

## CHAPTER 10

### GOVERNMENT PROCUREMENT

#### Article 10.1: Establishment of a Single Market

1. The Parties agree to establish a single New Zealand/Singapore government procurement market, in order to maximise competitive opportunities for New Zealand/Singapore suppliers, and reduce costs of doing business for both government and industry.
2. This shall be achieved by the Parties:
  - (a) committing to implement the *APEC Non-Binding Principles on Government Procurement* relating to transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination;
  - (b) ensuring the opportunity exists for their suppliers to compete on an equal and transparent basis for government contracts;
  - (c) ensuring the non-application against their suppliers of preferential schemes and other forms of discrimination based on the place of origin of goods and services unless such schemes or forms of discrimination fall within Article 16.14 (Preferences Under Other Agreements);
  - (d) providing a mechanism for cooperation to work towards achieving the greatest possible consistency in contractual, technical and performance standards and specifications, and simplicity and consistency in the application of procurement policies, practices and procedures.

#### Article 10.2: Scope

1. This Chapter applies to government procurement valued at above Special Drawing Rights (SDR) 50,000. The Parties shall consult and agree on a common basis for expressing this value threshold in their respective national currency equivalents as at the date of entry into force of this Agreement, and as at the date of reviews of the operation of this Agreement held in accordance with Article 15.4 (Review).
2. Government procurement of services is subject to a Party's schedule of commitments in Annex 8.1 (Services Commitments) and the terms, limitations, conditions or qualifications set out therein.<sup>1</sup>

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<sup>1</sup> At the request of New Zealand, Singapore confirms that there shall be no discrimination in terms of government procurement of services in favour of corporate entities where the Singapore Government is the majority shareholder or has a special share as defined in Annex 8.1 (Services Commitments).

3. Where government bodies require enterprises not covered under this Chapter to award contracts in accordance with particular requirements, Article 10.4 shall apply *mutatis mutandis* to such requirements.

### **Article 10.3: Definitions**

For the purposes of this Chapter:

**designated bodies** means bodies designated in each of the Parties to investigate complaints about non-compliance with this Chapter; they may include an agency or office responsible to a Party, or a position located within such agency or office. The designated body for Singapore is the Ministry of Finance and the designated body for New Zealand is the Ministry of Economic Development;

**goods and services** means but is not limited to goods alone, services alone or goods and related services. Computer software is defined as “goods” for this purpose. **Related services** means but is not limited to services provided in conjunction with the supply of goods or construction activities (such as architectural design, engineering, project design, project management and related consultancy services);

**Ministers responsible for procurement** means Ministers with portfolio responsibility for procurement policy where such direct responsibility exists. Otherwise the definition shall mean Ministers with portfolio responsibility for this Chapter;

**procurement** means but is not limited to purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements;

**government procurement** means procurement by government bodies, that is departments and other bodies, including statutory authorities, which are controlled by the Parties and excludes procurement by any body corporate or other legal entity that has the power to contract, except where the Parties exercise their discretion to determine that this Chapter shall apply. In the case of regional or local governments or authorities, and in the case of procurement of services by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities, the Parties shall use their best endeavours to encourage wider application of this Chapter, consistent with good commercial practice, to procurement by all such governments, authorities and bodies;

**New Zealand/Singapore suppliers** means service suppliers (determined in accordance with Chapter 8 (Services)) or suppliers of goods originating in New Zealand or Singapore. Whether a good is originating in New Zealand or Singapore shall be determined in accordance with Chapter 3 (Rules of Origin);

**value for money** means the best available outcome for money spent in terms of the procuring agency's needs. The test of value for money requires relevant comparison of the whole of life costs and benefits relating directly to the procurement. “Whole of life costs and benefits”

include fitness for purpose and other considerations of quality, performance, price, delivery, accessories and consumables, service support and disposal.

#### **Article 10.4: General Principles**

Except as provided otherwise in this Chapter, the Parties shall:

- (a) at all times conduct their procurement activities in accordance with the spirit and intent of this Chapter;
- (b) ensure that all government bodies within their territories comply with this Chapter;
- (c) provide to services, goods and suppliers of the other Party equal opportunity and treatment no less favourable than that accorded to their own domestic services, goods and suppliers;
- (d) promote opportunities for their suppliers to compete for government business on the basis of value for money and avoid purchasing practices which discriminate or are otherwise biased against, or have the effect of denying equal access or opportunity to, their services, goods and suppliers, while conforming with any commitments of the Parties under international government procurement agreements;
- (e) use value for money as the primary determinant in all procurement decisions; and
- (f) achieve maximum practicable simplicity and consistency in the application of procurement policies, practices and procedures.

#### **Article 10.5: Valuation of Contracts**

1. The following provisions shall apply in determining the value of contracts for the purposes of implementing this Chapter.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of a valuation method by a government body shall not be made, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter.
4. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

## **Article 10.6: Rules of Origin**

A Party shall not apply rules of origin to goods or services imported or supplied from the other Party, for the purposes of government procurement, 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 10.7: Procurement Procedures**

1. Each Party shall ensure that the procurement procedures, including tendering and supplier invitation, registration of interest, prequalification, selection, negotiation and contract award procedures, of its government bodies are applied in a manner consistent with this Chapter, the *APEC Non-Binding Principles on Government Procurement*, and good commercial practice.

2. In cases of procurement by open call for tender, invitations to tender shall be advertised in a publicly accessible medium; and in cases of procurement by selective invitation to tender, prior calls to prequalify or register interest shall be advertised in a publicly accessible medium.

3. The Parties shall ensure that government bodies make readily available on request by New Zealand/Singapore suppliers information on contract awards, including the name of the supplier, the goods or services supplied and value of the contract award, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between suppliers.

4. Government bodies shall, on request from an unsuccessful supplier 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.

5. Each Party shall also take appropriate steps to enhance transparency at all stages of their procurement procedures, and endeavour to provide the information specified in paragraph 2 and paragraph 3 for all government bodies from a single point of access through a public medium, such as the internet.

## **Article 10.8: Prohibition of Offsets**

1. Government bodies shall not, in the qualification and selection of suppliers, goods and services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets in relation to government procurement from New Zealand or Singapore suppliers.

2. **Offsets in relation to government procurement** means measures used to encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements.

### **Article 10.9: Disputes Between a Supplier and the Procuring Government Body**

1. In the event of a complaint by a supplier that there has been a breach of this Chapter, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring government body. In such instances the procuring government body shall accord timely and impartial consideration to any such complaint.

2. Failing resolution through consultation between the supplier and the procuring government body, the complainant should seek the assistance of the designated body of the Party in whose territory the complainant is located. A complaint made informally may be processed informally if this is deemed appropriate by the designated body and the complainant.

3. Failing resolution, the designated body receiving the complaint shall formally raise it with the designated body of the other Party for investigation of any alleged breach of this Chapter and for a report by it in writing. The Parties agree to provide details and documentation to permit a full investigation of complaints. Confidentiality of all information shall be maintained.

4. If the response is satisfactory to the designated body which received the original complaint, then the complaint shall lapse.

5. If satisfactory resolution is not achieved, the designated body which received the original complaint may then refer the matter to the Minister responsible for procurement in the other Party for further investigation and decision.

6. In the event that a complaint cannot be resolved through the steps set out above within 30 days of the designated body that received the original complaint formally raising it with the designated body of the other Party, the provisions of Chapter 14 (Dispute Settlement) shall apply. A Party shall be entitled by subrogation to exercise the rights and assert the claims of its own supplier against the other Party. The subrogated rights or claims shall not be greater than the original rights or claims of that supplier.

### **Article 10.10: Exemptions**

1. It is recognised by the Parties that, under certain circumstances, there may be a need for exemption from some of the requirements of this Chapter for certain government bodies, for certain classes of procurement, and for procurement undertaken in accordance with specific government policies.

2. Exemptions from some of the requirements of this Chapter may be sought by either Party for government bodies which meet the following criteria subject to consultation and agreement with the other Party:

- (a) joint bodies with any other State or separate customs territory which is not party to this Agreement;
- (b) bodies funded primarily from specific special levies on particular industries, or by community groups or from special grants or public donations.

It is not intended, however, that any government body shall be granted full exemption from the requirements of this Chapter. When considering applications for partial exemptions, the Parties shall exercise their authority with due diligence in accordance with the objectives of this Chapter.

3. The following classes of procurement are exempt from the application of this Chapter:

- (a) internal procurement by a government from its own bodies where no other supplier has been asked to tender. If, however, tenders are called or invited, the provisions of this Chapter shall apply whether or not a government body submits a tender;
- (b) the procurement of proprietary items required to ensure machinery or equipment integrity, but only as they may relate to biased specifications. Where such items are available from a number of sources or tenders are called or invited, all provisions of this Chapter apply other than as they relate to biased specifications;
- (c) the urgent procurement of goods and related services in the event of emergencies, such as natural disasters, or to meet the urgent requirements of United Nations peacekeeping or humanitarian operations;
- (d) procurement of proprietary equipment of a work, health or safety nature specified in industrial agreements but only as they may relate to biased specifications. Where such items are available from a number of sources or tenders are called or invited, all provisions of this Chapter apply other than as they relate to biased specifications;
- (e) defence procurement of a strategic nature and other procurement where national security is a consideration; and
- (f) procurement under development assistance programmes.

4. Either Party may seek to have additional classes of procurement exempted from this Chapter. Such exemptions shall be permitted only with the agreement of the other Party.

### **Article 10.11: Administration and Review**

1. The designated bodies shall report jointly to the Ministers responsible for procurement on the implementation of this Chapter in preparation for the reviews provided for in Article 15.4 (Review).
2. A committee of senior officials responsible for government procurement policy of each Party may meet as appropriate to discuss policy issues, technical or other cooperation, and the reviews referred to in paragraph 1.