

CHAPTER 10

GOVERNMENT PROCUREMENT

ARTICLE 10.1

Incorporation of the GPA¹

The GPA is incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 10.2

Additional scope of application

The rules and procedures provided for in the provisions of the GPA specified in Part 1 of Annex 10 apply, *mutatis mutandis*, to procurement covered by Part 2 of Annex 10.

¹ For the purposes of this Chapter, without prejudice to paragraph 2 of Article 10.14, the GPA incorporated into and made part of this Chapter, *mutatis mutandis*, shall be understood as the GPA as of the day before the date on which the EU-Japan EPA ceases to apply to the United Kingdom, until the GPA enters into force for the United Kingdom as an independent party to the GPA, and any references to the GPA in this Agreement shall be interpreted accordingly. For the purposes of the preceding sentence, the procurement covered by the annexes of the European Union to Appendix I to the GPA applicable to the United Kingdom the day before the date on which the EU-Japan EPA ceases to apply to the United Kingdom, shall be deemed to be the procurement covered by the annexes of the United Kingdom to Appendix I to the GPA under this Agreement.

ARTICLE 10.3

Additional rules

Each Party shall apply Articles 10.4 to 10.12 to both the procurement covered by its annexes to Appendix I to the GPA and the procurement covered by Part 2 of Annex 10.

ARTICLE 10.4

Publication of notices

Notices of intended or planned procurement under Article VII of the GPA shall be directly accessible by electronic means free of charge through a single point of access on the Internet.

ARTICLE 10.5

Conditions for participation

1. Further to Article VIII of the GPA, a procuring entity of a Party shall not exclude a supplier established in the other Party from participating in a tendering procedure on the basis of a legal requirement according to which the supplier must be:

- (a) a natural person; or
- (b) a legal person.

This provision does not apply to procurement within the scope of the Act on Promotion of Private Finance Initiative of Japan (Law No. 117 of 1999).

2. 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 subparagraph 2(b) of Article VIII of the GPA, that procuring entity shall not impose the condition that such prior experience must have been acquired within the territory of that Party.

ARTICLE 10.6

Qualification of suppliers

1. If a Party maintains a supplier registration system under which interested suppliers are required to register and provide certain information, those suppliers may request their registration at any time. A procuring entity should inform those suppliers within a reasonably short period of time whether their registration has been granted.

2. When, in order to be allowed to submit a tender in view of a procurement for construction work in Japan, a supplier established in the United Kingdom is required to undergo a Business Evaluation (Keiejikoshinsa) (also known as Keishin) under the Construction Business Law of Japan (Law No. 100 of 1949), Japan shall ensure that its authorities carrying out such evaluation:

- (a) assess in a non-discriminatory manner and, where appropriate, recognise as equivalent to those in Japan, indicators of the supplier realised outside Japan, which may include:
 - (i) the number of technical staff;
 - (ii) the labour welfare conditions;
 - (iii) the number of operating years in the construction business;
 - (iv) the conditions of accounting in the construction business;
 - (v) the amount of research and development expenditure;

- (vi) the acquisition of ISO9001 or ISO14001 certification;
 - (vii) the employment and development of young engineers and skilled workers;
 - (viii) the amount of sales for completed construction work; and
 - (ix) the amount of sales for completed construction work as a prime contractor; and
- (b) take due account of indicators of the supplier realised outside Japan, which may include:
- (i) the amount of equity capital;
 - (ii) the amount of earnings before interest, taxes, depreciation and amortisation (EBITDA);
 - (iii) the ratio of net interest expense to sales amount;
 - (iv) the liabilities turnover period;
 - (v) the ratio of gross profit on sale to gross capital;
 - (vi) the ratio of recurring profit to sales amount;
 - (vii) the ratio of equity capital to fixed asset;
 - (viii) the equity ratio;
 - (ix) the amount of cash flows from operating activities; and
 - (x) the amount of accumulated earnings.

ARTICLE 10.7

Selective tendering

1. If, in accordance with paragraphs 4 and 5 of Article IX of the GPA, a procuring entity limits the number of suppliers for a given procurement, the number of suppliers permitted to submit a tender shall be sufficient to ensure competition without affecting the operational efficiency of the procurement system.
2. For Japan, this Article applies only to central government entities.

ARTICLE 10.8

Technical specifications

If a procuring entity applies environment-friendly technical specifications as set out for environmental labels or as defined by relevant laws and regulations in force within the United Kingdom or Japan, each Party shall ensure that those specifications are:

- (a) appropriate to define the characteristics of the goods or services that are the object of the contract;
- (b) based on objectively verifiable and non-discriminatory criteria; and
- (c) accessible to all interested suppliers.

ARTICLE 10.9

Test reports

1. Each Party, including its procuring entities, may require that interested suppliers provide a test report issued by a conformity assessment body or a certificate issued by such a body as a means of proof of conformity with the requirements or the criteria set out in the technical specifications, the evaluation criteria or any other terms or conditions.
2. When requiring the submission of a test report or a certificate issued by a conformity assessment body, each Party, including its procuring entities, shall:
 - (a) accept the results of conformity assessment procedures that are conducted by the registered conformity assessment bodies of the other Party in accordance with paragraph 1 of Article 2 of the Protocol on Mutual Recognition; and
 - (b) duly take into consideration any future expansion of the scope of the Protocol on Mutual Recognition, or any further agreement to be concluded between the Parties with the purpose of mutual recognition of conformity assessment procedures, once it has entered into force.

ARTICLE 10.10

Environmental conditions

Procuring entities may lay down environmental conditions relating to the performance of a procurement, provided that those conditions are compatible with the rules established by this Chapter and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation.

ARTICLE 10.11

Treatment of tenders and awarding of contracts

1. Further to paragraph 5 of Article XV of the GPA, and in accordance with the conditions set out in each Party's laws and regulations, each Party shall ensure that its procuring entities are entitled to choose between the two criteria referred to in subparagraphs (a) and (b) of paragraph 5 of Article XV of the GPA and that they are aware of the respective merits of those criteria.
2. 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 10.12

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) with regard to the procuring entities covered under Annexes 1 and 3 of each Party to Appendix I to the GPA, as well as the central government entities and all other entities except the sub-central government entities covered under Part 2 of Annex 10, 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 this Chapter, 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 this Chapter, the supplier may bring the matter before a court, including with a view to seeking compensation, in accordance with the 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.

ARTICLE 10.13

Collection and reporting of statistics

Each Party shall communicate to the other Party available and comparable statistical data relevant to the procurement covered by Part 2 of Annex 10.

ARTICLE 10.14

Modifications and rectifications to coverage

1. A Party may modify or rectify its commitments under Part 2 of Annex 10.
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 for the purposes of this Agreement.
3. When a Party intends to modify its commitments under Part 2 of Annex 10, the Party 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 coverage comparable to that existing prior to the modification.
4. Notwithstanding subparagraph 3(b), a Party does not need to provide compensatory adjustments if the modification concerns a procuring entity over whose procurement the Party has effectively eliminated its control or influence.
5. In the event the Committee on Government Procurement established by Article XXI of the GPA adopts criteria pursuant to subparagraphs 8(b) and (c) of Article XIX of the GPA, those criteria shall be applicable also within the context of this Article.
6. If the other Party objects that:
 - (a) an adjustment proposed in accordance with subparagraph 3(b) is inadequate to maintain a comparable level of mutually agreed coverage; or

- (b) the intended modification referred to in paragraph 4 concerns a procuring entity over whose procurement the Party has not effectively eliminated its control or influence,

it shall submit an objection in writing to the Party intending to modify its commitments within 45 days from the date of receipt of the notification referred to in subparagraph 3(a) or be deemed to have accepted the adjustment or modification.

7. The following changes to a Party's commitments under Part 2 of Annex 10 shall be considered a rectification:

- (a) a change in the name of a procuring entity;
- (b) a merger of two or more procuring entities listed in the same paragraph of Part 2 of Annex 10;
- (c) the separation of a procuring entity listed in Part 2 of Annex 10 into two or more procuring entities that are added to the procuring entities listed in the same paragraph of that Part; and
- (d) updates of indicative lists such as those set out in paragraph 2 of Section A of Part 2 of Annex 10, subparagraph 1(b) of Section B of Part 2 of Annex 10, or in Annexes 2 and 3 of the United Kingdom to Appendix I to the GPA.

8. In the case of intended rectifications, the Party shall notify the other Party in writing every two years, in line with the cycle of notifications provided for in the Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX and XXII of the Agreement adopted on 30 March 2012 (GPA/113), following the entry into force of this Agreement.

9. The other Party may, within 45 days from the date of receipt of the notification pursuant to paragraph 8, submit an objection in writing to the Party intending to rectify its commitments. The Party submitting an objection shall set out the reasons why it believes the intended rectification is not a change provided for in paragraph 7, and describe the effect of the intended rectification on the mutually agreed coverage provided for in this Agreement. If no such objection is submitted in writing within 45 days from the date of receipt of the notification, the intended rectification shall be deemed to have been accepted.

10. If the Party objects to the intended modification or rectification, or to the proposed compensatory adjustment, the Parties shall seek to resolve the issue through consultations. If no agreement between the Parties is reached within 150 days from the date of receipt of the notification of the objection, the Party intending to modify or rectify its commitments may have recourse to dispute settlement under Chapter 22 to determine whether the objection is justified. An intended modification or rectification in respect of which an objection has been submitted shall be deemed to have been accepted only when so agreed through the consultations or so decided by the panel established pursuant to Article 22.7.

ARTICLE 10.15

Cooperation

The Parties shall endeavour to cooperate with a view to achieving enhanced understanding of their respective government procurement markets. The Parties also recognise that the involvement of related industries of the Parties, through means such as dialogues, is important for that purpose.

ARTICLE 10.16

Committee on Government Procurement

1. The Committee on Government Procurement established pursuant to Article 23.3 (hereinafter referred to in this Article as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.
2. The Committee shall have the following functions:
 - (a) making recommendations to the Joint Committee to adopt decisions amending Part 2 of Annex 10 to reflect modifications or rectifications accepted pursuant to Article 10.14 or agreed compensatory adjustments;
 - (b) adopting modalities for the communication of statistical data pursuant to Article 10.13, if deemed necessary;
 - (c) considering matters regarding government procurement that are referred to it by a Party; and
 - (d) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party.

ARTICLE 10.17

Contact points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.