

## **CHAPTER 12**

### **GOVERNMENT PROCUREMENT**

#### ARTICLE 12.1: SCOPE

##### *Application of Chapter*

1. This Chapter shall apply to any measure regarding covered procurement.
2. For the purposes of this Chapter, “covered procurement” means a government procurement of goods, services or both:
  - (a) by any contractual means, including purchase, rental, hire purchase, or lease, with or without an option to buy, build-operate-transfer contracts and public works concessions contracts;
  - (b) for which the value, as estimated in accordance with this Article, equals or exceeds the relevant threshold specified in Annex 12-A;
  - (c) that is conducted by a procuring entity;
  - (d) that is not excluded from coverage by this Chapter; and
  - (e) subject to the conditions specified in Annex 12-A.
3. This Chapter shall not apply to:
  - (a) procurement of goods and services by a procuring entity of a Party from another entity of that Party, or between a procuring entity of a Party and a regional or local government of that Party;
  - (b) non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;
  - (c) procurement for the direct purpose of providing foreign assistance;
  - (d) procurement of research and development services;
  - (e) procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party;
  - (f) public employment contracts;
  - (g) procurement conducted under the particular procedures or conditions of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project, or under the particular procedures or conditions of an international organisation, or funded by international grants, loans, or other assistance to the extent that the provision of such assistance is subject to conditions inconsistent with this Chapter;
  - (h) procurement funded by grants or sponsorship payments received from a person other than a procuring entity of a Party;

- (i) the acquisition or rental of land, buildings, or other immovable property or rights thereon where not part of an arrangement for procurement of construction services;
- (j) procurement of financial advisory and asset management services pertaining to reserves held by each Party, including for the purposes of funding retirement benefits; or
- (k) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities.

#### *Valuation of Contracts*

4. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for in the procurement and, where the procurement provides for the possibility of option clauses, the maximum total value of the procurement, inclusive of optional purchases; and
- (b) without prejudice to paragraph 6, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration.

5. The selection of the valuation method by a procuring entity shall not be used, nor shall any procurement requirement be divided, for the purposes of avoiding the application of this Chapter.

6. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
  - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

7. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be a covered procurement, unless otherwise excluded under this Chapter.

8. The Parties acknowledge and affirm the *Memorandum of Understanding on Defence Industry Cooperation between the Ministry of National Defense of the Republic of Korea and the*

*Department of Defence of Australia*, dated 8 August 2001 (the “MOU”), including any amendment to or extension thereto. The Parties recognise that the benefits and responsibilities established under the MOU will continue to apply.

#### ARTICLE 12.2: EXCEPTIONS

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions, or of prison labour.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

3. Further to Article 22.2 (Essential Security), nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.

#### ARTICLE 12.3: GENERAL PRINCIPLES

##### *National Treatment and Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party and its procuring entities shall accord to the goods, services and suppliers of the other Party treatment no less favourable than the most favourable treatment the Party and its procuring entities accord to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, neither a Party nor its procuring entities shall:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

##### *Measures Not Specific to Procurement*

3. Paragraphs 1 and 2 shall not apply to measures regarding customs duties and other charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, or other import regulations including restrictions and formalities, and measures affecting trade in services other than measures regarding covered procurement.

### *Prohibition of Offsets*

4. Neither a Party nor its procuring entities shall seek, take account of, impose or enforce offsets at any stage of a covered procurement.

### *Rules of Origin*

5. Each Party shall apply to covered procurements of goods or services the rules of origin that it applies in the normal course of trade to those goods or services.

### *Conduct of Procurement and Tendering Procedures*

6. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

7. A procuring entity may use open, selective or limited tendering procedures.

8. No procuring entity shall prepare, design, or otherwise structure or divide any procurement, in any stage of the procurement, for the purposes of avoiding the application of this Chapter.

9. Further to Article 22.4 (Disclosure of Information), nothing in this Chapter shall be construed as requiring a Party or its procuring entities to disclose, furnish or allow access to confidential information furnished by a person where such disclosure might prejudice fair competition between suppliers, without the authorisation of the person that furnished that information.

## ARTICLE 12.4: PUBLICATION OF NOTICES

### *Notice of Procurement*

1. In an open tendering procedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders (hereinafter referred to as “notice of procurement”) in electronic or paper media that are widely disseminated and remain readily accessible to any interested supplier of the other Party for the entire period established for tendering.

2. Where, in a selective tendering procedure, a procuring entity publishes a notice inviting applications for participation or requesting suppliers to express their interest in a covered procurement, that notice shall be published in electronic or paper media that are widely disseminated and readily accessible to any interested supplier of the other Party.

3. Unless otherwise provided in this Chapter, each notice of procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;
- (b) a description of the procurement and any conditions for participation;
- (c) where appropriate, the time-frame for delivery of goods or services; and
- (d) the address and time limit for the submission of tenders.

### *Notice of Planned Procurement*

4. Each Party shall encourage its procuring entities to publish prior to, or as early as possible in, each fiscal year, a notice regarding their procurement plans for that fiscal year. The notice should, at a minimum, include a description of each planned procurement and indicate the expected time of commencement of the related tender procedure.

### ARTICLE 12.5: TIME LIMITS

1. A procuring entity shall prescribe time limits for tendering that allow suppliers adequate time to submit applications or requests to participate in a covered procurement and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

2. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement shall also apply where:

- (a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or
- (b) negotiations are terminated and suppliers may submit new tenders.

3. Unless provided for in paragraph 4, the final date for the receipt of tenders shall not be less than 25 days from the date on which a notice of procurement is published or, in the case of selective tendering, from the date on which the procuring entity invites suppliers to submit tenders.

4. A procuring entity may reduce the time limit for the receipt of tenders to not less than 10 days:

- (a) where the procuring entity has published a separate notice, including a notice of planned procurement under Article 12.4.4, at least 30 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;
- (b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;
- (c) where a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable; or
- (d) where the procuring entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes, including goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace.

#### ARTICLE 12.6: CONDITIONS FOR PARTICIPATION

1. A Party and its procuring entities shall limit any conditions for participation in a covered procurement to those that ensure the potential supplier's capability to fulfil the contract in question.
2. In assessing whether a supplier satisfies the conditions for participation, a Party and its procuring entities:
  - (a) shall evaluate the capabilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;
  - (b) shall base its determination solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;
  - (c) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and
  - (d) may require prior experience where relevant to meet the requirements of the procurement.
3. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as:
  - (a) bankruptcy;
  - (b) false declarations;
  - (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract;
  - (d) final judgments in respect of serious crimes or other serious offences;
  - (e) professional misconduct, or acts or omissions, that adversely reflect on the commercial integrity of the supplier; or
  - (f) failure to pay taxes.

#### ARTICLE 12.7: REGISTRATION AND QUALIFICATION OF SUPPLIERS

1. Where a Party or a procuring entity requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that Party or procuring entity shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.
2. A Party or procuring entity may establish a multi-use list, provided that the Party or procuring entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:
  - (a) a description of the goods and services, or categories thereof, for which the list may be used;

- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of the conditions;
  - (c) the name and address of the procuring entity or other government agency and other information necessary to contact the entity and obtain all relevant documents relating to the list; and
  - (d) any deadlines for submission of applications for inclusion on that list.
3. A Party or procuring entity that maintains a multi-use list shall include on the list all suppliers that satisfy the conditions for participation within a reasonably short time.
4. Where a supplier applies for participation in a covered procurement, or for inclusion on a list referred to in paragraph 2, a procuring entity shall promptly advise such supplier of its decision with respect to its application.

#### ARTICLE 12.8: TECHNICAL SPECIFICATIONS

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
- (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
  - (b) base the technical specification on international standards, where such standards exist, otherwise on national technical regulations, recognised national standards or building codes.
3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the procuring entity includes words such as "or equivalent" in the tender documentation.
4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific covered procurement from a person that may have a commercial interest in the procurement.
5. Notwithstanding paragraph 4, a procuring entity may:
- (a) conduct market research in developing technical specifications for a specific covered procurement; or
  - (b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.
6. For greater certainty, a procuring entity may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

#### ARTICLE 12.9: TENDER DOCUMENTATION

1. A procuring entity shall promptly provide, on request, to any supplier participating in a covered procurement, tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.
2. Unless already provided in the notice of procurement, such documentation shall include a complete description of:
  - (a) the procurement, including the nature, scope and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;
  - (b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;
  - (c) all criteria to be considered in the awarding of the contract;
  - (d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and
  - (e) any other terms or conditions relevant to the evaluation of tenders.
3. Neither a Party nor its procuring entities shall provide information with regard to a specific covered procurement in a manner which would have the effect of giving a potential supplier or group of potential suppliers an advantage over competitors.
4. A procuring entity shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure.
5. Where, during the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set out in notices or tender documentation provided to participating suppliers, or amends or reissues notices or tender documentation, it shall transmit in writing all such modifications or all such amended or reissued notices or tender documentation:
  - (a) to all the suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information was provided; and
  - (b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

#### ARTICLE 12.10: SELECTIVE TENDERING PROCEDURES

To ensure optimum effective competition under selective tendering procedures, procuring entities shall invite tenders from the maximum number of domestic suppliers and suppliers of the other Party that is consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.



## ARTICLE 12.11: LIMITED TENDERING

1. Provided that it does not use this Article for the purpose of avoiding competition, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, and subject to paragraph 2, a procuring entity may use limited tendering procedures. When a procuring entity applies limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 12.4 through 12.10, 12.12.1, and 12.12.3 through 12.12.8.

2. A procuring entity may use limited tendering only under the following circumstances:

- (a) where, in response to a prior notice, invitation to participate, or invitation to tender:
  - (i) no tenders were submitted or no suppliers requested participation;
  - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation;
  - (iii) no suppliers satisfied the conditions for participation; or
  - (iv) the tenders submitted have been collusive,and the procuring entity does not substantially modify the essential requirements of the procurement;
- (b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for additional deliveries by the original supplier or its authorised agent that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the procuring entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (d) for goods purchased on a commodity market;
- (e) where a procuring entity procures a prototype or a first good or service that is intended for limited trial or developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards;
- (f) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following use of open tendering or selective tendering in accordance with this Chapter, and for which the procuring entity has indicated in the notice of procurement concerning the initial construction service that limited tendering procedures might be used in awarding contracts for such new construction services;

- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers;
- (h) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the goods or services could not be obtained in time by means of an open or selective tendering procedure; or
- (i) where a contract is awarded to the winner of a design contest, provided that:
  - (i) the contest has been organised in a manner that is consistent with this Chapter; and
  - (ii) the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

3. For each contract awarded under paragraphs 1 and 2, a procuring entity shall prepare a written report that includes:

- (a) the name of the procuring entity;
- (b) the value and kind of goods or services procured; and
- (c) a statement indicating the circumstances and conditions described in paragraphs 1 and 2 that justify the use of a procedure other than open or selective tendering procedures.

#### ARTICLE 12.12: RECEIPT AND OPENING OF TENDERS AND AWARDING OF CONTRACTS

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat all tenders in confidence subject to the laws of the Party of the procuring entity. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity provides suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunities to all participating suppliers.

5. A procuring entity shall require that, in order to be considered for award, a tender be submitted in writing and, at the time of opening, conform to the essential requirements of the tender documentation.

6. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to satisfy the conditions for participation and whose tender is determined to be the most advantageous or best value for money, in accordance with the requirements and evaluation criteria specified in the notices and tender documentation.

7. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it can comply with the conditions for participation and is capable of fulfilling the terms of the contract.

8. A procuring entity shall not cancel a covered procurement, nor terminate or modify awarded contracts, so as to circumvent the requirements of this Chapter.

#### ARTICLE 12.13: POST-AWARD INFORMATION

1. No later than 60 days after award of a contract, a procuring entity shall publish a notice in an officially designated publication that includes at least the following information about the award:

- (a) the name and address of the procuring entity;
- (b) a description of the goods or services procured;
- (c) the date of award or the contract date;
- (d) the contract value;
- (e) the name and address of the successful supplier; and
- (f) the procurement method used.

2. A procuring entity shall promptly inform suppliers that have submitted tenders of the contract award decision. A procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the procuring entity did not select its tender.

3. A procuring entity shall maintain records and reports relating to the conduct of procurements covered by this Chapter, including reports required by Article 12.11.3, for a period of at least three years after the date it awards a contract.

#### ARTICLE 12.14: ENSURING INTEGRITY IN PROCUREMENT PROCESSES

Each Party shall ensure that criminal or administrative penalties exist to sanction:

- (a) a procurement official of that Party who solicits or accepts, directly or indirectly, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;
- (b) any person who offers or grants, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions; and
- (c) any person intentionally offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official, for that foreign procurement official or a third party, in order that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain business or other improper advantage.

#### ARTICLE 12.15: DOMESTIC REVIEW PROCEDURES

1. In the event of a complaint by a supplier of a Party that there has been a failure to apply the other Party's measures implementing this Chapter in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity 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 and ensure that the making of any such complaint is not prejudicial to the supplier's participation in ongoing or future procurement or right to seek corrective measures under administrative or judicial review procedures.
2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that a supplier of the other Party submits, in accordance with the laws and regulations of the Party of the procuring entity, relating to a covered procurement.
3. Each Party shall make information on complaint mechanisms generally available.

#### ARTICLE 12.16: RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may modify its coverage under this Chapter, provided that:
  - (a) it notifies the other Party in writing and simultaneously offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraphs 2 and 3; and
  - (b) the other Party does not object in writing within 30 days of the notification.
2. Each Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Government Procurement Schedules referred to in Annex 12-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments.
3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

#### ARTICLE 12.17: DEFINITIONS

For the purposes of this Chapter:

**build-operate-transfer contract** and **public works concession contract** means any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of

time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

**conditions for participation** means registration, qualification, and other pre-requisites for participation in a procurement;

**in writing** or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. This may include electronically transmitted and stored information;

**limited tendering procedures** means those tendering procedures covered by Article 12.11;

**multi-use list** means a list of suppliers that a Party or procuring entity has determined satisfy the conditions for participation in that list, and that the Party or procuring entity intends to use more than once;

**offset** means any condition or undertaking that encourages local development or improves a Party's balance of payments accounts such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;

**open tendering procedures** means a procurement method where all interested suppliers may submit a tender;

**procuring entity** means an entity listed in Sections A, B or C of Annex 12-A;

**selective tendering procedures** means a procurement method where only suppliers qualified to tender or satisfying the conditions for participation are invited by the procuring entity to submit a tender;

**services** includes construction services unless otherwise specified;

**supplier** means a person that provides or could provide goods or services; and

**technical specification** means a tendering requirement that:

- (a) sets out the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or
- (b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

**ANNEX 12-A**  
**GOVERNMENT PROCUREMENT**

**Section A: Central Government Entities**

This Chapter applies to central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

- (a) for procurement of goods and services:  
130,000 SDR
- (b) for procurement of construction services:  
5,000,000 SDR

**Schedule of Korea**

Anti-corruption and Civil Rights Commission of Korea  
Board of Audit and Inspection  
Cultural Heritage Administration  
Defense Acquisition Program Administration (Note 3)  
Fair Trade Commission  
Financial Services Commission  
Korea Coast Guard (Note 5)  
Korea Communications Commission  
Korea Customs Service  
Korea Forest Service  
Korea Intellectual Property Office  
Korea Meteorological Administration  
Military Manpower Administration  
Ministry of Agriculture, Food and Rural Affairs  
Ministry of Culture, Sports and Tourism  
Ministry of Education  
Ministry of Employment and Labor  
Ministry of Environment  
Ministry of Food and Drug Safety  
Ministry of Foreign Affairs  
Ministry of Gender Equality and Family  
Ministry of Government Legislation  
Ministry for Health and Welfare  
Ministry of Justice  
Ministry of Land, Infrastructure and Transport  
Ministry of National Defense (Note 3)  
Ministry of Oceans and Fisheries  
Ministry of Patriots and Veterans Affairs  
Ministry of Science, ICT and Future Planning  
Ministry of Security and Public Administration  
Ministry of Strategy and Finance  
Ministry of Trade, Industry and Energy  
Ministry of Unification  
Multifunctional Administrative City Construction Agency  
National Emergency Management Agency

National Human Rights Commission of Korea  
National Police Agency (Note 5)  
National Tax Service  
Office for Government Policy Coordination  
Prime Minister's Secretariat  
Public Procurement Service (Note 4)  
Rural Development Administration  
Small and Medium Business Administration  
Statistics Korea  
Supreme Prosecutors' Office

## Notes to the Schedule of Korea

1. The above central government entities cover their “subordinate linear organizations”, “special local administrative agencies”, and “attached organs”, as prescribed in the relevant provisions of the Government Organization Act of the Republic of Korea.

2. This Chapter does not apply to any set-asides for small- and medium-sized businesses in accordance with the *Act Relating to Contracts to Which the State is a Party* and its Presidential Decree, and the procurement of agricultural, fishery and livestock products in accordance with the *Grain Management Act*, the *Act on Distribution and Price Stabilization of Agricultural and Fishery Products*, and the *Livestock Industry Act*.

3. Ministry of National Defense and Defense Acquisition Program Administration: Subject to the decision of the Korean Government under the provisions of Article 22.2 (Essential Security), for the purchases of the Ministry of National Defense and the Defense Acquisition Program Administration, this Chapter will generally apply to the following FSC categories only, and for services and construction services listed in Section E and Section F, it will apply only to those areas which are not related to national security and defence:

FSC 2510 Vehicular cab, body, and frame structural components  
FSC 2520 Vehicular power transmission components  
FSC 2540 Vehicular furniture and accessories  
FSC 2590 Miscellaneous vehicular components  
FSC 2610 Tires and tubes, pneumatic, non-aircraft  
FSC 2910 Engine fuel system components, non-aircraft  
FSC 2920 Engine electrical system components, non-aircraft  
FSC 2930 Engine cooling system components, non-aircraft  
FSC 2940 Engine air and oil filters, strainers and cleaners, non-aircraft  
FSC 2990 Miscellaneous engine accessories, non-aircraft  
FSC 3020 Gears, pulleys, sprockets and transmission chain  
FSC 3416 Lathes  
FSC 3417 Milling machines  
FSC 3510 Laundry and dry cleaning equipment  
FSC 4110 Refrigeration equipment  
FSC 4230 Decontaminating and impregnating equipment  
FSC 4520 Space heating equipment and domestic water heaters  
FSC 4940 Miscellaneous maintenance and repair shop specialized equipment  
FSC 5120 Hand tools, non-edged, non-powered  
FSC 5410 Prefabricated and portable buildings  
FSC 5530 Plywood and veneer  
FSC 5660 Fencing, fences and gates  
FSC 5945 Relays and solenoids  
FSC 5965 Headsets, handsets, microphones and speakers  
FSC 5985 Antennae, waveguide, and related equipment  
FSC 5995 Cable, cord, and wire assemblies: communication equipment

FSC 6220 Electric vehicular lights and fixtures  
FSC 6505 Drugs and biologicals  
FSC 6840 Pest control agents and disinfectants  
FSC 6850 Miscellaneous chemical, specialties  
FSC 7310 Food cooking, baking, and serving equipment  
FSC 7320 Kitchen equipment and appliances  
FSC 7330 Kitchen hand tools and utensils  
FSC 7350 Tableware  
FSC 7360 Sets, kits, outfits, and modules food preparation and serving  
FSC 7530 Stationery and record forms  
FSC 7920 Brooms, brushes, mops, and sponges  
FSC 7930 Cleaning and polishing compounds and preparations  
FSC 8110 Drums and cans  
FSC 9150 Oils and greases: cutting, lubricating, and hydraulic  
FSC 9310 Paper and paperboard

4. Public Procurement Service: this Chapter covers only those procurements carried out by the Public Procurement Service for the entities listed in this Section. Regarding procurement for entities listed in Sections B and C, the coverage and thresholds for such entities thereunder shall be applied.

5. National Police Agency and Korea Coast Guard: this Chapter does not cover procurement for the purpose of maintaining public order, as provided in Article 12.2.

#### **Schedule of Australia (Notes 1 and 2)**

Administrative Appeals Tribunal  
Attorney-General's Department  
Australian Bureau of Statistics  
Australian Centre for International Agricultural Research  
Australian Crime Commission  
Australian Customs and Border Protection Service  
Australian Electoral Commission  
Australian Federal Police  
Australian Institute of Criminology  
Australian Law Reform Commission  
Australian National Audit Office  
Australian Office of Financial Management (AOFM)  
Australian Public Service Commission  
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)  
Australian Research Council  
Australian Taxation Office  
Australian Trade Commission  
Australian Transaction Reports and Analysis Centre (AUSTRAC)  
Australian Transport Safety Bureau  
Bureau of Meteorology  
Commonwealth Grants Commission  
ComSuper  
CrimTrac Agency  
Defence Materiel Organisation (Note 3)  
Department of Agriculture  
Department of Communications  
Department of Defence (Note 3)  
Department of Education  
Department of Employment



Department of Environment  
 Department of Finance  
 Department of Foreign Affairs and Trade  
 Department of Health  
 Department of the House of Representatives  
 Department of Human Services  
 Department of Immigration and Border Protection  
 Department of Industry  
 Department of Infrastructure and Regional Development  
 Department of Parliamentary Services  
 Department of the Prime Minister and Cabinet  
 Department of the Senate  
 Department of Social Services  
 Department of the Treasury  
 Department of Veterans' Affairs  
 Fair Work Commission  
 Family Court and Federal Circuit Court  
 Federal Court of Australia  
 Geoscience Australia  
 Inspector-General of Taxation  
 IP Australia  
 Migration Review Tribunal and Refugee Review Tribunal  
 National Archives of Australia  
 National Blood Authority  
 National Capital Authority  
 National Competition Council  
 Office of the Australian Information Commissioner  
 Office of the Australian Accounting Standards Board  
 Office of the Commonwealth Ombudsman  
 Office of the Director of Public Prosecutions  
 Office of the Fair Work Ombudsman  
 Office of the Inspector-General of Intelligence and Security  
 Office of the Official Secretary to the Governor-General  
 Office of Parliamentary Counsel  
 Old Parliament House  
 Productivity Commission  
 Professional Services Review Scheme  
 Royal Australian Mint  
 Safe Work Australia  
 Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)  
 Workplace Gender Equality Agency

### **Notes to the Schedule of Australia**

1. This Chapter covers only those entities which are listed in this Schedule.
2. This Chapter does not cover the procurement of motor vehicles by any entity listed in this Section.
3. Department of Defence and Defence Materiel Organisation
  - (a) this Chapter does not cover Department of Defence and Defence Materiel Organisation procurement of the following goods due to Article 12.2 (Exceptions):

	<u>Approximately equivalent to:</u>
Weapons	FSC 10
Fire Control Equipment	FSC 12
Ammunition and Explosives	FSC 13
Guided Missiles	FSC 14
Aircraft and Airframe Structural Components	FSC 15
Aircraft Components and Accessories	FSC 16
Aircraft Launching, Landing and Ground Handling Equipment	FSC 17
Space Vehicles	FSC 18
Ships, Small Craft, Pontoons and Floating Docks	FSC 19
Ship and Marine Equipment	FSC 20
Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles	FSC 23
Engines, Turbines, and Components	FSC 28
Engines Accessories	FSC 29
Bearings	FSC 31
Water Purification and Sewage Treatment Equipment	FSC 46
Valves	FSC 48
Maintenance and Repair Shop Equipment	FSC 49
Prefabricated Structures and Scaffolding	FSC 54
Communication, Detection, and Coherent Radiation Equipment	FSC 58
Electrical and Electronic Equipment Components	FSC 59
Fiber Optics Materials, Components, Assemblies, and Accessories	FSC 60
Electric Wire, and Power and Distribution Equipment	FSC 61
Alarm, Signal and Security Detection Systems	FSC 63
Instruments and Laboratory Equipment	FSC 66
Specialty Metals	No Code

**Note:** Whether a good is included within the scope of this Note shall be determined solely according to the descriptions provided in the left column above. U.S. Federal Supply Codes are provided for reference purposes only *(for a complete listing of the United States Federal Supply Codes, to which the Australian categories are approximately equivalent, see <http://www.fbo.gov>)*.

- (b) for Australia, this Chapter does not cover the following services, as elaborated in the Common Classification System and the WTO system of classification – MTN.GNS/W/120, due to Article 12.2 *(for a complete listing of the Common Classification System, see: <http://www.sice.oas.org/trade/nafta/chap-105.asp>)*.
- (i) design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment (approximately equivalent to relevant parts of U.S. Product Service Codes A & J)
  - (ii) operation of Government-owned Facilities (approximately equivalent to U.S. Product Service Code M)
  - (iii) space services (AR, B4 & V3)
  - (iv) services in support of military forces overseas

- (c) this Chapter does not cover the procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, or the Defence Imagery and Geospatial Organisation.
- (d) in respect of Article 12.3, the Australian Government reserves the right, pursuant to Article 12.2, to maintain the Australian industry capability program and its successor programs and policies.

## **Section B: Sub-Central Government Entities**

1. This Chapter applies to sub-central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

- (a) for procurement of goods and services:  
for Korea: 200,000 SDR; and  
for Australia: 355,000 SDR
- (b) for procurement of construction services:  
for Korea: 15,000,000 SDR; and  
for Australia: 5,000,000 SDR.

2. This Chapter covers only those entities specifically listed in this Schedule.

### **Schedule of Korea**

Busan Metropolitan City  
 Chungcheongbuk-do  
 Chungcheongnam-do  
 Daegu Metropolitan City  
 Daejeon Metropolitan City  
 Gangwon-do  
 Gwangju Metropolitan City  
 Gyeonggi-do  
 Gyeongsangbuk-do  
 Gyeongsangnam-do  
 Incheon Metropolitan City  
 Jeju Special Self-Governing Province  
 Jeollabuk-do  
 Jeollanam-do  
 Seoul Metropolitan Government  
 Ulsan Metropolitan City

### **Notes to the Schedule of Korea**

1. The above sub-central administrative government entities cover their "subordinate organizations under direct control", "offices" and "branch offices", as prescribed in the relevant provisions of the *Local Autonomy Act* of the Republic of Korea. Any entity with a separate legal personality that is not listed in this Annex is not covered.

2. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act Relating to Contracts to Which the Local Government is a Party* and its Presidential Decree.

## **Schedule of Australia**

### **Australian Capital Territory (ACT) (Note 1)**

ACT Gambling and Racing Commission  
ACT Insurance Authority  
ACTION  
ACT Auditor-General  
Chief Minister and Treasury Directorate  
Commerce and Works Directorate  
Community Services Directorate  
Cultural Facilities Corporation  
Economic Development Directorate  
Education and Training Directorate  
Environment and Sustainable Development Directorate  
Health Directorate  
Housing ACT  
Independent Competition and Regulatory Commission  
Justice and Community Safety Directorate  
Legal Aid Commission  
Ombudsman of the ACT  
Territory and Municipal Services Directorate

1. For the entities listed for the Australian Capital Territory, the Government Procurement chapter does not cover the procurement of health and welfare services, education services, utility services, or motor vehicles.

### **New South Wales (NSW) (Notes 1 and 2)**

The Audit Office of New South Wales  
Commission for Children and Young People  
Community Relations Commission  
Department of Attorney General and Justice  
Department of Education and Communities  
Department of Family and Community Services  
Department of Finance and Services  
Department of Planning and Infrastructure  
Department of Premier and Cabinet  
Department of Trade and Investment, Regional Infrastructure and Services  
Fire and Rescue NSW  
Health Care Complaints Commission  
Information and Privacy Commission (for the Information and Privacy Commission, this Chapter does not cover procurement related to the functions of the Privacy Commission)  
Legal Aid NSW  
Ministry for Police and Emergency Services  
Ministry of Health  
Motor Accidents Authority of NSW  
New South Wales Crime Commission  
New South Wales Electoral Commission  
New South Wales Ombudsman  
New South Wales Rural Fire Service  
NSW Food Authority  
NSW Rural Assistance Authority  
Office of the Board of Studies  
Office of the Director of Public Prosecutions NSW

Office of the Environment Protection Authority  
Police Integrity Commission  
Public Service Commission  
State Emergency Service  
Sydney Harbour Foreshore Authority  
Sydney Olympic Park Authority  
Transport for NSW (for Transport for NSW, this Chapter does not cover procurement related to the functions of The Transport Construction Authority and The Country Rail Infrastructure Authority)  
The Treasury  
WorkCover NSW

1. For the entities listed for New South Wales, this Chapter does not cover the procurement of health and welfare services, education services, or motor vehicles.
2. For the entities listed for New South Wales, this Chapter does not apply to the procurements undertaken by a covered entity on behalf of a non-covered entity.

### **Northern Territory (NT) (Note 1)**

Aboriginal Areas Protection Authority  
Auditor-General's Office  
Central Australian Hospital Network  
Department of Arts and Museums  
Department of the Attorney-General and Justice  
Department of Business  
Department of the Chief Minister  
Department of Correctional Services  
Department of Health  
Department of Housing  
Department of Land Resource Management  
Department of Lands, Planning and the Environment  
Department of the Legislative Assembly  
Department of Local Government  
Department of Mines and Energy  
Department of Primary Industry and Fisheries  
Department of Regional Development and Women's Policy  
Department of Sport and Recreation  
Department of Treasury and Finance  
Health and Community Services Complaints Commission  
Land Development Corporation  
Museum and Art Galleries Board  
Northern Territory Electoral Commission  
Northern Territory Emergency Service  
Northern Territory Employment and Training Authority  
Northern Territory Fire and Rescue Service  
Northern Territory Licensing Commission  
Office of the Commissioner for Public Employment  
Ombudsman's Office  
Parks and Wildlife Commission of the Northern Territory  
Police Force of the Northern Territory  
Racing Commission  
Remuneration Tribunal  
Strehlow Research Centre Board  
Top End Hospital Network  
Tourism NT

Utilities Commission of the Northern Territory  
Work Health Authority

1. For the entities listed for the Northern Territory, this Chapter does not cover set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreements between the Northern Territory Government and Charles Darwin University.

### **Queensland (Notes 1 and 2)**

Entities declared to be departments pursuant to section 14 of the *Public Service Act 2008*  
Public Service Commission  
Public Trust Office

1. For the entities listed for Queensland, this Chapter does not apply to procurement:
- (a) by covered entities on behalf of non-covered entities;
  - (b) undertaken by departments, or parts of departments, which deliver health, education, training and/or arts services; and
  - (c) of health services, education services, training services, arts services, welfare services, government advertising and motor vehicles.

### **South Australia (SA) (Note 1)**

Aboriginal Affairs and Reconciliation Division  
Arts SA  
Attorney-General's Department  
Auditor-General's Department  
Country Fire Service  
Courts Administration Authority  
Defence SA  
Department for Communities and Social Inclusion  
Department for Correctional Services  
Department of Education and Child Development  
Department of Environment, Water and Natural Resources  
Department of Further Education, Employment, Science and Technology  
Department of Health and Ageing  
Department for Manufacturing, Innovation, Trade, Resources and Energy  
Department of Planning, Transport and Infrastructure  
Department of the Premier and Cabinet  
Department of Primary Industries and Regions of South Australia  
Department of Treasury and Finance  
Electoral Commission SA  
Environment Protection Authority  
Independent Gambling Authority  
Legal Services Commission  
Office for State / Local Government Relations  
Parliament of South Australia  
South Australian Fire and Emergency Services Commission  
South Australian Metropolitan Fire Services  
South Australia Police  
South Australian Tourism Commission  
State Emergency Services  
State Procurement Board  
TAFE SA

1. For the entities listed for South Australia, this Chapter does not cover the procurement of health and welfare services, education services, advertising services or motor vehicles.

### **Tasmania (Note 1)**

Department of Economic Development, Tourism and the Arts  
Department of Education  
Department of Health and Human Services  
Department of Infrastructure, Energy and Resources  
Department of Justice  
Department of Police and Emergency Management  
Department of Premier and Cabinet  
Department of Primary Industries, Parks, Water and Environment  
Department of Treasury and Finance  
House of Assembly  
Legislative Council  
Legislature-General  
Office of the Director of Public Prosecutions  
Office of the Governor  
Office of the Ombudsman  
Tasmanian Audit Office  
Tasmanian Health Organisation – North  
Tasmanian Health Organisation – North West  
Tasmanian Health Organisation – South

1. For the entities listed for Tasmania, this Chapter does not cover the procurement of health and welfare services, education services, or advertising services.

### **Victoria (Notes 1 and 2)**

Commissioner for Environmental Sustainability  
Department of Education, Early Childhood and Development  
Department of Environment and Primary Industries  
Department of Health  
Department of Human Services  
Department of Justice  
Department of Premier and Cabinet  
Department of State Development, Business and Innovation  
Department of Transport, Planning and Local Infrastructure  
Department of Treasury and Finance  
Independent Broad-based Anti-corruption Commission  
Office of the Chief Commissioner of Police (Victoria Police)  
Office of the Commission for Children and Young People  
Office of the Essential Services Commission  
Office of the Fire Services Levy Monitor  
Office of the Legal Services Commissioner  
Office of the Ombudsman  
Office of the Privacy Commissioner  
Office of Public Prosecutions  
Office of the Road Safety Camera Commissioner  
Office of the Taxi Services Commission  
Office of the Victorian Commission for Gambling and Liquor Regulation  
Office of the Victorian Responsible Gambling Foundation  
State Services Authority  
Victorian Auditor-General's Office

Victorian Electoral Commission  
Victorian Equal Opportunity and Human Rights Commission  
Victorian Inspectorate

1. For the entities listed for Victoria, this Chapter does not cover the procurement of motor vehicles.
2. For the entities listed for Victoria, this Chapter does not apply to procurements by covered entities on behalf of non-covered entities.

## **Western Australia**

Botanic Gardens and Parks Authority  
Corruption and Crime Commission (Western Australia)  
Country High Schools Hostels Authority  
Department of the Attorney General  
Department for Child Protection  
Department for Communities  
Department of Agriculture and Food  
Department of Commerce  
Department of Corrective Services  
Department of Culture and the Arts  
Department of Education  
Department of Training and Workforce Development  
Department of Education Services  
Department of Environment and Conservation  
Department of Finance  
Department of Fire and Emergency Services  
Department of Fisheries  
Department of Health  
Department of Housing  
Department of Indigenous Affairs  
Department of Local Government  
Department of Mines and Petroleum  
Department of Planning  
Department of the Premier and Cabinet  
Department of Racing, Gaming and Liquor  
Department of Regional Development and Lands  
Department of the Registrar Western Australian Industrial Relations Commission  
Department of State Development  
Department of Sport and Recreation  
Department of Training and Workforce Development  
Department of Treasury  
Department of Water  
Disability Services Commission  
Equal Opportunity Commission  
Gascoyne Development Commission  
Goldfields Esperance Development Commission  
Governor's Establishment  
Great Southern Development Commission  
Heritage Council of Western Australia  
Kimberley Development Commission  
Law Reform Commission of Western Australia  
Legislative Assembly  
Legislative Council  
Main Roads Western Australia



Mid West Development Commission  
Minerals and Energy Research Institute of Western Australia  
National Trust of Australia (WA)  
Office of the Auditor General  
Office of the Director of Public Prosecutions  
Office of the Information Commissioner  
Office of the Inspector of Custodial Services  
Office of the Parliamentary Commissioner for Administrative Investigations  
Parliamentary Services Department  
Peel Development Commission  
Pilbara Development Commission  
Public Sector Commission  
Public Transport Authority  
Rottnest Island Authority  
Rural Business Development Corporation  
Salaries and Allowances Tribunal  
School Curriculum and Standards Authority  
Small Business Development Corporation  
South West Development Commission  
State Library of Western Australia  
Swan River Trust  
Western Australia Police  
Western Australian Electoral Commission  
Western Australian Land Information Authority (Landgate)  
Western Australian Planning Commission  
Western Australian Sports Centre Trust (trading as VenuesWest)  
Western Australian Tourism Commission  
Wheatbelt Development Commission  
Zoological Parks Authority

### **Section C: Other Covered Entities**

This Chapter applies to other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

- (a) for procurement of goods:  
450,000 SDR
- (b) for procurement of construction services:  
15,000,000 SDR

### **Schedule of Korea**

Industrial Bank of Korea  
Korea Agro-Fisheries Trade Corporation  
Korea Coal Corporation  
Korea Development Bank  
Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)  
Korea Expressway Corporation  
Korea Gas Corporation  
Korea Land and Housing Corporation

Korea Minting and Security Printing Corporation  
Korea National Oil Corporation  
Korea Resources Corporation  
Korea Railroad Corporation  
Korea Rural Community Corporation  
Korea Tourism Organization  
Korea Trade-Investment Promotion Agency  
Korea Water Resources Corporation  
Korea Workers' Compensation and Welfare Service

### **Notes to the Schedule of Korea**

1. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act on the Management of Public Institutions and the Rule on Contract Business of Public Institutions and Quasi-Governmental Institutions*, the *Local Public Enterprises Act* and the *Enforcement Regulations of the Local Public Enterprise Act*.

### **Schedule of Australia (Notes 1, 2 and 3)**

Australian Communications and Media Authority  
Australian Competition and Consumer Commission  
Australian Financial Security Authority  
Australian Fisheries Management Authority  
Australian Human Rights Commission  
Australian Institute of Marine Science  
Australian Maritime Safety Authority  
Australian Pesticides and Veterinary Medicines Authority  
Australian Prudential Regulation Authority  
Australian Securities and Investments Commission  
Comcare  
Commonwealth Scientific and Industrial Research Organisation  
Corporations and Markets Advisory Committee  
The Director of National Parks  
Great Barrier Reef Marine Park Authority  
Safe Work Australia  
Sydney Harbour Federation Trust  
Tourism Australia

### **Notes to the Schedule of Australia**

1. This Chapter covers only those entities specifically listed in this Schedule.
2. For the entities listed in this Section, this Chapter covers only the procurement of goods and construction services as specified in Australia's schedules in Sections D and F of this Annex.
3. For the entities listed in this Section, this Chapter does not cover the procurement of motor vehicles.

### **Section D: Goods**

1. This Chapter applies to all goods procured by the entities listed in Sections A, B and C, unless otherwise specified in this Chapter, including this Annex.

2. This Chapter does not cover the procurement of blood and blood products, including plasma-derived products.

## Section E: Services

This Chapter applies to all services procured by the entities listed in Sections A and B, unless otherwise specified in this Chapter, including this Annex.

### **Schedule of Korea**

Of the WTO Universal List of Services as contained in document WTO/MTN.GNS/W/120, the following services are included (all others being excluded):

GNS/W/120	CPC	Description
1.A.b.	862	Accounting, auditing and bookkeeping services
1.A.c.	863	Taxation services
1.A.d.	8671	Architectural services
1.A.e.	8672	Engineering services
1.A.f.	8673	Integrated engineering services
1.A.g.	8674	Urban planning and landscape architectural services
1.B.a.	841	Consultancy services related to the installation of computer hardware
1.B.b.	842	Software implementation services
1.B.c.	843	Data processing services
1.B.d.	844	Data base services
1.B.e.	845	Maintenance and repair services of office machinery and equipment (including computers)
1.E.a.	83103	Rental/leasing services without operators relating to ships
1.E.b.	83104	Rental/leasing services without operators relating to aircraft
1.E.c.	83101, 83105*	Rental/leasing services without operators relating to other transport equipment (only passenger vehicles for less than fifteen passengers)
1.E.d.	83106, 83108, 83109	Rental/leasing services without operators relating to other machinery and equipment
	83107	Rental/leasing services without operator relating to construction machinery and equipment
1.F.a.	8711, 8719	Advertising agency services
1.F.b.	864	Market research and public opinion polling services
1.F.c.	865	Management consulting services
1.F.d.	86601	Project management services
1.F.e.	86761*	Composition and purity testing and analysis services (only inspection, testing and analysis services of air, water, noise level and vibration level)
	86764	Technical inspection services
1.F.f.	8811*, 8812*	Consulting services relating to agriculture and animal husbandry
	8814*	Services incidental to forestry (excluding aerial fire fighting and disinfection)
1.F.g.	882*	Consulting services relating to fishing

GNS/W/120	CPC	Description
1.F.h.	883*	Consulting services relating to mining
1.F.m.	86751, 86752	Related scientific and technical consulting services
1.F.n.	633, 8861 8862, 8863 8864, 8865 8866	Maintenance and repair of equipment
1.F.p.	875	Photographic services
1.F.q.	876	Packaging services
1.F.r.	88442*	Printing (screen printing, gravure printing, and services relating to printing)
1.F.s.	87909*	Stenography services Convention agency services
1.F.t.	87905	Translation and interpretation services
2.C.j.	7523*	On-line information and data-base retrieval
2.C.k.	7523*	Electronic data interchange
2.C.l.	7523*	Enhanced/value-added facsimile services including store and forward, store and retrieve
2.C.m.	-	Code and protocol conversion
2.C.n.	843*	On-line information and/or data processing (including transaction processing)
2.D.a.	96112*, 96113*	Motion picture and video tape production and distribution services (excluding those services for cable TV broadcasting)
2.D.e.	-	Record production and distribution services (sound recording)
6.A.	9401*	Refuse water disposal services (only collection and treatment services of industrial waste water)
6.B.	9402*	Industrial refuse disposal services (only collection, transport, and disposal services of industrial refuse)
6.D.	9404*, 9405*	Cleaning services of exhaust gases and noise abatement services (services other than construction work services)
	9406*, 9409*	Environmental testing and assessment services (only environmental impact assessment services)
11.A.b.	7212*	International transport, excluding cabotage
11.A.d.	8868*	Maintenance and repair of vessels
11.F.b.	71233*	Transportation of containerized freight, excluding cabotage
11.H.c	748*	Freight transport agency services - Maritime agency services - Maritime freight forwarding services - Shipping brokerage services - Air cargo transport agency services - Customs clearance services
11.I.	-	Freight forwarding for rail transport

#### Notes to the Schedule of Korea

Asterisks (\*) designate "part of" as described in detail in the Revised Conditional Offer of the Republic of Korea Concerning Initial Commitments on Trade in Services.

### **Schedule of Australia**

This Chapter does not cover the procurement of:

- (a) plasma fractionation services;
- (b) government advertising services;
- (c) legal services;
- (d) telecommunications;
- (e) educational services;
- (f) financial services;
- (g) transport services; or
- (h) health and welfare services.

### **Section F: Construction Services**

This Chapter applies to all construction services procured by the entities listed in Sections A, B and C, unless otherwise specified in this Chapter, including in this Annex.

### **Schedule of Korea**

1. This Chapter applies to the procurement of all construction services under Division 51 of the United Nations Provisional Central Product Classification (CPC) procured by the entities listed in Sections A through C, unless otherwise specified in this Chapter.
2. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act on Private Participation in Infrastructure*.

### **Schedule of Australia**

For the purposes of Articles 12.6.1 and 12.6.2 Australia requires, as a condition for participation in procurement of building and construction services, compliance with the National Code of Practice for the Construction Industry and related implementation guidelines at the central and sub-central government levels, and their successor policies and guidelines. In this respect Australia shall accord to the goods, services and suppliers of Korea, treatment no less favourable than the most favourable treatment it accords to its own goods, services and suppliers.

### **Section G: General Notes**

Unless otherwise specified herein, the following General Notes in each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

### **Schedule of Korea**

1. This Chapter does not apply to procurement in furtherance of human feeding programs.
2. For greater clarity, procurement for airports is not covered under this Agreement.

### **Schedule of Australia**

This Chapter does not apply to:

- (a) any form of preference to benefit small and medium enterprises;
- (b) measures to protect national treasures of artistic, historic, or archaeological value;
- (c) measures for the health and welfare of indigenous people; and
- (d) measures for the economic and social advancement of indigenous people.

## **Section H: Value of Thresholds**

### **General**

1. The value of the thresholds set out in Sections A, B and C shall be adjusted at two-year intervals with each adjustment taking effect in January.
2. Each Party shall calculate and convert for itself the value of the thresholds into its own national currency using the conversion rates published by the IMF in its monthly “International Financial Statistics”. Except where paragraph 3 applies, the conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November of the year before the adjusted thresholds are to take effect.
3. In respect of thresholds for sub-central entities Australia may apply the methodology for conversion of SDR amounts into Australian dollars set out in Section 8, Annex 15-A of the Australia-United States Free Trade Agreement as of the date of entry into force of this Agreement to the relevant SDR value set out in paragraph 2.
4. A Party may round its calculations for adjusted thresholds covered by this section according to the following:
  - (a) for Korea, to the nearest one million Korean won for goods and services and the nearest 10 million Korean won for construction services; and
  - (b) for Australia, to the nearest one thousand Australian dollars.
5. Each Party shall notify the other Party of the current thresholds in their respective currencies immediately after this Agreement enters into force, and the adjusted thresholds in their respective currencies thereafter in a timely manner.
6. The Parties shall consult if a major change in a national currency relative to the SDR or to the national currency of the other Party were to create a significant problem with regard to the application of this Chapter.