

CHAPTER 6
GOVERNMENT PROCUREMENT

ARTICLE 6.1

Scope and Coverage

1. The provisions of the WTO Revised Agreement on Government Procurement (2012) (GPA), specified in Appendix 1 to Annex XXI (Government Procurement) to this Agreement, including the Annexes of each Party to Appendix 1 to the GPA, are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of this Chapter, “covered procurement” means procurement to which Article II of the GPA applies and, in addition, procurement listed in Appendix 2 to Annex XXI (Government Procurement) to this Agreement.
3. With regard to covered procurement, each Party shall apply, *mutatis mutandis*, the provisions of the GPA specified in Appendix 1 to Annex XXI (Government Procurement) to this Agreement, on a bilateral basis, to suppliers, goods or services of another Party. Each Party shall also apply, with regard to covered procurement, the provisions on value of thresholds in Appendix 5 to Annex XXI (Government Procurement).

ARTICLE 6.2

Additional Disciplines

In addition to the provisions referred to under Article 6.1 (Scope and Coverage), the Parties shall apply the provisions in Articles 6.3 (Use of Electronic Means); 6.4 (Electronic Publication of Procurement Notices); 6.5 (Supporting Evidence); 6.6 (Conditions for Participation); 6.7 (Registration Systems and Qualification Procedures); 6.8 (Selective Tendering); 6.9 (Abnormally Low Prices); 6.10 (Facilitating Participation of Small and Medium-Sized Enterprises (SME)); 6.11 (Environmental, Social and Labour Considerations); 6.12 (Modifications and Rectifications of Market Access Commitments); 6.13 (Modifications); 6.14 (Rectifications) and 6.15 (Further Negotiations).

ARTICLE 6.3

Use of Electronic Means

1. Each Party shall ensure that its procuring entities conduct covered procurement by electronic means to the widest extent practicable.

2. A procuring entity is considered as conducting covered procurement by electronic means if the entity uses electronic means of information and communication for:
 - (a) the publication of notices and tender documentation in procurement procedures; and
 - (b) the submission of requests to participate and the submission of tenders.
3. Except for specific situations, such electronic means of information and communication shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict access to the procurement procedure.
4. Each Party shall ensure that its procuring entities receive and process electronic invoices in accordance with its law.

ARTICLE 6.4

Electronic Publication of Procurement Notices

1. With regard to covered procurement, all procurement notices including notices of intended procurement, summary notices, notices of planned procurement and contract award notices shall be directly accessible by electronic means, free of charge, through a single point of access on the internet.
2. Each Party shall publish notices in accordance with Appendix 3 to Annex XXI (Government Procurement).

ARTICLE 6.5

Supporting Evidence

Each Party shall ensure that at the time of submission of requests to participate or at the time of submission of tenders, procuring entities do not require suppliers to submit all or part of the supporting evidence that they are not in one of the situations in which a supplier may be excluded and that they fulfil the conditions for participation unless this is necessary to ensure the proper conduct of the procurement.

ARTICLE 6.6

Conditions for Participation

Each Party shall ensure that where its procuring entities require a supplier, as a condition for participation in a covered procurement, to demonstrate prior experience they do not require that the supplier has such experience in that Party.

ARTICLE 6.7

Registration Systems and Qualification Procedures

A Party that maintains a supplier registration system shall ensure that interested suppliers may request registration at any time. Any interested supplier having made a request shall be informed within a reasonable period of time of the decision to grant or reject this request.

ARTICLE 6.8

Selective Tendering

Each Party shall ensure that where a procuring entity uses a selective tendering procedure, the procuring entity addresses invitations to submit a tender to a number of suppliers that is sufficient to ensure genuine competition without affecting the operational efficiency of the procurement system.

ARTICLE 6.9

Abnormally Low Prices

Further to paragraph 6 of Article XV of the GPA, if a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may also verify with the supplier whether the price takes into account the grant of subsidies.

ARTICLE 6.10

Facilitating Participation of Small and Medium-Sized Enterprises (SMEs)

1. The Parties recognise the important contribution of SMEs to economic growth and employment and the importance of facilitating their participation in government procurement.
2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for

eligibility, is transparent and non-discriminatory against suppliers from the other Parties.

3. If available, a Party shall, upon request of another Party, provide information regarding its measures aimed at promoting, encouraging and facilitating the participation of SMEs in government procurement. The Parties' contact points are listed in Appendix 4 to Annex XXI (Government Procurement).
4. With a view to facilitating participation by SMEs in government procurement, each Party shall, to the extent possible, and if appropriate:
 - (a) provide comprehensive procurement-related information in a single electronic portal;
 - (b) endeavour to make all tender documentation available free of charge;
 - (c) conduct procurement by electronic means or through other new information and communication technologies; and
 - (d) consider the size, design, and structure of the procurement.

ARTICLE 6.11

Environmental, Social and Labour Considerations

Each Party shall:

- (a) allow procuring entities to take into account environmental, labour and social considerations throughout the procurement procedure, provided they are non-discriminatory and are not applied in a discriminatory manner; and
- (b) take appropriate measures to ensure compliance with its obligations under environmental, social and labour law, including those established under Chapter 13 (Trade and Sustainable Development).

ARTICLE 6.12

Modifications and Rectifications of Market Access Commitments

Each Party may modify or rectify its market access commitments in Appendix 2 to Annex XXI (Government Procurement) in accordance with the procedures set out in Articles 6.13 (Modifications) and 6.14 (Rectifications).

ARTICLE 6.13

Modifications

1. A Party intending to modify Appendix 2 to Annex XXI (Government Procurement), shall:
 - (a) notify the other Parties in writing; and
 - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Parties to maintain a level of market access commitments comparable to that existing prior to the modification.
2. Notwithstanding point (b) of paragraph 1, a Party is not required to provide compensatory adjustments to the other Parties if the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement.
3. A Party's control or influence over the covered procurement of procuring entities is presumed to be effectively eliminated if the procuring entity is exposed to competition in markets to which access is not restricted.
4. Any other Party may object to the modification referred to in point (a) of paragraph 1 if it disputes that:
 - (a) a compensatory adjustment proposed under point (b) of paragraph 1 is adequate to maintain a comparable level of mutually agreed market access commitments; or
 - (b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence as provided for in paragraph 2.
5. A Party shall object in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 1 or that Party will be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Chapter 16 (Dispute Settlement).

ARTICLE 6.14

Rectifications

1. A Party intending to rectify Appendix 2 to Annex XXI (Government Procurement) shall notify the other Parties in writing.
2. The following changes to an Appendix to Annex XXI (Government Procurement) shall be considered a rectification, provided that they do not affect the mutually agreed market access commitments provided for in this Chapter:

- (a) a change in the name of a procuring entity;
 - (b) a merger of two or more procuring entities listed within that Sub-Section; and
 - (c) the separation of a procuring entity listed in that Sub-Section into two or more procuring entities that are added to the procuring entities listed in the same Sub-Section.
3. A Party may notify the other Parties of an objection to a proposed rectification within 45 days from having received the notification. A Party submitting an objection shall set out the reasons for considering the proposed rectification not as a change provided for in paragraph 1, and describe the effect of the proposed rectification on the mutually agreed market access commitments provided for in this Chapter. If no such objection is submitted in writing within 45 days after having received the notification, the other Parties shall be deemed to have agreed to the proposed rectification.

ARTICLE 6.15

Further Negotiations

In case a Party in the future offers additional benefits with regard to its respective government procurement market access coverage agreed under this Chapter to a non-party, it shall agree, upon request of another Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.