

CHAPTER 6

GOVERNMENT PROCUREMENT

ARTICLE 6.1

Scope and Coverage

1. In accordance with the provisions of this Chapter, the Parties shall ensure the effective, reciprocal and gradual opening of their government procurement markets.
2. This Chapter applies to any law, regulation, procedure or practice regarding covered procurement by a procuring entity, whether or not it is conducted exclusively or partially by electronic means.
3. For the purpose of this Chapter, “covered procurement” means procurement for governmental purposes:
 - (a) of goods⁷, services, or any combination thereof:
 - (i) as specified in Annexes XIII and XIV for each Party, and
 - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - (b) by any contractual means, including purchase; lease; and rental or hire purchase, with or without an option to buy;
 - (c) for which the value, as estimated in accordance with Article 6.7, equals or exceeds the relevant threshold specified in Annexes XIII and XIV at the time of publication of a notice in accordance with Article 6.14;
 - (d) that is not excluded from coverage in paragraph 4 or in Annexes XIII and XIV for a Party.⁸
4. Except where provided otherwise in Annexes XIII or XIV, this Chapter shall not apply to:
 - (a) contracts awarded pursuant to:

⁷ For the purpose of this Chapter, “goods” shall mean goods classified in Chapters 1 to 97 of the HS.

⁸ The price preference for small and medium-sized enterprises (SMEs) applied by the Sultanate of Oman is defined in Annex XIV

- (i) an international agreement and intended for the joint implementation or exploitation of a project by the contracting parties;
 - (ii) an international agreement relating to the stationing of troops;
 - (iii) the particular procedure of an international organisation;
 - (iv) 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.
- (b) non-contractual agreements or any form of government assistance and procurement made in the framework of assistance or co-operation programmes;
- (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) contracts for:
 - (i) the acquisition or rental of land, existing buildings, or other immovable property or concerning rights thereon;
 - (ii) the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
 - (iii) arbitration and conciliation services;
 - (iv) public employment contracts; and
 - (v) research and development services other than those where the benefits accrue exclusively to the entity for its use in the conduct of its own affairs, on condition that the service is wholly remunerated by the entity.

5. Each Party shall specify the following information:

- (a) in Annex XIII:
 - (i) in Appendix 1, the central government entities whose procurement is covered by this Chapter;
 - (ii) in Appendix 2, the sub-central government entities whose procurement is covered by this Chapter;

- (iii) in Appendix 3, all other entities whose procurement is covered by this Chapter;
 - (iv) in Appendix 4, the goods covered by this Chapter;
 - (v) in Appendix 5, the services covered by this Chapter; and
 - (vi) in Appendix 6, the construction services covered by this Chapter;
- (b) in Annex XIV, any general notes applicable to a Party.

ARTICLE 6.2

Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between 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 goods produced or services supplied by persons with disabilities, philanthropic institutions, or prison labour.

ARTICLE 6.3

Definitions

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

- (a) “entity” means an entity covered in Annex XIII;
- (b) “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;
- (c) “permanent list” means a list of suppliers that a procuring entity has determined that they satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

- (d) “offsets” means any condition or undertaking that encourage local development or improve a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions;
- (e) “person” means a natural person or a juridical person;
- (f) “services” includes construction services, unless otherwise specified;
- (g) “standard” is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products 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 product, service, process or production method;
- (h) “supplier” means any natural or juridical person or public body or group of such persons of a Party or bodies of a Party which can provide goods, services or the execution of works. The term shall cover equally a supplier of goods, a service provider or a contractor;
- (i) “technical regulation” is a document which lays down characteristics of a product 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 product, service, process or production method;
- (j) “technical specifications” means a tendering requirement 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; and
- (k) “tenderer” means a supplier who has submitted a tender.

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 a treatment no less favourable than that accorded by it 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 do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of another Party; and
- (b) its entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

ARTICLE 6.5

Rules of Origin

No Party may apply rules of origin to goods imported or services supplied from another Party for purposes of government procurement covered by this Chapter that are different from, or inconsistent with, the rules of origin which that Party applies in the normal course of trade.

ARTICLE 6.6

Offsets

1. Except as provided for in paragraph 2, each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or in the award of contracts, consider, seek or impose offsets.

2. A Party may adopt or retain an offset as set out in Appendix 6 of Annex XIV, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement. Such measures shall be based on the development needs of that Party and shall accord suppliers of another Party treatment no less favourable than the treatment it accords to suppliers of any non-party.

ARTICLE 6.7

Valuation Rules

1. Entities shall not split up a procurement, nor use any other method of contract valuation with the intention of avoiding the application of this Chapter when determining whether a contract is covered by the disciplines thereof, subject to the conditions set out in Annexes XIII and XIV.
2. In calculating the value of a contract, an entity shall take into account all forms of remuneration, such as premiums, fees, commissions and interests.

ARTICLE 6.8

Transparency

1. Each Party shall promptly publish any law, regulation, judicial decision and administrative ruling of general application and procedure, including standard contract clauses and challenge procedures, regarding procurement covered by this Chapter in the appropriate publications referred to in Appendix 2 of Annex XIV, including officially designated electronic media.
2. Each Party shall promptly publish in the same manner all modifications to such measures.
3. Notwithstanding any other provision of this Agreement, a Party, including its procuring entities, shall not provide information to a particular supplier that might prejudice fair competition between suppliers.

ARTICLE 6.9

Tendering Procedures

1. Entities shall award their public contracts by using methods such as open or selective tendering procedures according to their national procedures, in compliance with this Chapter.
2. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
3. For the purposes of this Chapter:
 - (a) open tendering procedures are those procedures whereby any interested supplier may submit a tender;

- (b) selective tendering procedures are those procedures whereby, consistent with Article 6.10 and other relevant provisions of this Chapter, only suppliers satisfying qualification requirements established by the entities are invited to submit a tender;
- (c) limited tendering procedures are those procedures whereby entities may choose not to publish a notice of intended procurement, and may consult the suppliers of their choice and negotiate the terms of contract with one or more of these suppliers, under the conditions laid down in Article 6.12.

ARTICLE 6.10

Selective Tendering

1. Entities that intend to use selective tendering shall in the notice of intended procurement or in the notice inviting suppliers to submit a request for participation invite qualified suppliers to submit a request for participation and indicate the time-limit for submitting requests for participation.
2. When using selective tendering procedures, a procuring entity shall recognize as qualified suppliers such domestic suppliers and suppliers of another Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the objective criteria for such limitation. 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 referred to in paragraph 1, procuring entities shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 2.
4. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions foreseen in Article 6.11. Any selection shall allow for equitable opportunities for suppliers on the lists.

ARTICLE 6.11

Qualification of Suppliers

1. Any conditions for participation in procurement shall be limited to those that are essential to ensure that the potential supplier has the capability to fulfil the requirements of the procurement and the ability to execute the contract in question.
2. In the process of qualifying suppliers, entities shall not discriminate between domestic suppliers and suppliers of another Party. In assessing whether a supplier

satisfies the conditions for participation, a procuring entity shall evaluate the financial, commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity. The procuring entity shall base its assessment on the conditions that it has specified in advance in notices or tender documentation.

3. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as bankruptcy, false declarations or conviction for serious crime such as participation in criminal organizations.

4. Entities shall publish in adequate time any conditions for participation in tendering procedures to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement practices, to complete the qualification procedure.

5. Procuring entities may establish or maintain a permanent list of qualified suppliers. They shall ensure that suppliers may apply for qualification at any time and that all qualified suppliers so requesting are included in the list within a reasonable and non-discriminatory short period of time. A supplier having requested to be included in the list shall be informed by the entities concerned of the decision in this regard in a timely fashion.

6. Entities operating in the utilities sectors or others may use a notice inviting suppliers to apply for inclusion on a permanent list as a notice of intended procurement and may exclude requests for participation from suppliers not yet qualified in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application.

ARTICLE 6.12

Limited Tendering

1. Subject to the conditions established in paragraph 2 when using the limited tendering procedure, a procuring entity may choose not to publish a contract notice prior to the award of the procurement contract.

2. Provided that limited tendering is not used to avoid maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of another Party or protection to domestic producers or suppliers, entities may award their public contracts by limited tendering procedure in the following cases:

- (a) where no suitable tenders have been submitted in response to an open or selective tender, on condition that the requirements of the initial tender are not substantially modified;

- (b) where, for technical or artistic reasons, or for 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 about by events unforeseen by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
- (f) when 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;
- (g) for new services consisting of the repetition of similar services and for which the entity has indicated in the notice concerning the initial service, that limited tendering procedures might be used in awarding contracts for such new services;
- (h) for products purchased on a commodity market;
- (i) in the case of contracts awarded to the winner of a design contest; in the case of several successful candidates, successful candidates shall be invited to participate in the negotiations as specified in the notice or the tender documents;
- (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 forth in the notices or tender documentation.
- 2. An entity shall:
 - (a) ensure that any elimination of tenderers in the negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and
 - (b) when negotiations are concluded, provide a common deadline for the remaining tenderers to submit any new or revised tenders.

ARTICLE 6.14

Publication of Notices

1. Each Party shall ensure that its entities provide for effective dissemination of the tendering opportunities generated by the relevant government procurement processes, providing suppliers of another Party with all the information required to take part in such procurement.
2. For each covered procurement as defined in paragraph 3 of Article 6.1, except as set out in paragraph 3(c) of Article 6.9 and in Article 6.12, entities shall publish in advance a notice inviting interested suppliers to submit tenders, or where appropriate, requests for participation for that contract.
3. The information in each notice of intended covered procurement shall include at least the following:
 - (a) name, address, and if available telefax number, electronic address of the entity and, if different, the address where all documents relating to the procurement may be obtained;
 - (b) the tendering procedure chosen and the form of the contract;
 - (c) a description of the intended procurement, as well as essential contract requirements to be fulfilled;
 - (d) any conditions that suppliers must fulfil to participate in the procurement;
 - (e) time-limits for submission of tenders and, where appropriate, other time limits;
 - (f) if possible, terms of payment and any other terms; and

(g) costs of the tendering documentation.

4. Each notice referred to in this Article and Appendix 5 of Annex XIV, shall be accessible during the entire time period established for tendering for the relevant procurement.

5. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. The notices shall be accessible through the points of access specified in Appendix 2 of Annex XIV.

ARTICLE 6.15

Tender Documentation

1. A procuring 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. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature, scope, and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certifications, plans, drawings, or instructional materials;
- (b) any conditions for participation, including any applicable fees, financial guarantees, information, and documents that suppliers are required to submit;
- (c) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and
- (d) any other terms or conditions relevant to the evaluation of tenders.

ARTICLE 6.16

Technical Specifications

1. Each Party shall ensure that its entities do 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 entities shall, where appropriate:
 - (a) be in terms of performance and functional requirements rather than design or descriptive characteristics; and
 - (b) be based on international standards, where these exist or, in their absence, on national technical regulations, recognised national standards, or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, an entity shall, where appropriate, include words such as “or equivalent” in the technical specifications and consider tenders that demonstrably meet the required design or descriptive characteristics and are fit for the purposes intended.
4. An entity shall not prescribe technical specifications that require or 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 procurement requirements and provided that, in such cases, words such as “as equivalent” are included in the tender documentation.

ARTICLE 6.17

Time Limits

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 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 are specified in Appendix 3 to Annex XIV.

ARTICLE 6.18

Treatment of Tenders and Contract Awards

1. Tenders and requests to participate in procedures shall be submitted in writing.

2. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

3. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

- (a) where price is the sole criterion, the lowest price; or
- (b) the most advantageous tender.

4. Each Party shall ensure that its entities provide for effective dissemination of the results of government procurement processes.

5. Entities shall as soon as possible publish the decisions regarding the award of the contract and of the characteristics and relative advantages of the selected tender. Upon request, entities shall inform any eliminated tenderer of the reasons for the rejection of its tender.

ARTICLE 6.19

Bid Challenges

1. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of any obligations specified in this Chapter for procurements in which they have, or have had, an interest.

2. Challenges shall be heard by an impartial and independent reviewing authority. A reviewing authority, if it is not a court, shall either be subject to judicial review or shall have procedural guarantees of due process.

3. Provided it respects the previous paragraphs, each Party can determine according to its domestic laws and regulations the review procedures applicable to the hearing of challenges under this Article.

4. Each Party shall allow sufficient period of time for suppliers to prepare and submit a challenge.

ARTICLE 6.20

Information Technology

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government

procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using generally available and interoperable information technology products and software, including those related to authentication and encryption of information; and
- (b) maintain mechanisms that ensure the integrity of, and prevent inappropriate access to, requests for participation and tenders.

ARTICLE 6.21

Co-operation and Assistance

1. The Parties will co-operate in the area of government procurement by exchanging experience and information about best practices and regulatory frameworks.

2. The Parties shall endeavour to co-operate with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets.

3. Technical assistance shall be provided upon a duly motivated request, in particular through jointly developed training programmes.

ARTICLE 6.22

Modifications to Coverage

1. A Party may modify its coverage under this Chapter, provided that it:

- (a) notifies the other Parties of the modification; and
- (b) provides the other Parties, within 30 days following the date of such notification, appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding paragraph 1(b), no compensatory adjustments shall be provided to the other Parties where the modification by a Party of its coverage under this Chapter concerns:

- (a) rectifications of a purely formal nature and minor amendments to Annexes XIII and XIV;
 - (b) one or more covered entities on which government control or influence has been effectively eliminated.
3. The Joint Committee shall endorse any modifications to coverage as set forth by this Article by amending the relevant Annex.

ARTICLE 6.23

Further Negotiations

If a Party offers in the future a non-party more favourable conditions for access to its government procurement market than agreed under this Chapter, it shall, upon request of another Party, enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

ARTICLE 6.24

Review and Implementation

1. The Joint Committee shall review the implementation of this Chapter every two years, unless otherwise agreed by the Parties; it shall consider any issue arising from it, and take appropriate action in the exercise of its functions.
2. At the request of a Party, the Joint Committee shall convene a working group to address issues related to the implementation of this Chapter.

ARTICLE 6.25

Transitional Period

1. Notwithstanding the provisions on national treatment set out in Article 6.4, GCC Member States may grant, for a transitional period not exceeding ten years from the date of entry into force of this Agreement, a price preference programme in favour of their domestic goods and services.
2. A price preference granted under this article shall not exceed 10% of the value of the goods and services produced domestically.