

Committee on Government Procurement

CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

To facilitate consultations relating to accession to the Agreement on Government Procurement, please provide a description of the government procurement regime applied in your country by replying, to the extent possible, to the questions in the checklist of issues below. If there is no specific provision on a particular issue, the response should state this.

The information to be provided in this context is without prejudice to any additional information which Parties may wish to request from acceding governments on any other aspects of their procurement regimes. For each item on the checklist, please identify any legal or administrative actions that will need to be taken in order to align your government procurement regime with the requirements of the GPA and ensure full implementation of the Agreement following accession.

If your government is aware of any need for training or other capacity-building efforts relating to any of the items on this checklist, please describe the need in as specific and concrete terms as possible, and describe any steps your government is taking, whether independently or in cooperation with other Members or international organizations, to address that need.

I. LEGAL FRAMEWORK

1. Is there a single central law on procurement? If so, please specify?
2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.
3. To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.

II. SCOPE AND COVERAGE

4. Please summarize the organization of the government in your country at each level.
5. Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.

6. What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?

7. Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Specify.

8. Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such entities below the central/federal government level?

9. Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.

10. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.

12. Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.

13. Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.

14. Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.

15. Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.

17. Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X.

Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?

18. In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?

19. What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?

20. Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?

21. Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.

22. Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?

23. Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.

24. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

V. INFORMATION

25. Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.

26. Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.

27. Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions of your legislation.

28. Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.

29. Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.

30. Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.

31. Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.

VI. BID CHALLENGE PROCEDURES

32. Please provide information on existing challenge procedures.

33. Are there specific provisions enabling access of foreign suppliers to challenge procedures?

34. To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:

- (i) The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?
- (ii) What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:
 - How are its members selected?
 - Are its decisions subject to judicial review?
 - If not, how will the requirements of paragraph 6 of Article XX be taken into account?
- (iii) What is the applicable law by reference to which the challenge body will examine complaints?
- (iv) Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?
 - Do these measures include the possibility to suspend the procurement process? On what conditions?
- (v) How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?
- (vi) Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.
- (vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?

VII. OTHER MATTERS

35. To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.

36. Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.
