for review shall be submitted to the [name of the independent body] in writing within the following time periods:
(a) Applications for review of the terms of solicitation, pre-qualification or pre-selection or of decisions or actions taken by the procuring entity in pre-qualification or pre-selection proceedings shall be submitted prior to the
(b) Applications for review of other decisions or actions taken by the procuring entity in the procurement proceedings shall be submitted:

(i) Within the standstill period applied pursuant to paragraph 2 of article 20 of this Law; or

(ii) Where no standstill period has been applied, within ... working days [the enacting State specifies the period] after the time when the applicant became aware of the circumstances giving rise to the application or when the applicant should have become aware of those circumstances, whichever is earlier, but not later than ... working days [the enacting State specifies the period] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement];

(c) Notwithstanding subparagraph (b) (i) of this paragraph, a supplier or contractor may request the [name of the independent body] to entertain an application for review filed after the expiry of the standstill period, but not later than ... working days [the enacting State specifies the period] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement], on the ground that the application raises significant public interest considerations. The [name of the independent body] may entertain the application where it is satisfied that significant public interest considerations so justify. The decision of the [name of the independent body] and the reasons therefor shall promptly be communicated to the supplier or contractor concerned;

(d) Applications for review of the failure of the procuring entity to issue a decision under article 31 of this Law within the time limits prescribed in that article shall be submitted within ... working days [the enacting State specifies the period] after the decision of the procuring entity should have been communicated to the applicant in accordance with the requirements of paragraphs 3, 6 and 8 of article 31 of this Law, as appropriate.

3. Following receipt of an application for review, the [name of the independent body] may, subject to the requirements of paragraph 4 of this article:

(a) Order the suspension of the procurement proceedings at any time before the entry into force of the offset contract; and
(b) Order the suspension of the performance of a offset contract or the operation of a framework agreement that has entered into force; if and for as long as it finds such a suspension necessary to protect the interests of the applicant unless the [name of the independent body] decides that urgent public interest considerations require the procurement proceedings[, the offset contract or the framework agreement, as applicable,] to proceed. The [name of the independent body] may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

4. The [name of the independent body] shall:
(a) Order the suspension of the procurement proceedings for a period of ten (10) working days where an application is received prior to the deadline for presenting submissions; and

(b) Order the suspension of the procurement proceedings [or the performance of a offset contract or the operation of a framework agreement, working days [the enacting State specifies the period] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement];

(c) Notwithstanding subparagraph (b) (i) of this paragraph, a supplier or contractor may request the [name of the independent body] to entertain an application for review filed after the expiry of the standstill period, but not later than ... working days [the enacting State specifies the period] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement], on the ground that the application raises significant public interest considerations. The [name of the independent body] may entertain the application where it is satisfied that significant public interest considerations so justify. The decision of the [name of the independent body] and the reasons therefore shall promptly be communicated to the supplier or contractor concerned;

(d) Applications for review of the failure of the procuring entity to issue a decision under article 31 of this Law within the time limits prescribed in that article shall be submitted within ... working days [the enacting State specifies the period] after the decision of the procuring entity should have been communicated to the applicant in accordance with the requirements of paragraphs 3, 6 and 8 of article 31 of this Law, as appropriate.

3. Following receipt of an application for review, the [name of the independent
body] may, subject to the requirements of paragraph 4 of this article:

(a) Order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; and

(b) Order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force;] if and for as long as it finds such a suspension necessary to protect the interests of the applicant unless the [name of the independent body] decides that urgent public interest considerations require the procurement proceedings[, the procurement contract or the framework agreement, as applicable,] to proceed. The [name of the independent body] may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

4. The [name of the independent body] shall:

(a) Order the suspension of the procurement proceedings for a period of ten (10) working days where an application is received prior to the deadline for presenting submissions; and

(b) Order the suspension of the procurement proceedings [or the performance of a offset contract or the operation of a framework agreement, effective access to all documents relating to the procurement proceedings in its possession, in a manner appropriate to the circumstances.

5. In taking its decision on an application that it has entertained, the [name of the independent body] may declare the legal rules or principles that govern the subject matter of the application, shall address any suspension in force and shall take one or more of the following actions, as appropriate:

(a) Prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Law;

(b) Require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Law to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Law;

(c) Overturn in whole or in part an act or a decision of the procuring entity that is not in compliance with the provisions of this Law [other than any act or decision bringing the procurement contract or the framework agreement into force];

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(d) Revise a decision by the procuring entity that is not in compliance with the provisions of this Law [other than any act or decision bringing the procurement contract or the framework agreement into force];
(e) Confirm a decision of the procuring entity;
(f) Overturn the award of a offset contract or a framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Law and, if notice of the award of the offset contract or the framework agreement has been published, order the publication of notice of the overturning of the award;
(g) Order that the procurement proceedings be terminated;
(h) Dismiss the application;
(i) Require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting an application as a result of an act or decision of, or procedure followed by, the procuring entity in the procurement proceedings that is not in compliance with the provisions of this Law, and for any loss or damages suffered[, which shall be limited to the costs of the preparation of the submission or the costs relating to the application, or both]; or
(j) Take such alternative action as is appropriate in the circumstances.

10. The decision of the [name of the independent body] under paragraph 9 of this article shall be issued within 10 working days [the enacting State specifies the period] after receipt of the application. The [name of the independent body] shall immediately thereafter communicate the decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings.

11. All decisions of the [name of the independent body] under this article shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the [name of the independent body] under this article.

Article 33. Rights of participants in challenge proceedings

1. Any supplier or contractor participating in the procurement proceedings to which the application relates, as well as any governmental authority whose interests are or could be affected by the application, shall have the right to participate in challenge proceedings under articles 31 and 32 of this Law. A supplier or contractor duly notified of the proceedings that fails to
participate in such proceedings is barred from subsequently challenging under articles 31 and 32 of this Law the decisions or actions that are the subject matter of the application.

2. The procuring entity shall have the right to participate in challenge proceedings under article 32 of this Law.

3. The participants in challenge proceedings under articles 31 and 32 of this Law shall have the right to be present, represented and accompanied at all hearings during the proceedings; the right to be heard; the right to present evidence, including witnesses; the right to request that any hearing take place in public; and the right to seek access to the record of the challenge proceedings subject to the provisions of article 34 of this Law.

Article 34. Confidentiality in challenge proceedings

No information shall be disclosed in challenge proceedings and no public hearing under articles 31 and 32 of this Law shall take place if so doing would impair the protection of essential security interests of the State, would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition.