

06 GOVERNMENT PROCUREMENT

ARTICLE 1

Definitions

1. For the purposes of this Chapter:
 - (a) “confidential information” includes: trade secrets; know-how; privileged information; or any other information that is expressed to be confidential or sensitive by the person disclosing the information or is disclosed in circumstances importing, either expressly or implicitly, an obligation of confidence as recognised by the laws, regulations, procedures and practices of the Party concerned;
 - (b) “entities” means:
 - (i) for Australia, those entities listed at Annex 3A and their successors other than those subsequently commercialised or privatised; and
 - (ii) for Singapore, those entities listed at Annex 3B and their successors other than those subsequently commercialised or privatised;
 - (b) “limited tendering procedures” means those tendering procedures in which the procuring entity directly invites one or more suppliers to submit tenders;
 - (c) “open tendering procedures” means those tendering procedures in which the procuring entity issues a public call for tenders; and
 - (d) “tender process” includes all activities directly related to the process of procuring goods or services conducted by a Party or its entities which is open to participation by persons of the other Party before a contract for the supply of those goods or services is concluded.

ARTICLE 2

Scope and Coverage

1. This Chapter shall apply to:

- (a) any law, regulation, procedure or practice regarding any procurement by entities; and
 - (b) procurement of goods and services¹ by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of goods and services.
2. This Chapter shall not apply to:
- (a) internal procurement of goods and services by a Party from its own entities where no other supplier has been asked to tender. However, where such an entity submits a tender in an open tendering procedure, this Chapter shall apply;
 - (b) procurement of proprietary items required to ensure the integrity of machinery, equipment or systems. However, where such items are available from a number of sources and an open tendering procedure is used, this Chapter shall apply;
 - (c) procurement of proprietary equipment of a work, health or safety nature specified in industrial agreements. However, where such items are available from a number of sources and an open tendering procedure is used, this Chapter shall apply;
 - (d) procurement for the purposes of overseas development assistance;
 - (e) procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party; or
 - (f) procurement of asset management and financial advisory services pertaining to reserves held by each Party's Government or its entities.

ARTICLE 3

National Treatment

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 the other Party offering goods or services of the other Party, treatment no less favourable than that accorded 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:

¹ For the purposes of this Chapter, "goods and services" includes construction.

(a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and

(b) that its entities shall not discriminate against a locally-established supplier on the basis that it is a supplier of a good or service of the other Party.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

4. A Party shall not discriminate in favour of corporate bodies in which that Party is a shareholder.

ARTICLE 4

Rules of Origin

A Party shall not apply rules of origin to goods or services imported or supplied for purposes of government procurement covered by this Chapter from the other Party, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same goods or services from that other Party.

ARTICLE 5

Technical Specifications

Technical specifications laying down the characteristics of the goods or services to be procured shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

ARTICLE 6

Tendering Principles

1. Entities may use open tendering procedures or limited tendering procedures.

2. Each Party shall ensure that the tendering procedures of its entities are consistent with the provisions of this Chapter, provide for mechanisms to eliminate conflict of interest between persons administering a tendering procedure and potential suppliers, achieve value for money outcomes and are conducted in a fair and non-discriminatory manner.

3. In an open tendering procedure, entities shall publish an invitation to participate in such a way as to be readily accessible to any interested supplier of the other Party. In particular, entities shall make tender notices accessible to suppliers. Where a deadline has been specified for the close of tenders, the existence of such a deadline shall be made known in the same medium as used to publish tender notices.
4. Any conditions for participation in open tendering procedures shall be published in adequate time to enable interested suppliers of the other Party to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and/or qualification procedures.
5. Entities shall not provide to any tenderer information with regard to a specific procurement in a manner which would have the effect of giving that tenderer an advantage over other tenderers.
6. The tender evaluation process shall be fair and non-discriminatory and shall have a mechanism to eliminate potential conflict of interest between persons administering the process and suppliers participating in the process.
7. Entities shall, on request from an unsuccessful supplier of the other Party which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

ARTICLE 7

Registration and Qualification of Suppliers

1. In the process of registering and/or qualifying suppliers, the entities of a Party shall not discriminate between domestic suppliers and suppliers of the other Party.
2. Any conditions for participation in open tendering procedures shall be no less favourable to suppliers of the other Party than to domestic suppliers.
3. The process of, and the time required for, registering and/or qualifying suppliers shall not be used in order to keep suppliers of the other Party off a list of suppliers or from being considered for a particular procurement.
4. Entities maintaining permanent lists of registered and/or qualified suppliers shall ensure that suppliers may apply for registration or qualification at any time, and that all registered and qualified suppliers are included in the lists within a reasonably short time.

ARTICLE 8

Protection and Proper Use of Confidential Information

1. When a person of a Party discloses confidential information to the other Party or its entities, the latter Party shall ensure that such information is kept confidential and is not used for a purpose other than that for which it was disclosed, except where disclosure is required:

- (a) by an order of a court or tribunal;
- (b) by a House of Parliament or its Committees, however the relevant Party or entity may resist such an order by a claim of public interest immunity; or
- (c) under legislation governing access to government information, unless an exception or exemption under such legislation is successfully invoked in relation to the information.

2. Before any confidential information is disclosed pursuant to Article 8.1, reasonable notice in writing shall be given to the person of a Party who provided the information.

ARTICLE 9

Protection of Intellectual Property in a Tender Process and the Resulting Contracts

1. Material protected by intellectual property rights as defined in Chapter 13 (Intellectual Property) that is supplied by a person of a Party in a tender process shall not lose that protection on the sole basis that it is so supplied.

2. Ownership of intellectual property specifically produced under a contract for the procurement of goods and services concluded between a person of one Party and the other Party or its entities shall be as determined by the contract.

3. The contract for the procurement of goods or services shall not affect intellectual property rights in material that existed prior to the date of the contract unless the contracting Parties expressly agree otherwise in the contract.

4. Where the contract for goods or services includes the provision of licensed software, the procuring Party or procuring entities, may not reverse assemble or reverse compile the licensed software except to the extent permitted under its copyright law.

ARTICLE 10

Application of provisions of other Chapters to this Chapter

The provisions of Article 4 (Competitive Neutrality) of Chapter 12 (Competition Policy) shall apply, *mutatis mutandis*, to procurements within the scope of this Chapter.

ARTICLE 11

Electronic Procurement

1. The Parties shall, within the context of their commitment to promote electronic commerce, seek to provide opportunities for government procurement to be undertaken through electronic means, hereafter referred to as “e-procurement”.

2. Each Party shall work toward a single entry point for the purpose of enabling suppliers to access information on procurement opportunities in its territory.

3. To facilitate access of suppliers of one Party to e-procurement opportunities of the other Party, the Parties shall, to the extent possible, cooperate to ensure policies and procedures are adopted that:

- (a) promote equitable access for all potential suppliers of the other Party;
- (b) promote the use of systems that are the most cost-effective for potential suppliers, where the Parties utilise authentication systems;
- (c) provide for the least cost to potential suppliers, where the Parties elect to procure goods or services through online or reverse auctions;
- (d) protect documentation from unauthorised and undetected alteration;
and
- (e) provide appropriate levels of security for data on, and passing through, the procuring entity’s network.

4. Each Party shall, to the extent possible, make procurement opportunities that are available to the public accessible to suppliers via the Internet or any publicly available electronic medium. To the extent possible, each Party shall make available relevant documentation by the same means.

ARTICLE 12

Review of tender process

1. In the event of a complaint by a supplier that there has been a breach of the procuring Party's laws, regulations, procedures or practices regarding procurement in

the context of a procurement in which they have, or have had, an interest, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint.

2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's laws, regulations, procedures and practices regarding procurement in the context of procurements in which they have, or have had, an interest.

3. Each Party shall make information on complaint mechanisms generally available.

ARTICLE 13

Transparency

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

2. The Parties shall publish and make accessible information relating to government procurement, and any changes or additions to this information, in a consistent and timely manner. Information relating to government procurement includes:

- (a) procurement laws, regulations, and policy guidelines;
- (b) open tendering opportunities and the conditions for participation;
- (c) supplier qualification mechanisms and criteria for qualification; and
- (d) decisions on contract awards.

ARTICLE 14

Exceptions

1. Nothing in this Chapter shall be construed to prevent either Party from taking any action or not disclosing any information which 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.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between

countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent either Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property;
- (b) relating to the goods or services of handicapped persons, of philanthropic institutions or of prison labour; or
- (c) relating to the conservation of exhaustible natural resources.

ARTICLE 15

Opportunities for indigenous persons

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall prevent Australia from promoting employment and training opportunities for its indigenous people in regions where significant indigenous populations exist.

ARTICLE 16

Industry Development

Nothing in this Chapter shall prevent the Parties from using government procurement to promote industry development including measures to assist small and medium enterprises (SMEs) within their territory to gain access to the government procurement market.

ARTICLE 17

Dispute Settlement

A Party may not initiate dispute settlement proceedings under Chapter 16 (Dispute Settlement) regarding its rights and obligations under this Chapter unless:

- (a) the matter giving rise to the dispute involves a pattern of practice; and
- (b) the suppliers affected have exhausted the available remedies regarding the particular matter.

ARTICLE 18

Review of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on government procurement with a non-Party, it shall give positive consideration to a request by the other Party for incorporation herein of treatment no less favourable than under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.
2. Not later than 12 months from the date of entry into force of this Agreement and biennially thereafter, the Parties shall examine and, where appropriate, update the entities specified in Annexes 3A and 3B.
3. As part of the examination referred to in Article 18.2, both Parties shall consider adding entities to their respective Annexes. This undertaking shall include Australia encouraging its State and Territory Governments to list their entities by the time of the first review, and Singapore considering adding entities not covered by the WTO Plurilateral Agreement on Government Procurement.