

5. Chapter Nine (Government Procurement) and Annex 9 (BOT Contracts and Public Works Concessions) are hereby replaced with the following:

“CHAPTER NINE

GOVERNMENT PROCUREMENT

ARTICLE 9.1

General Provisions

1. The Parties recognise their shared interest in promoting the international liberalisation of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXI:3 of the GPA and in other appropriate international fora.

2. For the purposes of this Chapter, the **GPA** means the *WTO Agreement on Government Procurement* signed at Marrakesh on 15 April 1994, as amended by the *Protocol Amending the Agreement on Government Procurement*, adopted at Geneva on 30 March 2012, and as may be further amended from time to time.

3. For all covered procurement, the Parties shall apply the provisions of the GPA, other than those exceptions set out in this paragraph. To that end, the GPA and each Party's Annexes, including the Notes and footnotes thereto, to Appendix I to the GPA, are incorporated into and made part of this Agreement, *mutatis mutandis*, with the exception of:

- (a) most favoured treatment for goods, services and suppliers of any other Party, as set out in Article IV:1(b) of the GPA;
- (b) special and differential treatment for developing countries, as set out in Article V of the GPA;
- (c) the obligation to include in notices of intended procurement an indication that the procurement is covered by this Agreement, as set out in Article VII:2(1) of the GPA;
- (d) conditions for participation, as set out in Article VIII:2 of the GPA, which shall be replaced by “In establishing the conditions for participation, a procuring entity shall not impose the condition that, in order for a supplier of a Party to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of the other Party or that the supplier has prior work experience in the territory of that Party, except when prior work experience is essential to meet the requirements of the procurement.”;
- (e) in relation to the commitments agreed in this Chapter additional to those in the GPA, and to the coverage defined in Article 9.2.1(b), consultations and dispute settlement, as set out in Article XX of the GPA;

- (f) institutions, as set out in Article XXI of the GPA; and
 - (g) final provisions, as set out in Article XXII of the GPA.
4. For the purposes of the incorporation of the GPA into this Chapter under paragraph 3:
- (a) “Agreement” in the GPA means “Chapter,” and “Party to this Agreement” means “Party”;
 - (b) “other Parties”, “another Party”, “another Party or Parties”, or “any other Party” in the GPA means “the other Party”; and
 - (c) “the Committee” in the GPA means “the Working Group”.

ARTICLE 9.2

Scope and Coverage

1. Subject to paragraph 2, the procurement covered by this Chapter shall be:
- (a) all procurement covered by each Party’s Annexes to Appendix I to the GPA and any note and any footnote attached thereto, including their amendments or replacements; and
 - (b) procurement covered by the respective Party’s Annex 9-B,
(covered procurement).
2. For the purposes of this Agreement, build-operate-transfer contracts (hereinafter referred to as "BOT contracts and public works concessions, each as defined in Annex 9-A.2, shall be subject to Annex 9-A but not to the other provisions of this Chapter.
3. This Chapter shall apply to any measure regarding covered procurement.

ARTICLE 9.3

Use of Electronic Means

1. Further to Article IV:3 of the GPA, when conducting covered procurement, a procuring entity shall use electronic means:
- (a) for the publication of notices of intended procurement and summary notices; and
 - (b) to the widest extent practicable,

- (i) for information exchange and communication, the publication of tender documentation in procurement procedures, and for the submission of tenders; and
- (ii) for the publication of notices of planned procurement and contract award notices.

ARTICLE 9.4

Electronic Publication of Procurement Notices

1. In addition to the requirements in Article VII of the GPA, with regard to covered procurement, each Party shall make directly accessible by electronic means, free of charge, through a single point of access on the internet, as listed in Annex 9-C:

- (a) the notices of intended procurement and summary notices; and
 - (b) to the widest extent practicable, notices of planned procurement and contract award notices.
2. To improve market access to each Party's procurement market, each Party shall:
- (a) publish its summary notices primarily in English and in accordance with domestic law; and
 - (b) to the extent possible and appropriate, use English in its publication of the other materials listed in Article 9.4.

ARTICLE 9.5

Facilitation of Participation by Small and Medium-sized Enterprises (SMEs)

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs 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.

3. Each Party shall endeavour to facilitate participation by SMEs in covered procurement and shall, to the extent possible and appropriate regarding covered procurement:

- (a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;
- (b) make all tender documentation available free of charge;

- (c) conduct covered procurement by electronic means or through other new information and communication technologies;
- (d) consider the size, design, and structure of the covered procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs;
- (e) seek opportunities to simplify administrative processes; and
- (f) endeavour to require prompt payment by procuring entities to their suppliers and by suppliers to their subcontractors.

ARTICLE 9.6

Environmental, Social, and Labour Considerations

1. A Party, including its procuring entities, may:
 - (a) take into account environmental, social, and labour considerations at any stage of a procurement, provided that they are:
 - (i) based on objectively verifiable criteria;
 - (ii) non-discriminatory; and
 - (iii) indicated in the notice of intended procurement or tender documentation; and
 - (b) take appropriate measures to ensure compliance with its environmental, social and labour law, international obligations, including pursuant to Chapter Thirteen (Trade and Sustainable Development), and standards of conduct, ethics and integrity, provided that the measures taken are non-discriminatory.

ARTICLE 9.7

Ensuring Integrity in Procurement Practices

1. Each Party shall ensure that criminal or administrative measures exist to address corruption, fraud, and other illegal acts in its government procurement.
2. These measures may include procedures to render ineligible for, or exclude from, participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in corrupt, fraudulent, or other illegal acts. When applying such procedures, each Party, including its procuring entities:
 - (a) may consider the gravity of the supplier's acts or omissions, and any remedial measures or mitigating factors; and

- (b) shall provide a supplier of the other Party directly implicated:
 - (i) reasonable opportunity to present facts and arguments in support of its position prior to the decision to render ineligible for, or exclude from, participation being made; and
 - (ii) notice that this decision has been made and the reasons for the decision.

3. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

4. A Party may put in place policies or procedures that require successful suppliers to maintain and enforce appropriate measures, such as internal controls, business ethics, and compliance programmes, for preventing and detecting corruption, fraud, and other illegal acts.

ARTICLE 9.8

Government Procurement Working Group

1. The Working Group on Government Procurement established under this Article shall meet, as mutually agreed or upon request of a Party, to address matters, as and when appropriate, related to the implementation and operation of this Chapter, such as but not limited to:

- (a) considering issues regarding government procurement and BOT contracts or public works concessions that are referred to it by a Party;
- (b) exchanging information relating to the government procurement and BOT contracts or public works concessions opportunities in each Party;
- (c) in relation to government procurement, facilitating participation by SMEs, exchanging best practice on measures to promote environmental, social, and labour considerations, and encouraging greater participation by women; and
- (d) developing and expanding the use of electronic means in government procurement systems, including the ready accessibility of the Parties' electronic procurement platforms.

ARTICLE 9.9

Further Negotiations

If a Party offers a non-party more favourable conditions for access to its government procurement market than those agreed under this Chapter, it shall, upon request of the other

Party, enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

ANNEX 9-A

BOT CONTRACTS AND PUBLIC WORKS CONCESSIONS

ARTICLE 9-A.1

Scope and Coverage

1. This Annex shall apply to BOT contracts and public works concessions the value of which is above 15,000,000 SDR.
2. As regards the United Kingdom, this Annex covers public works concessions of the entities listed in the United Kingdom's Annexes 1 and 2 to Appendix I to the GPA and their corresponding Annexes in any agreement which replaces or amends the GPA in the sectors set out therein.¹
3. As regards Korea, this Annex covers BOT contracts of the entities listed in Korea's Annexes 1 and 2 to Appendix I to the GPA and their corresponding Annexes in any agreement which replaces or amends the GPA and, further to this, BOT contracts of Sejong City and all local governments² located in Seoul City, Busan City, Incheon City, and Gyeonggi-do.

ARTICLE 9-A.2

Definitions

1. For Korea,

BOT contract means any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract.

2. For the United Kingdom,

CPC means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

¹ Further to the abovementioned Annexes in this paragraph, this includes the following procuring entities: (1) South Eastern Regional College, (2) South West College, (3) North West Regional College, (4) Northern Ireland Housing Executive, (5) Council for Catholic Maintained Schools, (6) Police Retraining and Rehabilitation Trust and (7) the Maze Long Kesh Development Corporation.

² For Korea, local government means a local government as defined in the *Local Autonomy Act*.

public works concession means a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment;

public works contract means public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Division 51 of the CPC or a work, or the realisation by whatever means of a work, corresponding to the requirements specified by the contracting authority; and

work means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

ARTICLE 9-A.3

Rules Applicable to BOT Contracts and Public Works Concessions

National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures, and practices regarding BOT contracts or public works concessions covered by Article 9-A.1, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods, services, and suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its domestic goods, services, and suppliers.
2. With respect to all laws, regulations, procedures, and practices regarding BOT contracts or public works concessions covered by Article 9-A.1, a Party, including its procuring entities, shall not treat a locally established supplier of the other Party less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership.

Notice of Intended Contract

3. Each Party shall ensure that a procuring entity publishes a notice of intended BOT contracts or public works concessions covered by Article 9-A.1 in an appropriate official paper or electronic medium listed in Annex 9-C. The notices shall be accessible to interested suppliers free of charge, through a single point of access, so that interested suppliers may submit tenders or requests for participation in that contract. Each notice of intended contract shall include the following information:

- (a) the name and the address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the contract;
- (b) a description of the contract;
- (c) the address and the final date for the submission of tenders or requests for participation;

- (d) the language or languages in which tenders or requests for participation may be submitted;
- (e) a list and brief description of any conditions for participation of suppliers; and
- (f) the main criteria to be used for the award of the contract.

Award Publication

4. Within a reasonable period of time after the award of each contract covered by Article 9-A.1, each Party shall ensure that the award of that contract is made publicly available in an appropriate official paper or electronic medium listed in Annex 9-C indicating the name and the address of the procuring entity and of the successful supplier.

Review

5. Each Party shall ensure that there is an effective system of review of decisions by competent authorities covered by this Annex. This obligation does not require the creation of a special system of administrative or judicial review.

Other Rules and Procedures

6. Subject to paragraphs 1 through 5, this Annex is without prejudice to the measures undertaken by each Party to encourage small and medium-sized enterprises to participate in BOT contracts or public works concessions in accordance with its domestic law.

Security and General Exceptions

7. Nothing in this Annex shall be construed to prevent a Party from taking any action or not disclosing any information that 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.

8. Subject to the requirement that such measures are not applied in a manner that 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 Annex shall be construed to prevent a 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 or services of persons with disabilities, philanthropic institutions, or prison labour.

ANNEX 9-B

MARKET ACCESS COMMITMENTS BEYOND THE GPA

For the purposes of this Annex, **CPC** means the *Provisional Central Product Classification* (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Part A: Korea

In accordance with Article 9.2, this Chapter applies to the procurement covered by Article II of the GPA and to the procurement covered by this Part.

The Notes in Korea's Annexes to Appendix I to the GPA also apply to the procurement covered by this Part, unless otherwise provided for in this Part.

1. Additional Procuring Entities

- (a) Sejong City;

with regard to procurement equal to or above the following thresholds:

- (i) 400,000 SDR for procurement of goods and services; or
- (ii) 15,000,000 SDR for procurement of construction services.

2. Additional Services

Procurement of the following services shall be covered:

- (a) Planning, creating and placement services of advertising (CPC 8712).

Notes to Part A

[For clarity, procurement of the following services shall be covered, in accordance with Note 2 to Korea's Annex 7 to Appendix I to the GPA:

- (a) Taxation services (CPC 863);
- (b) Photographic services (CPC 875);
- (c) Packaging services (CPC 876);
- (d) Stenography services (CPC 87909*);
- (e) Translation and interpretation services (CPC 87905); and
- (f) Consulting services relating to mining (CPC 883*).

Asterisks (*) designate "part of" as described in detail in the *Revised Conditional Offer of the Republic of Korea Concerning Initial Commitments on Trade in Services*.

“ANNEX 9-B

Part B: United Kingdom

In accordance with Article 9.2, this Chapter applies to the procurement covered by Article II of the GPA and to the procurement covered by this Part.

The Notes and footnotes in the United Kingdom’s Annexes to Appendix I to the GPA also apply to the procurement covered by this Part, unless otherwise provided for in this Part.

1. Additional Procuring Entities

- (a) South Eastern Regional College;
- (b) South West College;
- (c) North West Regional College;
- (d) Northern Ireland Housing Executive;
- (e) Council for Catholic Maintained Schools;
- (f) Police Retraining and Rehabilitation Trust;
- (g) Maze Long Kesh Development Corporation;

with regard to procurement equal to or above the following thresholds:

- (i) 130,000 SDR for procurement of goods and services;
- (ii) 5,000,000 SDR for procurement of construction services (CPC 51).

2. Additional Services

Procurement of the following services, on a reciprocal basis with the coverage provided by Korea, in addition to the services listed under the United Kingdom’s Annex 5 to Appendix I to the GPA (and in accordance with the Notes thereto), by entities covered under the United Kingdom’s Annexes 1 through 3 to Appendix I to the GPA or under paragraph 1 (additional procuring entities) of this Part:

- (a) Taxation Services (CPC 863);
- (b) Photographic services (CPC 875);
- (c) Packaging services (CPC 876);
- (d) Translation and interpretation services (CPC 87905);

- (e) Stenography services (CPC 87909);
- (f) Consulting services relating to mining (CPC 883).

Notes to Part B

(a) For clarity, procurement of the following services shall be covered, in accordance with the Notes to the United Kingdom's Annex 5 to Appendix I to the GPA:

- (i) Planning, creating and placement services of advertising (CPC 8712).

(b) For clarity, Article 9.2 (Scope and Coverage) of the (Chapter Government Procurement) and Part B to this Annex do not cover the procurement of the following services:

- (a) Human health services (CPC 931);
- (b) Administrative healthcare services (CPC 91122);
- (c) Supply services of nursing personnel and supply services of medical personnel (CPC 87206 and CPC 87209).

3. High-Speed Rail

Notwithstanding Note 6i to the United Kingdom's Annex 3 to Appendix I to the GPA, procurement by procuring entities operating in the field of high-speed railways and high-speed railways infrastructure in regard of goods and suppliers from Korea shall be considered as covered procurement."

ANNEX 9-C

PUBLICATION OF INFORMATION

The information to be published pursuant to Article 9.4 shall be published as follows:

For the United Kingdom: Find a Tender service

For Korea: Korea Online e-Procurement System”