

## TITLE VI

### PUBLIC PROCUREMENT

#### CHAPTER 1

#### SCOPE

#### ARTICLE 276

##### Objective

The objective of this Title is to guarantee each Party's suppliers access to increased opportunities to participate in public procurement procedures and to enhance the transparency of public procurement procedures.

#### ARTICLE 277

##### Incorporation of certain provisions of the GPA and covered procurement

1. The provisions of the GPA that are specified in Section A of Annex 25, including the Annexes of each Party to Appendix I to the GPA, are hereby incorporated into this Title.

2. For the purposes of this Title, "covered procurement" means procurement to which Article II of the GPA applies and, in addition, procurement listed in Section B of Annex 25.

3. With regard to covered procurement, each Party shall apply, *mutatis mutandis*, the provisions of the GPA specified in Section A of Annex 25 to suppliers, goods or services of the other Party.

## CHAPTER 2

### ADDITIONAL RULES FOR COVERED PROCUREMENT

#### ARTICLE 278

##### Use of electronic means in procurement

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 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 legislation.

## ARTICLE 279

### Electronic publication

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.

## ARTICLE 280

### 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 281

### 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 the territory of that Party.

## ARTICLE 282

### 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 283

### 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 284

### 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 285

### Environmental, social and labour considerations

Each Party shall ensure that its procuring entities may take into account environmental, labour and social considerations throughout the procurement procedure, provided that those considerations are compatible with the rules established by Chapters 1 and 2 and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation.

## ARTICLE 286

### Domestic review procedures

1. Where an impartial administrative authority is designated by a Party under paragraph 4 of Article XVIII of the GPA, that Party shall ensure that:

- (a) the members of the designated authority are independent, impartial, and free from external influence during the term of appointment;
- (b) the members of the designated authority are not dismissed against their will while they are in office, unless their dismissal is required by the provisions governing the designated authority;  
and

(c) the President or at least one other member of the designated authority, has legal and professional qualifications equivalent to those necessary for judges, lawyers or other legal experts qualified under the laws and regulations of the Party.

2. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures, provided for in subparagraph 7(a) of Article XVIII of the GPA, may result in suspension of the procurement process or, if a contract has been concluded by the procuring entity and if a Party has so provided, in suspension of performance of the contract. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

3. In case an interested or participating supplier has submitted a challenge with the designated authority referred to in paragraph 1, each Party shall, in principle, ensure that a procuring entity shall not conclude the contract until that authority has made a decision or recommendation on the challenge with regard to interim measures, corrective action or compensation for the loss or damages suffered as referred to in paragraphs 2, 5 and 6 in accordance with its rules, regulations and procedures. Each Party may provide that in unavoidable and duly justified circumstances, the contract can be nevertheless concluded.

4. Each Party may provide for:

- (a) a standstill period between the contract award decision and the conclusion of a contract in order to give sufficient time to unsuccessful suppliers to assess whether it is appropriate to initiate a review procedure; or
- (b) a sufficient period for an interested supplier to submit a challenge, which may constitute grounds for the suspension of the execution of a contract.

5. Corrective action under subparagraph 7(b) of Article XVIII of the GPA may include one or more of the following:

- (a) the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or any other document relating to the tendering procedure and conduct of new procurement procedures;
- (b) the repetition of the procurement procedure without changing the conditions;
- (c) the setting aside of the contract award decision and the adoption of a new contract award decision;
- (d) the termination of a contract or the declaration of its ineffectiveness; or
- (e) the adoption of other measures with the aim to remedy a breach of Chapters 1 and 2, for example an order to pay a particular sum until the breach has been effectively remedied.



6. In accordance with subparagraph 7(b) of Article XVIII of the GPA, each Party may provide for the award of compensation for the loss or damages suffered. In this regard, if the review body of the Party is not a court and a supplier believes that there has been a breach of the domestic laws and regulations implementing the obligations under Chapters 1 and 2 of this Title, the supplier may bring the matter before a court, including with a view to seeking compensation, in accordance with judicial procedures of the Party.

7. Each Party shall adopt or maintain the necessary procedures by which the decisions or recommendations made by review bodies are effectively implemented, or the decisions by judicial review bodies are effectively enforced.

### CHAPTER 3

#### NATIONAL TREATMENT BEYOND COVERED PROCUREMENT

#### ARTICLE 287

##### Definitions

1. For the purposes of this Chapter, the treatment accorded by a Party under this Chapter means:
  - (a) with respect to the United Kingdom, treatment no less favourable than the most favourable treatment accorded, in like situations, to suppliers of the United Kingdom; and

- (b) with respect to a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, within that Member State to suppliers of that Member State.
2. For the purposes of this Chapter, a supplier of a Party, which is a legal person means:
- (a) for the Union, a legal person constituted or organised under the law of the Union or at least one of its Member States and engaged in substantive business operations, understood by the Union, in line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), as equivalent to the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU, in the territory of the Union; and
  - (b) for the United Kingdom, a legal person constituted or organised under the law of the United Kingdom and engaged in substantive business operations in the territory of the United Kingdom.

## ARTICLE 288

### National treatment of locally established suppliers

1. With regard to any procurement, a measure of a Party shall not result for suppliers of the other Party established in its territory through the constitution, acquisition or maintenance of a legal person in treatment less favourable than that Party accords to its own like suppliers<sup>1</sup>.
2. The application of the national treatment obligation provided for in this Article remains subject to security and general exceptions as defined in Article III of the GPA, even if the procurement is not covered procurement in accordance with this Title.

## CHAPTER 4

### OTHER PROVISIONS

## ARTICLE 289

### Modifications and rectifications of market access commitments

Each Party may modify or rectify its market access commitments in its respective Sub-section under Section B of Annex 25 in accordance with the procedures set out in Articles 290 to 293.

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<sup>1</sup> For greater certainty, application of the national treatment obligation provided for in this Article is subject to the exceptions referred to in note 3 of the Notes of Sub-sections B1 and B2 of Section B of Annex 25.

## ARTICLE 290

### Modifications

1. A Party intending to modify a Sub-section of Section B of Annex 25, shall:
  - (a) notify the other Party in writing; and
  - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Party 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 Party if the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement.

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.

3. The 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.

The other Party shall object in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 1 or be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Title I of Part Six.

## ARTICLE 291

### Rectifications

1. A Party intending to rectify a Sub-section under Section B of Annex 25 shall notify the other Party in writing.

The following changes to a Sub-section under Section B of Annex 25 shall be considered a rectification, provided that they do not affect the mutually agreed market access commitments provided for in this Title:

- (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.

2. A Party may notify the other Party 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 Title. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

## ARTICLE 292

### Consultations and dispute resolution

If a Party objects to the proposed modification or the proposed compensatory adjustments referred to in Article 290 or to the proposed rectification referred to in Article 291, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days of receipt of the objection, the Party seeking to modify or rectify its Sub-section under Section B of Annex 25 may refer the matter to dispute settlement in accordance with Title I of Part Six, to determine whether the objection is justified.

## ARTICLE 293

### Amendment of Section B of Annex 25

If a Party does not object to the modification pursuant to Article 290(3) or to a rectification pursuant to Article 291(2), or the modifications or rectifications are agreed between the Parties through the consultations referred to in Article 292, or there is a final settlement of the matter under Title I of Part Six, the Partnership Council shall amend the relevant Sub-section under Section B of Annex 25 to reflect the corresponding modifications or rectifications or the compensatory adjustments.

## ARTICLE 294

### Cooperation

1. The Parties recognise the benefits that may arise from cooperating in the international promotion of the mutual liberalisation of public procurement markets.
2. The Parties shall make available to each other annual statistics on covered procurement subject to technical availability.

## TITLE VII

### SMALL AND MEDIUM-SIZED ENTERPRISES

## ARTICLE 295

### Objective

The objective of this Title is to enhance the ability of small and medium-sized enterprises to benefit from this Heading.