

CHAPTER 6

GOVERNMENT PROCUREMENT

ARTICLE 6.1

General

The Parties recognise the importance of government procurement in trade relations and set as their objective the effective, reciprocal and gradual opening of their government procurement markets, in order to maximize, *inter alia*, competitive opportunities for the suppliers of the Parties.

ARTICLE 6.2

Definitions

For the purpose of this Chapter, the following definitions shall apply:

- (a) **e-procurement** means government procurement undertaken through electronic means;
- (b) **entities** means the entities of a Party covered in Annexes 8A, 8B and 8C;
- (c) **government procurement** means the process by which a covered entity obtains the use of or acquires goods or services, or any combination thereof, by contractual means for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale. Government procurement includes procurement by such methods as purchase, lease or rental, with or without the option to buy;
- (d) **in writing or written** means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- (e) **national technical regulation** means a document which lays down characteristics of a good or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
- (f) **person** means a natural person or a juridical person of a Party;
- (g) **recognised national standard** means a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or services or related processes and

production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

- (h) **services** includes construction services, unless otherwise specified;
- (i) **suppliers** means a person or a group of persons that provides or could provide goods or services;
- (j) **technical specifications** means a tendering requirement prescribed by a covered entity that:
 - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or
 - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 6.3 **Scope and Coverage**

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Chapter subject to the conditions specified by each Party in its respective Annexes.
2. This Chapter applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, of goods or services (including construction services), or any combination of goods and services.
3. This Chapter applies to any procurement contract of a value of not less than the relevant threshold specified in Annex 8A.
4. All entities, goods and services not listed in Annex 8A are not covered under this Chapter.
5. No entity may prepare, design, assign or otherwise structure or divide, at any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.
6. Except where provided otherwise in a Party's Annex 8A, this Chapter does not apply to:
 - (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

- (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
- (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts;
- (e) procurement conducted:
 - (i) for the specific purpose of providing international assistance, including development aid;
 - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
 - (iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Agreement; and
- (f) contracts awarded pursuant to all government procurement in goods, services and construction that will be executed in or for the benefits of the two Holy Cities of Makkah and Medina in the Kingdom of Saudi Arabia.

7. The provisions of this Chapter do not affect the rights and obligations provided for in Chapter 2 (Trade in Goods), and Chapter 5 (Trade in Services).

ARTICLE 6.4

National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of another Party offering such goods and services, treatment no less favourable than that accorded to domestic goods, services and suppliers.

2. With respect to all laws, regulations, procedures and practices regarding

government procurement covered by this Chapter, each Party shall ensure that:

- (a) its entities shall not treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation to, or ownership by, a person of the other Party; and
- (b) its entities shall not discriminate against a locally established supplier on the basis that it is a supplier of a goods or services of the other Party.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

ARTICLE 6.5 **Valuation of Intended Procurements**

1. The following provisions shall apply in determining the value of intended procurements for the purposes of implementing this Chapter:

- (a) Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable;
- (b) The selection of a valuation method by a covered entity shall not be made, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and
- (c) In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of any additional purchases which are optional.

ARTICLE 6.6 **Rules of Origin**

A Party shall not apply rules of origin to goods or services imported or supplied for purposes of government procurement covered by this Chapter from another Party, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same goods or services from that Party.

ARTICLE 6.7
Transitional Period for Price Preference

During a transitional period of ten (10) years, a GCC Member State may grant a price preference of ten percent (10%) for the use of any goods and services produced domestically for the procurement of goods and services listed in Annex 8A. A GCC Member State adopting this transitional period price preference shall extend such preference treatment to suppliers of Singapore for the use of the goods and services produced domestically at any GCC Member state.

ARTICLE 6.8
Small and Medium Sized Enterprises

The Parties reserve the right to apply a ten percent (10%) price preference for the Small and Medium Sized Enterprises (SMEs) in their respective countries.

ARTICLE 6.9
Transparency

Each Party shall promptly publish any law, regulation, and administrative procedures of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Chapter, in the appropriate publications listed in that Party's Annex 8B, and to enable the other Party and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to another Party its government procurement procedures.

ARTICLE 6.10
Tendering Procedures

1. Entities shall normally procure by open or selective tendering and may also procure by limited tendering or by negotiation for the selection of the successful supplier as set out in Articles 6.11, 6.12 and 6.13 respectively.

2. For the purposes of this Chapter:

- (a) **open tendering procedures** means a procurement method where all interested suppliers may submit a tender;
- (b) **selective tendering procedures** means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;
- (c) **limited tendering** means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

ARTICLE 6.11
Selective Tendering

1. Entities that intended to use selective tendering shall:
 - (a) invite suppliers to submit a request for participation by means of a notice of intended procurement inviting suppliers to submit a request for participation;
 - (b) indicate the time-limit for submitting requests for participation; and
 - (c) before the commencement of the time period for tendering invite qualified suppliers to submit a tender.
2. When using selective tendering procedures, a procuring entity shall recognise as qualified suppliers any domestic suppliers and any suppliers of the other Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement or, where publicly available, in the tender documentation any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers. Procuring entities shall select the suppliers to participate in the selective tendering procedure in a fair and non-discriminatory manner.
3. Where the tender documentation is not made publicly available from the date of publication of the notice of intended procurement, procuring entities shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 2 of this Article.

ARTICLE 6.12
Limited Tendering

1. Subject to the conditions established in paragraph 2 of this Article, when using the limited tendering procedure, a procuring entity may choose not to apply Articles 6.10 to 6.11 and 6.13.
2. Provided that limited tendering is not used to avoid competition or in a manner that discriminates against suppliers of another Party, entities may apply limited tendering procedure in the following cases:
 - (a) where no suitable tenders have been submitted in response to an open or selective tender, provided that the requirements of the initial tender are not substantially modified;
 - (b) where, for works of art, or, for technical or artistic reasons

connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;

- (c) for reasons of extreme urgency brought by events unforeseeable by the entity, the products or services could not be obtained in time by using open or selective tendering procedures;
- (d) for additional deliveries of goods or services by the original supplier that were not included in the initial procurement where a change of supplier for such additional goods or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement;
- (e) where an entity procures prototypes or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development of a first good or service;
- (f) where additional services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the services described therein. However, the total value of contracts awarded for the additional services may not exceed fifty percent (50%) of the amount of the main contract;
- (g) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded and for which the entity has indicated in the notice of intended procurement concerning the initial service, that limited tendering procedures might be used in awarding contracts for such new services;
- (h) for goods purchased on a commodity market;
- (i) in the case of contracts awarded to the winner of a design contest; where there are several successful candidates, the participants are evaluated by an independent panel or experts with a view to a design contract being awarded to a winner; and
- (j) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy but not for routine purchases from regular suppliers.

ARTICLE 6.13

Negotiations

1. A Party may provide for its entities to conduct negotiations:
 - (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
 - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation.
2. An entity shall:
 - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and
 - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 6.14

Publication of Notice of Intended Procurement

1. An entity shall, for each procurement covered by this Chapter, publish in advance a notice inviting all interested suppliers to submit tenders for that procurement (“notice of intended procurement”), except as otherwise provided for in Article 6.12. This notice shall be published in the appropriate publication listed in Annex 8B. Each such notice shall be valid during the entire period established for tendering for the relevant procurement.
2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the entity issuing the notice, the address and contact where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders and the dates for delivery of the goods or services to be procured.

ARTICLE 6.15

Time Limits for the Tendering Process

1. All time limits established by the entities for the receipt of tenders and requests to participate shall be adequate to allow suppliers of another Party, as well as domestic suppliers, to prepare and to submit tenders, and where appropriate, requests for participation or applications for qualifying. In determining any such

time limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, extent of subcontracting anticipated and the normal time for transmitting tenders from foreign as well as domestic points.

2. Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of requests for participation or for qualifying for the suppliers' list.

3. The minimum time limits for the receipt of tenders is not less than thirty (30) days and the actual time limit of each Party may be stated in Annex 8C.

ARTICLE 6.16

Tender Documentation

1. An entity shall provide interested suppliers with tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include the criteria that the entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values that the entity will assign to these criteria in evaluating tenders.

2. To the extent possible and subject to any applicable fees, an entity should make relevant tender documentation publicly available through electronic means or a computer-based telecommunications network openly accessible to all suppliers. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier and subject to any applicable fees, promptly make the documentation available in written form to the supplier.

3. Where an entity, during the course of a procurement, modifies any part of the tender documentation referred to in paragraph 1 of this Article, it shall:

- (a) publish all such modifications electronically; or
- (b) transmit all such modifications in writing to all suppliers that are participating in the procurement at the time the criteria were modified, and in all cases, allow adequate time to suppliers to submit fresh tenders, or modify and re-submit their tenders as appropriate.

ARTICLE 6.17

Technical Specifications

1. Each Party shall ensure that its entities shall not prepare, adopt or apply any technical specifications with a view to, or with the effect of, creating unnecessary

obstacles to trade between the Parties.

2. Technical specifications prescribed by a procuring entity shall, where appropriate:

- (a) be in terms of performance requirements rather than design or descriptive characteristics; and
- (b) be based on international standards, where applicable; otherwise, on national technical regulations, recognised national standards or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

4. Entities shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

ARTICLE 6.18

Registration and Qualification of Suppliers

1. In the process of registering and/or qualifying suppliers, the entities of a Party shall not discriminate between domestic suppliers and suppliers of another Party.

2. Any condition for participation in open tendering procedures shall be no less favourable to suppliers of another Party than to domestic suppliers.

3. The process of, and the time required for, registering and/or qualifying suppliers shall not be used in order to keep suppliers of another Party off a list of suppliers or from being considered for a particular procurement.

4. Entities maintaining permanent lists of registered and/or qualified suppliers shall ensure that suppliers may apply for registration or qualification at any time, and that all registered and qualified suppliers are included in the lists within a reasonable time.

5. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declaration, provided that such an action is consistent with Article 6.4.

ARTICLE 6.19
Evaluation of Contracts

The tender evaluation process shall be fair and non-discriminatory to avoid any potential conflict of interest between persons administering the process and suppliers participating in the process.

ARTICLE 6.20
Information on Awards

1. Subject to Article 6.26, an entity shall promptly publish a notice on contract award decision in the appropriate publications listed in Annex 8B. The award notice should include at least the following information:

- (a) the name of the entity;
- (b) a description of the goods or services procured;
- (c) the name of the winning supplier; and
- (d) the value of the contract award.

2. Entities shall, on request from an unsuccessful supplier of another Party which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

ARTICLE 6.21
Modifications and Rectifications to Coverage

1. A Party shall notify the Parties of any proposed rectification, transfer of an entity from one Appendix to another, in Annex 8A, withdrawal of an entity, or other modification (hereinafter referred to generally in this Article as "modification") of Annex 8A. The Party proposing the modification ("modifying Party") shall state in the notification:

- (a) the evidence on whether government control or influence over the covered procurements of the entity to be withdrawn has been effectively eliminated; and
- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement.

2. A Party may withdraw or replace a covered entity by making the appropriate compensatory adjustment to its coverage to maintain a level of coverage comparable to that existing prior to the modification. No compensatory adjustment shall be provided to an affected Party in respect of the following modifications made by a Party to its coverage under this Chapter:

- (a) rectifications of a purely formal nature and minor amendments to the Appendices; and
- (b) where Government control or influence over the entity's covered procurements has been effectively eliminated upon its corporatisation or privatisation.

ARTICLE 6.22

Electronic Procurement

1. The Parties shall endeavour, within the context of their commitment to promote electronic commerce, to seek to provide opportunities for e-procurement.

2. Each Party shall endeavour to work toward a single entry point for the purpose of enabling suppliers to access information on procurement opportunities in its territory.

3. Each Party shall, to the extent possible, make procurement opportunities that are available to the public accessible to suppliers via publically available electronic mediums or means. To the extent possible, each Party shall make available relevant documentation by the same medium or means.

4. For each case of intended procurement, the procuring entity shall publish a summary notice in English. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses and contact from which documents relating to the contracts may be requested.

5. Each Party shall encourage its entities to publish, as early as possible in the fiscal year, information regarding the entity's indicative procurement plans in the e-procurement portal.

ARTICLE 6.23

Challenge Procedures

1. In the event of a complaint by a supplier of a Party that there has been a breach of this Chapter in the context of procurement by another Party, that Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity of that other Party. In such instances the procuring entity of that other Party shall accord timely and impartial consideration to any such complaint, in such a manner that is not prejudicial to obtaining corrective measures under the challenge system.
2. Each Party shall provide suppliers of the Parties with non-discriminatory, timely, transparent and effective procedures to challenge alleged breaches of this Chapter arising in the context of procurements in which they have an interest.
3. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.
4. Unless the tender document specifies otherwise, a Party's total liability for any breach of this Chapter or compensation for loss or damages suffered shall be limited to the costs for tender preparation reasonably incurred by the supplier for the purpose of the procurement.
5. The issues arising under paragraphs 1 to 4 of this Article are to be determined by each Party according to its domestic laws and regulations.

ARTICLE 6.24

Exceptions

1. Nothing in this Chapter shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent any Party from imposing or enforcing measures:
 - (a) necessary to protect public morals, order or safety;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to protect intellectual property; or

- (d) relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

ARTICLE 6.25 **Progressive Liberalisation**

In line with the goal of further market liberalisation, the Parties shall, at meetings of the Joint Committee, review their commitments under this Chapter with the view to progressively improving them, taking into account their current respective levels of commitments.

ARTICLE 6.26 **Non-disclosure of Information**

1. The Parties, their covered entities, and their review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall be construed as requiring a Party or its covered entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

ARTICLE 6.27 **Language**

To improve market access to each others procurement markets, each Party shall where possible, use English in its publication of materials or information pertaining to procurement, including in the publications listed in Annex 8B and in the context of any electronic procurement pursuant to Article 6.22.