

## **CHAPTER 16**

### **GOVERNMENT PROCUREMENT**

#### **ARTICLE 16.1 : GENERAL**

1. The Parties reaffirm their rights and obligations under the WTO Agreement on Government Procurement (“GPA”) and their interest in further expanding bilateral trading opportunities in each Party’s government procurement market.
2. The Parties recognise their shared interest in promoting international liberalisation of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to co-operate in the review under paragraph 7 of Article XXIV of the GPA and on procurement matters in the APEC and other appropriate international fora.
3. Nothing in this Chapter shall be construed to derogate from either Party’s rights or obligations under the GPA.
4. The Parties confirm their desire and determination to apply the APEC Non-Binding Principles on Government Procurement, as appropriate, to all their government procurement that is outside the scope of the GPA and this Chapter.

#### **ARTICLE 16.2 : SCOPE AND COVERAGE**

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Chapter, as specified in Appendix 16A.1.
2. For the purpose of this Chapter, a covered government procurement means a procurement:
  - (a) by an entity specified in a Party’s Appendix 16A.1;
  - (b) by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without option to buy, of goods or services or any combination of goods and services specified in a Party’s Appendix 16A.2; and

(c) in which the contract has a value not less than the relevant thresholds set out in Annex 16A.

3. Except as otherwise specified in the Annexes, this Chapter does not cover non-contractual agreements or any form of governmental assistance, including co-operative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of products and services to persons or governmental authorities not specifically covered under the schedules to this Chapter.

4. In accordance with paragraph 3 of Article III of the GPA, the provisions of this Chapter do not affect the rights and obligations provided for in Chapter 3 (National Treatment and Market Access for Goods), Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment), Chapter 11 (Telecommunications) and Chapter 12 (Financial Services).

### **ARTICLE 16.3 : INCORPORATION OF GPA PROVISIONS**

1. The Parties shall apply the provisions of Articles II-IV, VI-XV, XVI:1, XVIII, XIX:1-4, XX, XXIII, Agreement Notes and Appendices II-IV of the GPA to all covered government procurement. To that end, these Articles, Notes and Appendices of the GPA are incorporated into and made part of this Chapter, *mutatis mutandis*.

2. For the purposes of the incorporation of the GPA under paragraph 1, the term:

- (a) **Agreement** in the GPA means “Chapter” except that **countries not Parties to this Agreement** means **non-Parties** and **Party to the Agreement** in GPA Article III:2(b) means **Party**;
- (b) **Appendix I** in the GPA means **Annex 16A**;
- (c) **Appendix II** in the GPA means **Annex 16B**;
- (d) **Annex 1** in the GPA means **Appendix 16A.1 of Schedule 1 of Annex 16A**;
- (e) **Annex 2** in the GPA means **Appendix 16A.1 of Schedule 2 of Annex 16A**;
- (f) **Annex 3** in the GPA means **Appendix 16A.1 of Schedule 3 of Annex 16A**;
- (g) **Annex 4** in the GPA means **Appendix 16A.1 of Schedule 2 of Annex 16A**;
- (h) **Annex 5** in the GPA means **Appendix 16A.1 of Schedule 3 of Annex 16A**;
- (i) **any other Party** in Article III:1(b) of the GPA means **a non-Party**;
- (j) “**from other Parties**” in Article IV:1 of the GPA means **from the other**

**Party;**

- (k) **among suppliers of other Parties or** in Article VIII of the GPA shall not be incorporated; and
- (l) **products** in the GPA means **goods**.

3. Where entities specified in Annex 16A, in the context of procurement covered under this Chapter, require enterprises not included in Annex 16A to award contracts in accordance with particular requirements, Article III of the GPA shall apply *mutatis mutandis* to such requirements.

4. If the GPA is amended or is superseded by another agreement, the Parties shall amend this Chapter, as appropriate, after consultations.

#### **ARTICLE 16.4 : QUALIFICATION OF SUPPLIERS**

Any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfill the contract in question. Any conditions for participation required from suppliers or service providers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers and service providers, as well as the verification of qualifications, shall be no less favourable to suppliers and service providers of the other Party than to domestic suppliers and service providers. The financial, commercial and technical capacity of a supplier or service provider shall be judged on the basis both of that supplier's or service provider's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organisations.

#### **ARTICLE 16.5 : INFORMATION TECHNOLOGY AND CO-OPERATION**

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 each Party publishes a notice inviting interested suppliers to submit tenders

for the contract in accordance with Article IX of the GPA, which is incorporated into this Chapter by paragraph 1 of Article 16.3, it will use a single point of access specified in Annex 16B.

3. The Parties shall endeavour to provide each other with technical co-operation and assistance through the exchange of information on the development of their respective government electronic procurement systems.

4. Pursuant to Article IX:8 of the GPA, the procuring entity shall publish a summary notice in one of the official languages of the WTO, namely English, French and Spanish. For the purposes of this Chapter, the Parties shall endeavour to use English as the language for publishing the notice for each case of intended procurement. 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 contacts from which documents relating to the contracts may be requested.

#### **ARTICLE 16.6 : PUBLICATION OF INDICATIVE PROCUREMENT PLANS**

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 electronic-procurement portal.

#### **ARTICLE 16.7 : MODIFICATIONS TO COVERAGE**

1. Where a Party proposes to make minor amendments, rectifications or other modifications of a purely formal or minor nature to its Appendices to Annex 16A, it shall notify the other Party. Such amendments, rectifications or modifications shall become effective thirty (30) days from the date of notification. The other Party shall not be entitled to compensatory adjustments.

2. Where a Party proposes to make a modification to its Appendices to Annex 16A when the business or commercial operations or functions of any of its entities or part thereof is constituted or established as an enterprise with a legal entity separate and distinct from the government of a Party, regardless of whether or not the government holds any shares or interest in such a legal entity, it shall notify the other Party. The proposed removal of such entity or modification shall become effective thirty (30) days from the date of notification. The other Party shall not be entitled to compensatory adjustments.

3. Where a Party proposes to make a modification for reasons other than those stated in paragraphs 1 and 2, it shall notify the other Party and provide appropriate compensatory adjustments in order to maintain a level of coverage comparable to that existing prior to the modification. The proposed modification shall become effective thirty (30) days from the date of notification.

#### **ARTICLE 16.8 : TRANSPARENCY**

The Parties shall apply all procurement laws, regulations, procedures and practices consistently, fairly and equitably so that their government entities provide transparency to potential suppliers.

#### **ARTICLE 16.9 : CONTACT POINTS**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter.

2. For the purposes of this Chapter, all communications or notifications to or by a Party shall be made through its contact point.

3. For the purposes of this Article, the contact points of the Parties are:

- (a) for Korea, the Ministry of Finance and Economy, or its successor; and
- (b) for Singapore, the Ministry of Finance, or its successor.