Article 17.15
Limited Tendering

1. A procuring entity may use limited tendering, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against the suppliers of the other Party or protection to domestic producers or suppliers. When a procuring entity applies limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 17.7 through 17.14.

2. Subject to paragraph 1, a procuring entity may use limited tendering only under the following conditions:

(a) on condition that the requirements of the initial tender are not substantially modified in the contract as awarded:

(i) no tenders were submitted or no suppliers requested participation;

(ii) all tenders submitted have been collusive;

(iii) no tenders were submitted that conform to the essential requirements in the tender documentation; or

(iv) no suppliers satisfied the conditions for participation;

(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable or unforeseen by the procuring entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier of goods or services, or its authorised representative, that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations; or

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(e) when a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

Note: Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards.

(f) for goods purchased on a commodity market;

(g) for purchases made under exceptionally advantageous conditions which only arise in the very short term such as from unsolicited innovative proposals, unusual disposals, or disposal of assets of businesses in liquidation, bankruptcy or receivership and not routine purchases from regular suppliers;