



# National Consultations on CARICOM Framework Public Procurement Policy

Montserrat 19-20 September 2011

Presentation IV  
POLICY –  
(b) Substantive Provisions

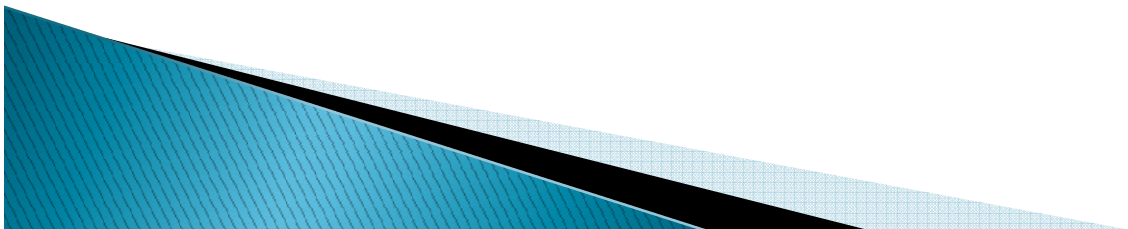
# Framework Regional Integration Policy on Public Procurement Substantive Provisions

# Thirty (30)

Substantive Provisions in the FRIP

# PROHIBITION OF OFFSETS (1)

- ✓ Member States shall ensure that covered entities do not seek or impose offsets in the qualification and selection of suppliers, goods, services or works, in the evaluation of tenders or in the award of contract in respect procurement covered under the provisions of the Policy for CARICOM Suppliers. A margin of preference may be applied only to extra-regional tenderers (76–78)



# RULES OF ORIGIN (2)

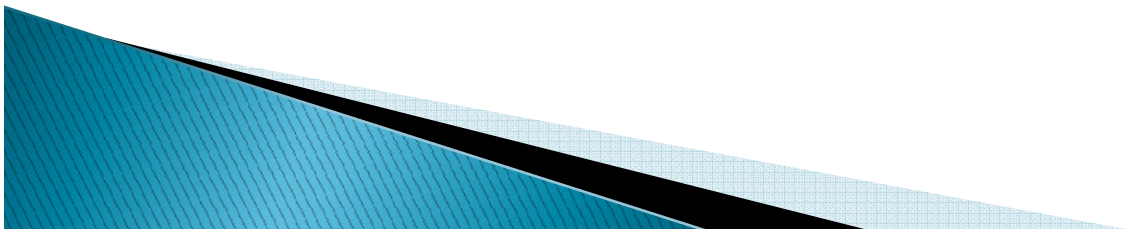
- ✓ Member States shall apply the existing Community rules of origin to the public procurement activities of the covered entities. It is not the intent of this Policy to recommend the creation of new rules of origin to govern the regional Public Procurement regime. It is neither efficient nor effective for a single market space to employ differing sets of origin rules, as the monitoring and management requirements would be overly burdensome at both the Community and National levels. The Public Procurement regime should therefore be subject to the same rules of origin that apply within the Community as regards originating and non-originating goods. (79)

# DENIAL OF BENEFITS (3)

- ✓ A Member State may deny the benefits of this Policy to a service supplier of another Member State, following notification and consultation, directly to the supplier, the Member State of supplier, and the Permanent Committee on Public Procurement when the denying Member State determines that the service is being provided by a supplier that:
  - ✗(a) is not established in the Region; or
  - ✗(b) is owned or controlled by extra-regional persons. (80)

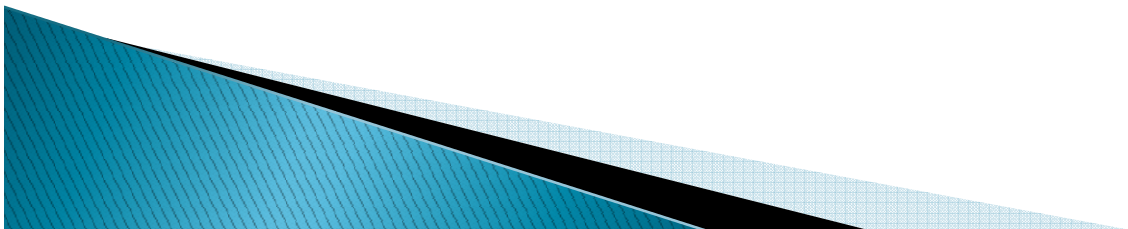
## (4). PUBLICITY CONCERNING LAWS AND REGULATIONS, AND OTHER RELEVANT DIRECTIVES OR GOVERNING DOCUMENTATION

- ✓ Requirements for publicity and market access are the two most critical elements that will distinguish national regimes from the regional regime. It is important therefore to ensure that all interested parties are aware, in advance, of the laws, regulations and other documentation that govern procurement processes in which they intend to participate. This affords a level of efficiency and effectiveness to the procurement process and safeguards against mis-procurements, unnecessary supplier challenges and the institution of dispute settlement procedures, as well as other potentially costly mistakes. (81–82)



# PRIOR INFORMATION NOTICE (5)

- ✓ Covered entities of the Member States shall publish, as early as possible in each fiscal year, a Prior Information Notice containing information regarding covered entities' procurement plans for the relevant year. (83–86)





# PUBLICATION OF PROCUREMENT OPPORTUNITIES (6)

- ✓ Covered entities of the Member States shall publish procurement opportunities where such opportunities involve contracts with values equal to and/or exceeding the applicable Thresholds. Such notices shall be published by way of the Community Public Procurement Notice Board, and shall include a minimum content as set out in paragraph 89 below. Covered entities may choose not to apply the provisions of this paragraph when employing a single source procedure. (87 – 88)

# (7) IDENTIFICATION AND PUBLICATION OF THE MINIMUM CONTENT OF TENDER NOTICES

- ✓ name and address of the covered entity, including the post of the designated responsible public officer;
- ✓ description of the required works, goods or services;
- ✓ location of the deliverable(s);
- ✓ qualification requirements;
- ✓ date, time and location where tender or prequalification documents may be collected, and the price charged, if any; (89–90)

# (7) IDENTIFICATION AND PUBLICATION OF THE MINIMUM CONTENT OF TENDER NOTICES

- ✓ source of funding;
- ✓ closing date and time for tender submission, the place and form of submission;
- ✓ date, time, location and manner of tender opening;
- ✓ tender security (if required);
- ✓ main criteria to be used for award of contract; and
- ✓ subject to the details of (j) above, a statement to the effect that the Member State is not bound to accept the lowest priced or any tender. (89–90)

# PUBLICATION OF QUALIFICATION REQUIREMENTS (8)

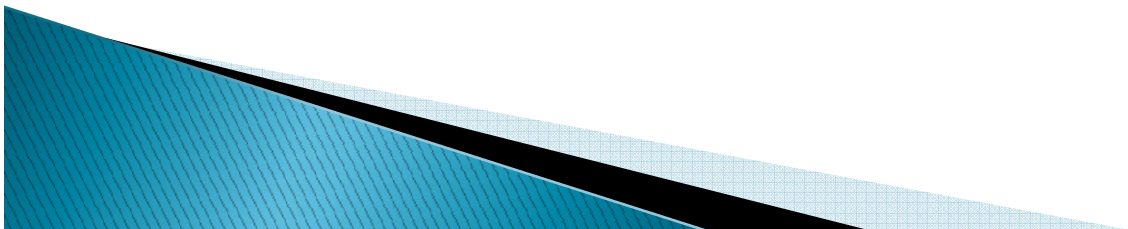
- ✓ Covered entities of the Member States shall publish any supplier qualification requirements in respect of a procurement opportunity. Such publication should be made by way of Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to in paragraph 89 (d) above. Covered entities may choose not to apply the provisions of this paragraph when employing a single source procedure. (91–92)

# PUBLICATION OF TIME LIMITS FOR THE TENDER PERIOD (9)

- ✓ Covered entities of the Member States shall publish any time limits for the tender period in respect of a procurement opportunity. Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to in paragraph 89 (g) above. (93–94)

# PUBLICATION OF TECHNICAL SPECIFICATIONS (10)

- ✓ Covered entities of the Member States shall publish any technical specification requirements in respect of the product(s) to be procured. Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Tender Documentation referred to in paragraph 150 (e) (95–96)

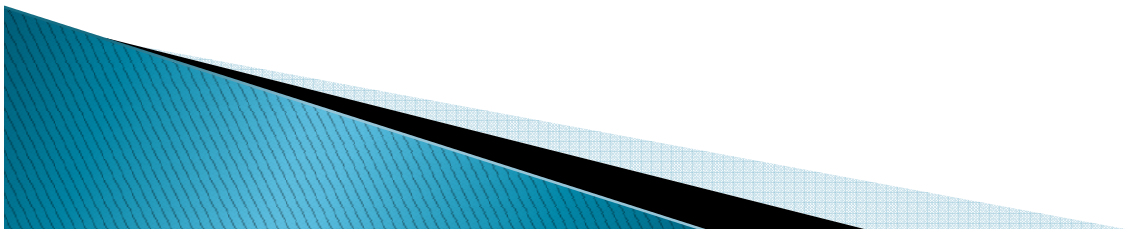


# PUBLICATION OF CONTRACT AWARD CRITERIA AND AWARD NOTICES (11)

- ✓ Covered entities of the Member States shall publish any evaluation and/or contract award criteria in respect of the procurements under consideration product(s). Such publication should be made by way of the Community Public Procurement Notice Board and as part of the minimum content requirement of the Invitation to Tender referred to at paragraph 89 (j) above and the Tender Documentation referred to in paragraph 150 (g) below. (97–104)

# RECORD OF THE PROCUREMENT PROCEEDINGS (12)

- ✓ Covered entities of the Member States shall document and maintain records of their procurement proceedings (105–108)





# RECORD OF THE PROCUREMENT PROCEEDINGS (12)

- ✓ Without prejudice to the means of retention and/or storage, covered entities of the Member States shall ensure that procurement records, at a minimum, contain the following information and are retained for a minimum period of five (5) years:
  - ✓ Brief description of the works, goods or services procured;
  - ✓ Names and addresses of supplier(s);
  - ✓ Procurement procedure used
  - ✓ Name and address of successful tenderer;
  - ✓ Date of approval;
  - ✓

# RECORD OF THE PROCUREMENT PROCEEDINGS (12)

- ✓ Contract price and actual completion cost;
- ✓ Contract duration;
- ✓ Information relative to the qualifications of suppliers;
- ✓ Summary of the evaluation and comparison of tenders;
- ✓ Reason(s) for rejection of any or all tenders;
- ✓ Summary of requests for clarification/verification of tender documents and any modifications thereof;
- ✓ Information relative to the successful tenderer's performance on the contract; and
- ✓ Information relative to complaints, resolution decisions and appeals.

# (13) LIMITATIONS ON THE PUBLIC DISCLOSURE OF INFORMATION

Except when ordered to do so by a competent court, and subject to the conditions of such an order, covered entities of a Member State shall not disclose:

- ✓ information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the supplier(s) or would inhibit fair competition; or
- ✓ information relating to the examination, evaluation and comparison of tenders, other than a summary of the evaluation and comparison of tenders. (109–110)

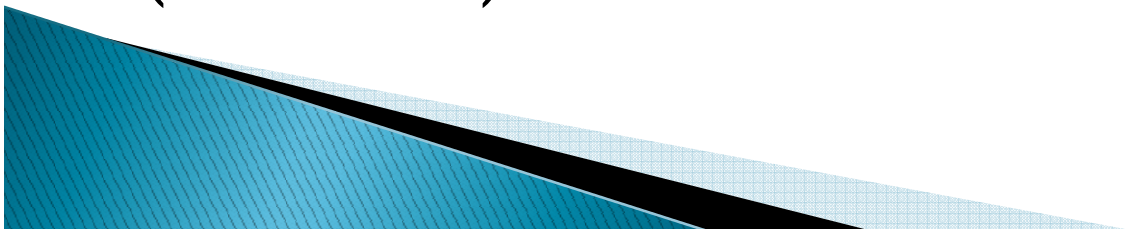
# (14) DESIGNATION OF CONTACT POINTS

For the purposes of the dissemination of general information under the requirements of this Policy,

Member States shall:

- ▶ a) establish National Contact Points; and
- ▶ b) submit information about such Contact Points to the Community level for posting to the Community Public Procurement Notice Board.

(111-114)



# VALUATION RULES (15)

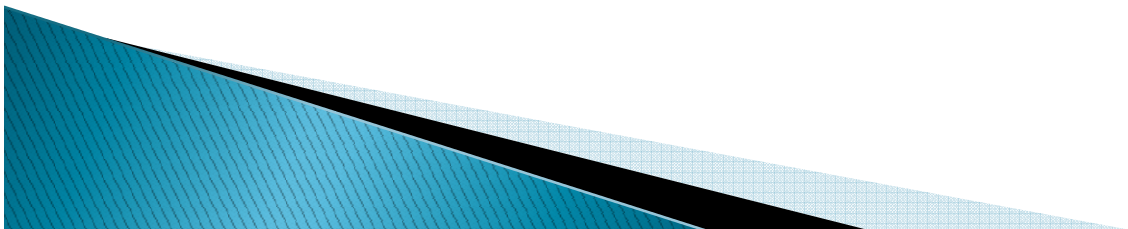
For the purposes of determining the use of the most appropriate procurement method in accordance with the provisions of this Policy, and in cases where it is not possible to specify a fixed contract price, covered entities shall observe the following as the basis for estimating the value of the procurement, with respect to:

- a) a fixed-term contract,
  - (i) where the term is 12 months or less, the total estimated contract value for the contract's duration; or
  - (ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value; or

# VALUATION RULES (15)

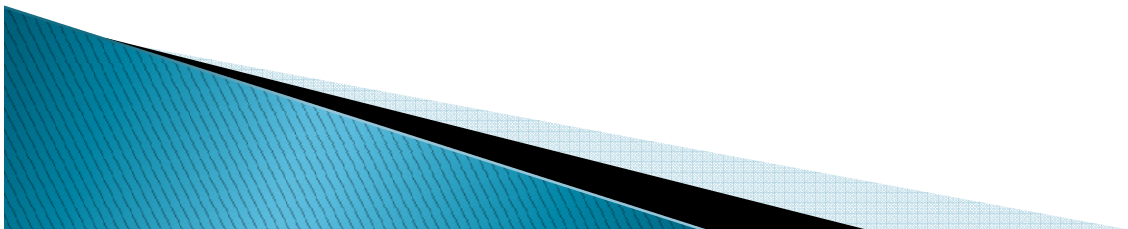
- ▶ b) a contract for an undetermined timeframe, the estimated monthly installment multiplied by 36. Where there is doubt as to whether the contract is to be a fixed-term contract, the basis for estimating the value of the procurement described in this subparagraph should be used.

(115-117)



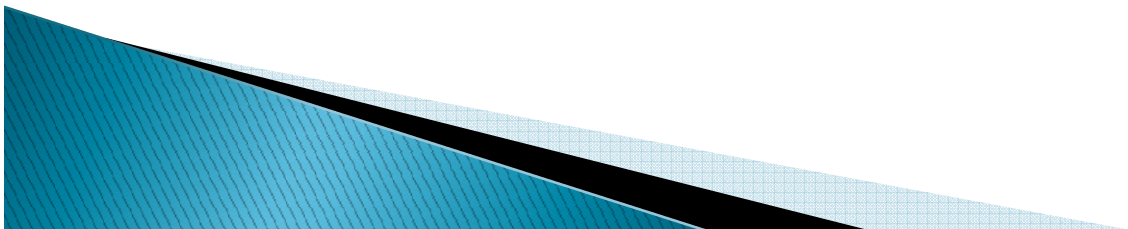
# TENDERING PROCEDURES (16)

- ✓ Member States shall employ open competitive tendering procedures for values of contract equal to and/or exceeding the relevant Threshold, except where such procedure is inefficient or would harm the interests of the Member States, as set out in paragraph 119 (118–123)



# TIME LIMITS (17)

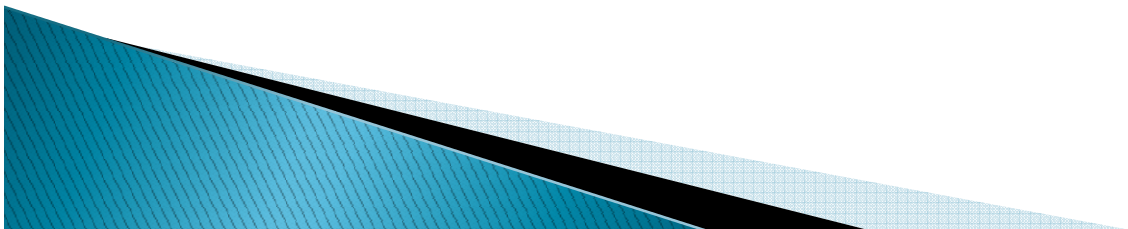
- ✓ Member States shall ensure that all time limits applied to procurements carried out by their covered entities and covered by the provisions of this Policy are adequate to allow interested regional suppliers to prepare and submit tenders and, where appropriate, applications for qualifying (124–130)





# Time Limits (17)

- ✓ In determining these time limits, covered entities of the Member States shall take into account the complexity of the intended procurement and the possibility of publication delays, and time considerations involved in the cross-border transport of relevant documentation, where necessary, consistent with the covered entities' own reasonable needs.



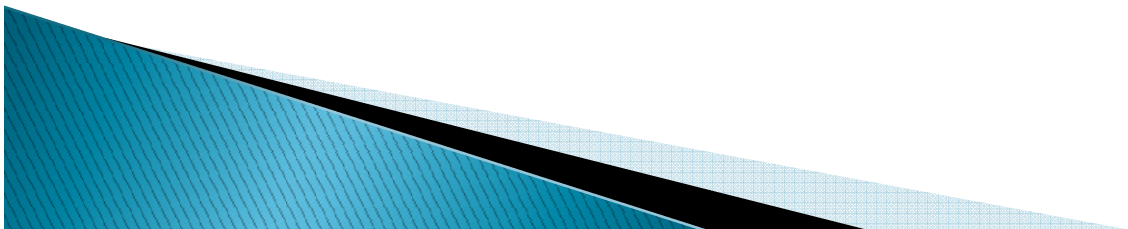
# TECHNICAL SPECIFICATIONS (18)

In prescribing technical specifications, covered entities of the Member States shall ensure that such specifications:

- ✓ are included in the tender documents;
- ✓ are worded in terms of performance and functional requirements, wherever possible, rather than design or descriptive characteristics;
- ✓ be based on regional standards, where these exist, or in their absence, on national standards or internationally recognized standards and codes;

# Technical Specifications (18)

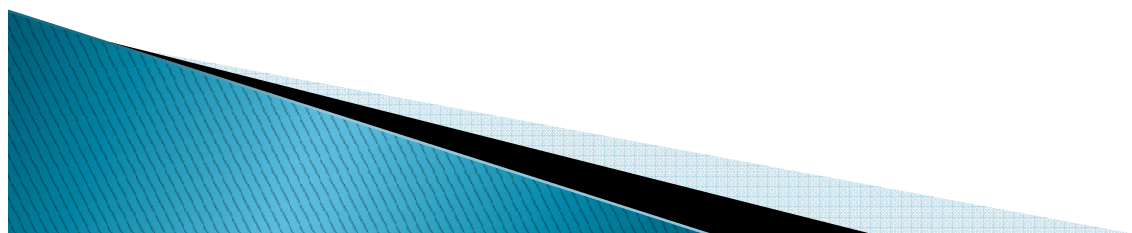
- ✓ do not refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement(s). Where this type of specification is necessary, words such as “equivalent or similar to” should be included in the specifications. (131–134)



# QUALIFICATION OF SUPPLIERS (19)

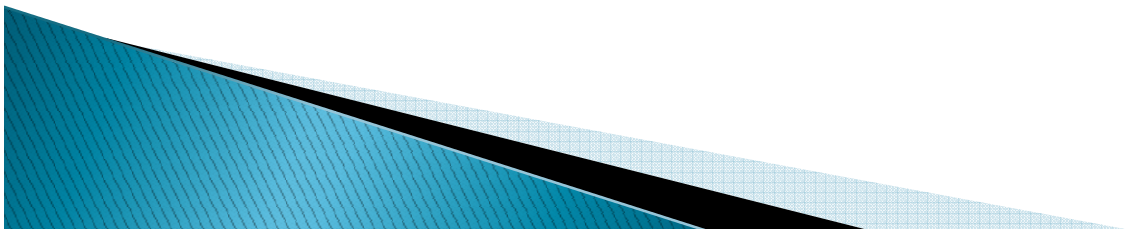
Covered entities of the Member States shall ensure that:

- a) any conditions for participation in a procurement opportunity imposed on an interested supplier by a covered entity are limited to those conditions that are essential to ensure that the supplier possesses the required capabilities to fulfill the requirements of the procurement and the ability to execute the corresponding contract;
- b) in the process of qualifying suppliers, covered entities do not discriminate between national and non-national suppliers;



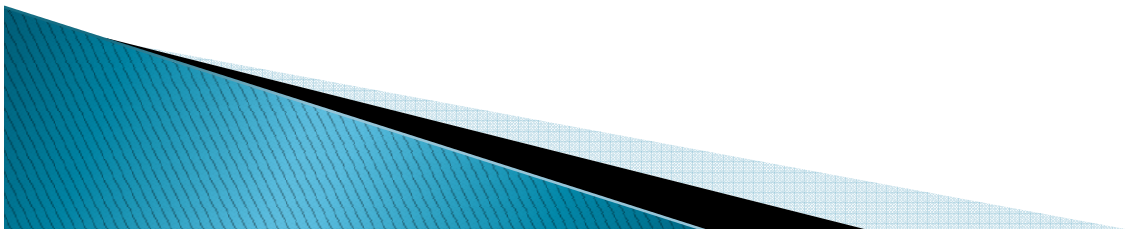
# QUALIFICATION OF SUPPLIERS (19)

- c) qualification decisions are based solely on the conditions for participation that have been specified in the invitation to tender and/or other tender documentation;
- d) all suppliers that meet the conditions for participation in a particular procurement opportunity, as set out by the covered entity and notified in the tender documents, are recognized as qualified;



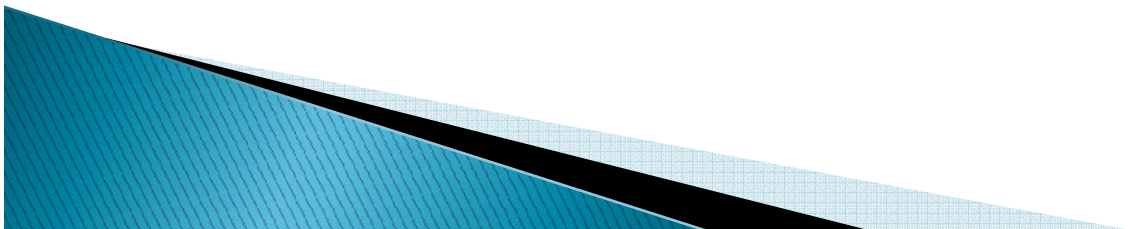
# QUALIFICATION OF SUPPLIERS (19)

- e) suppliers that have applied for qualification are promptly notified of the qualification decision of the covered entity;  
and
- f) where a supplier is rejected on the basis of qualifications, the covered entity within a reasonable time and at the request of that supplier, communicate the reasons for its decision to the supplier. (135–139)



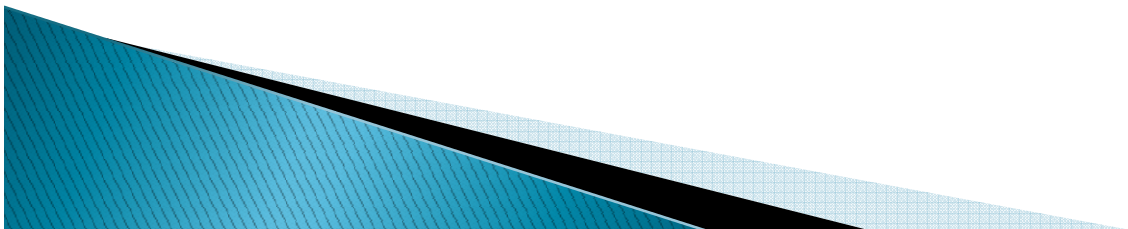
# SUPPLIER REGISTERS (20)

For the purposes of this Policy, there shall be a single common register of community suppliers for use by all Member States. (140 – 148)



# TENDER DOCUMENTATION (21)

Covered entities of the Member States shall ensure that tender documentation provided to suppliers contain all information necessary to allow the suppliers to submit responsive tenders (149–154)





# STANDARD BIDDING DOCUMENTS (22)

- ✓ For the purposes of procurement carried out under provisions of this Policy, Member States shall use Community Standard Bidding Documents.
- ✓ The Community Shall ensure The development and dissemination of Community Standard Bidding Documents in respect of procurements of goods, services and works, to include the standard forms and content of the invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data; delivery time or schedule of completion; and any necessary appendices, such as formats for tender securities; (159-160)

## (23) SUBMISSION, RECEIPT AND OPENING OF TENDERS

Member States shall ensure that Tenders:

- ✓ Are requested to be submitted in writing;
- ✓ Received after the closing date and time for submission are returned unopened to the sender(s); and
- ✓ Are received and opened under procedures and conditions that guarantee transparency, fairness and objectivity.(161 – 164)

# EVALUATION OF TENDERS AND AWARD OF CONTRACTS (24)

Covered entities of the Member States shall:

- a) Consider for evaluation only tenders which, at the time of opening, materially comply with the requirements of the covered entity for participation as described in the tender documents; and
- b) Ensure that tender evaluations are performed fairly and objectively, and solely on the basis of the evaluation criteria which is contained in the relevant tender documents.  
(165–170)

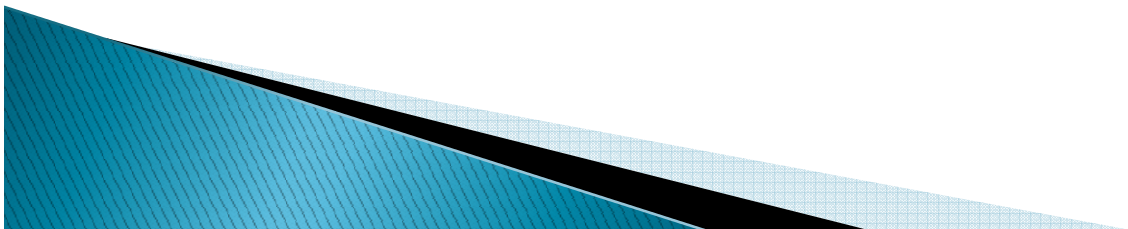
# NEGOTIATIONS (25)

Covered entities of the Member States may conduct negotiations in the following circumstances:

- ✓ In cases of extreme urgency brought about by unforeseen circumstances;
- ✓ When in the reasonable judgment of the covered entity, there is only one supplier that can perform the contract;
- ✓ In the context of procurements in which they have indicated such intent in the invitation to tender; and
- ✓ When it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria described in the tender documents. (171–177)

# CONTRACT ADMINISTRATION (26)

- ✓ Member States shall make the best efforts to ensure that procurement personnel are adequately trained and qualified to administer procurement and contract administration processes. (177–180)

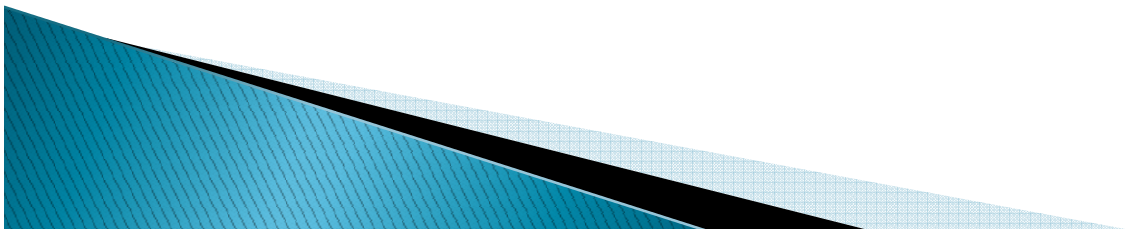


# ANTI-CORRUPTION AND CONFLICTS OF INTEREST (27)

- ✓ Member States shall ensure that their procurement personnel discharge their duties impartially so as to assure fair competitive access to procurement opportunities in the regional marketplace by responsible and qualified suppliers, and shall conduct themselves in such a manner as to foster public confidence in the integrity of the Community Regime on Public Procurement.  
181-185

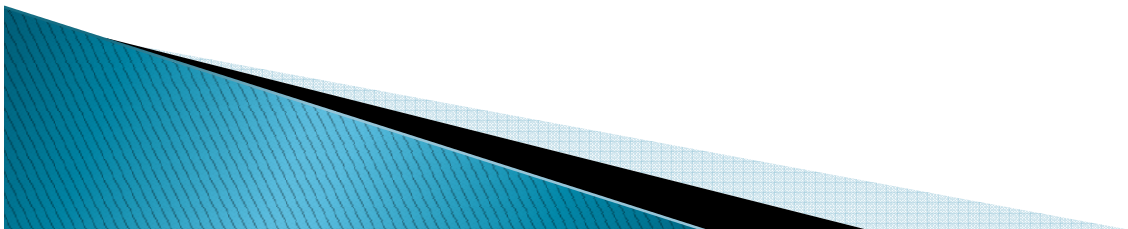
# USE OF INFORMATION TECHNOLOGY (28)

- ✓ Member States should endeavour to use electronic means of communication, as far as practicable and as domestic laws permit, to disseminate information on Public Procurement particularly as regards the publication of notices, including the Prior Information Notice, Invitations to Tender and Contract Award Notices (186)



# STATISTICAL REPORTING (29)

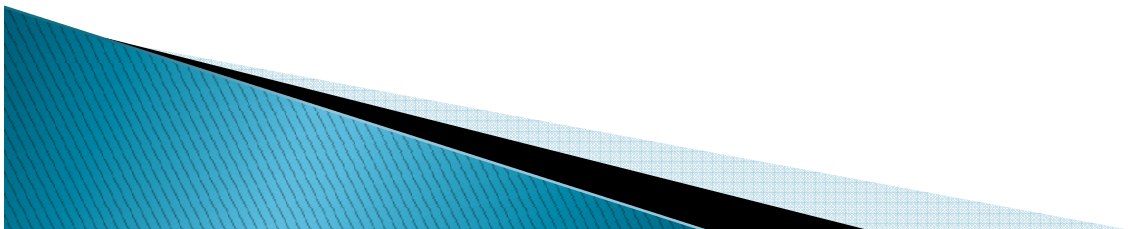
Member States to maintain and periodically submit at the Community level information relative to their procurement activities. (187–190)





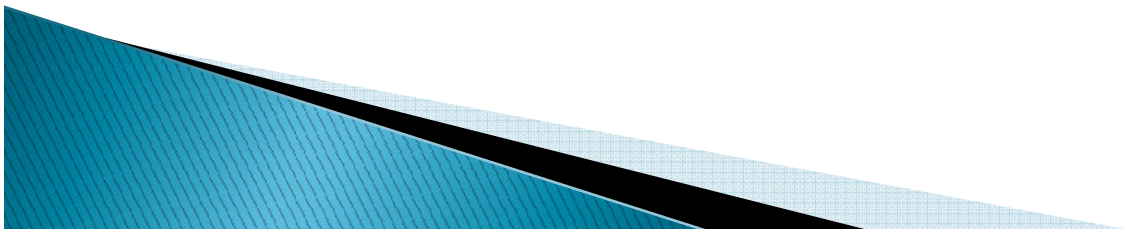
# SUPPLIER CHALLENGE AND REVIEW (30)

- ✓ For the purposes of implementation of this Policy, the right to review appertains only to suppliers, and not to members of the general public. Further, certain types of actions and decisions by the covered entities of the Member State that involve an exercise of discretion are not subject to the right of review provided for by this Policy (191–195)



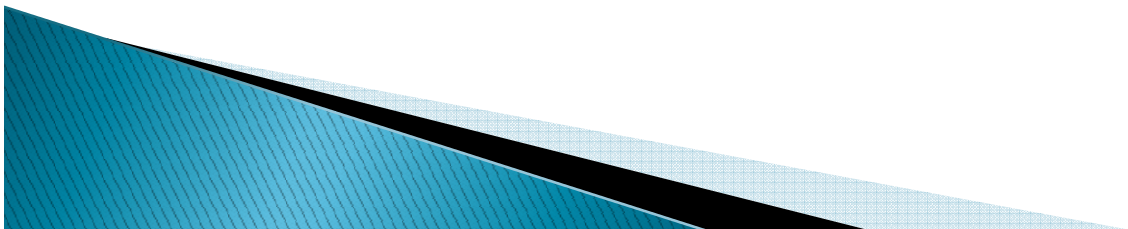
## SUPPLIER CHALLENGE AND REVIEW (30)

- ✓ Member States shall provide for the independent review of supplier challenges. Such review may be at the administrative or judicial levels.



## SUPPLIER CHALLENGE AND REVIEW (30)

- ✓ The Community shall ensure the development of common non-discriminatory, timely, transparent and effective procedures that enable suppliers to challenge alleged breaches of this Policy arising in the context of procurements in which they have, or have had, an interest. Such common rules shall be set out in subsequent documentation to this Policy.





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