

CHAPTER 14

PUBLIC PROCUREMENT

ARTICLE 14.1

Incorporation of certain provisions of the GPA

1. The Parties affirm their rights and obligations under the GPA.
2. The following provisions of the GPA are incorporated into and made part of this Agreement, *mutatis mutandis*, to apply to procurement covered by Annex 14 (Public procurement market access commitments) to this Agreement:
 - (a) Articles I to IV, Articles VI to XV, Articles XVI(1) to XVI(3), and Articles XVII and XVIII;
and
 - (b) Appendices II to IV as they relate to each Party.
3. Notwithstanding Article 1.5(5) (Relation to other international agreements), if any of the provisions of the GPA referred to in point (a) of paragraph 2 are amended, those amendments shall not be automatically incorporated into this Chapter, but the Parties shall consult with a view to amending this Chapter, as appropriate.

4. For greater certainty, references to the term “covered procurement” in the provisions incorporated into and made part of this Agreement, *mutatis mutandis*, in accordance with paragraph 2 shall be interpreted as references to procurement covered by Annex 14 (Public procurement market access commitments).

ARTICLE 14.2

Additional disciplines

1. The provisions of this Article apply in addition to the provisions referred to in Article 14.1 (Incorporation of certain provisions of the GPA).

2. As regards the use of electronic means in conducting procurement and publication of notices, all notices relating to covered procurement within the meaning of Article 14.1(4) (Incorporation of certain provisions of the GPA), including notices of intended procurement, summary notices, notices of planned procurement and contract award notices:

- (a) shall be directly accessible by electronic means, free of charge, through a single point of access on the internet; and
- (b) may also be published in an appropriate paper medium.

Tender documentation shall be made available through electronic means and the Parties shall use electronic means in the submission of tenders to the widest extent practicable.

3. As regards registration systems and qualification procedures, pursuant to Article IX(1) of the GPA, where a Party, including its procuring entities, or any other competent authority maintains a supplier registration system, it shall ensure that information on the supplier registration system is accessible through electronic means and that interested suppliers may request registration at any time. If a supplier meets the conditions for registration, it shall be registered within a reasonable period of time. If a supplier does not meet the conditions for registration, it shall be informed and provided with written reasons within a reasonable period of time.
4. As regards selective tendering, pursuant to Article IX(5) of the GPA, if a procuring entity uses a selective tendering procedure, it shall not limit the number of suppliers invited to submit a tender with the intention of avoiding effective competition.
5. As regards environmental, social and labour considerations, a Party may:
 - (a) allow procuring entities to take into account environmental, social and labour considerations related to the object of the procurement, provided that such considerations are:
 - (i) non-discriminatory; and

- (ii) indicated in the notice of intended procurement or in the tender documentation;
- (b) take appropriate measures to ensure compliance with its own and with international environmental, social and labour laws, regulations, obligations and standards provided that such laws, regulations, obligations and standards are not discriminatory.

6. As regards the conditions for participation, while a procuring entity of a Party may, in establishing the conditions for participation, require relevant prior experience where essential to meet the requirements of the procurement in accordance with point (b) of Article VIII(2) of the GPA, that procuring entity of a Party shall not require prior experience in the territory of the Party to be a condition of the procurement.

ARTICLE 14.3

Exchange of statistics

Every two years, each Party shall make available to the other Party bilateral statistics on public procurement, subject to their availability in the official online procurement systems of each Party.

ARTICLE 14.4

Modifications and rectifications to coverage

1. A Party may modify its commitments in its respective Section of Annex 14 (Public procurement market access commitments) in accordance with paragraphs 3 to 5 and paragraph 9 of this Article. A Party may rectify its commitments in its respective Section of Annex 14 (Public procurement market access commitments) in accordance with paragraphs 6 to 9 of this Article.
2. If a modification or a rectification of a Party's Annexes to Appendix I to the GPA becomes effective pursuant to Article XIX of the GPA, it shall automatically become effective and applicable for the purposes of this Agreement, *mutatis mutandis*.
3. A Party intending to modify its commitments in its respective Section of Annex 14 (Public procurement market access commitments) shall:
 - (a) notify the other Party in writing; and
 - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Party in order to maintain a level of coverage comparable to that existing prior to the modification.
4. Notwithstanding point (b) of paragraph 3, a Party is not required to provide compensatory adjustments to the other Party if the modification covers an entity over which the Party has effectively eliminated its control or influence.

5. The other Party may object to a modification as referred to in paragraph 3, if it considers that:
- (a) a compensatory adjustment proposed under point (b) of paragraph 3 is not adequate to maintain a comparable level of mutually agreed coverage; or
 - (b) the modification does not cover an entity over which the Party has effectively eliminated its control or influence as provided for in paragraph 4.

The other Party shall object in writing within 45 days after the date of delivery of the notification as referred to in point (a) of paragraph 3 or be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Chapter 26 (Dispute settlement).

6. The following changes to a Party's respective Section of Annex 14 (Public procurement market access commitments) shall be considered to be a rectification of a purely formal nature, provided that those changes do not affect the mutually agreed coverage provided for in this Chapter:

- (a) a change in the name of an entity;
- (b) a merger of two or more entities listed in that Section; and
- (c) the separation of an entity listed in that Section into two or more entities that are added to the entities listed in the same Section.

7. In the case of proposed rectifications to a Party's respective Section of Annex 14 (Public procurement market access commitments), the Party shall notify the other Party every two years, in line with the cycle of notifications provided for under the GPA.

8. A Party may notify the other Party of an objection to a proposed rectification within 45 days after the date of delivery of the notification. If a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a rectification of a purely formal nature referred to in paragraph 6, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Agreement. If no objection is submitted in writing within 45 days after the date of delivery of the notification, the Party shall be deemed to have agreed to the proposed rectification.

9. If the other Party objects to the proposed modification or rectification, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days after the date of delivery of the objection, the Party seeking to modify or rectify its respective Section of Annex 14 (Public procurement market access commitments) may refer the matter to dispute settlement in accordance with Chapter 26 (Dispute settlement). The intended modification or rectification of the relevant Section of Annex 14 (Public procurement market access commitments) shall take effect only when both Parties have agreed or on the basis of a final decision of a panel established under Article 26.5 (Establishment of a panel).

ARTICLE 14.5

Further negotiations

The Parties shall enter into negotiations on market access with a view to making improvements to the coverage provided for under Sub-Section 2 (Sub-central government entities) and Sub-Section 3 (Other entities) of Section B (Schedule of New Zealand) of Annex 14 (Public procurement market access commitments) as soon as possible following New Zealand local authorities, state services or state sector entities being either:

- (a) covered by New Zealand in another international trade agreement; or
- (b) required to follow the New Zealand Government Procurement Rules¹ after the date of entry into force of this Agreement.²

¹ The New Zealand Government Procurement Rules are New Zealand's primary instrument for regulating government procurement. A Whole of Government Direction issued on 22 April 2014 under Section 107 of the Crown Entities Act 2004 required certain classes of entities to follow the Government Procurement Rules.

² For greater certainty, this point does not apply if one or more of the entities concerned were required to follow the New Zealand Government Procurement Rules on the date of entry into force of this Agreement.