

ANNEX 9

BOT CONTRACTS AND PUBLIC WORKS CONCESSIONS

ARTICLE 1: DEFINITIONS

1. For Korea,

BOT 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 to 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.

2. For the European Union,

public works concession means a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment;

public works contract means public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Division 51 of the CPC or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority; and

work means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

ARTICLE 2: RULES APPLICABLE TO BOT CONTRACTS AND PUBLIC WORKS CONCESSIONS

National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding BOT contracts or public works concessions covered by Article 3 of this Annex, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods, services and suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.

2. With respect to all laws, regulations, procedures and practices regarding BOT contracts or public works concessions covered by Article 3 of this Annex, a Party, including its procuring entities, shall not treat a locally established supplier of the other Party less

favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership.

Notice of Intended Contract

3. Each Party shall ensure that a procuring entity publishes a notice of intended BOT contracts or public work concessions covered by Article 3 of this Annex in an appropriate official paper or electronic medium listed in Article 4 of this Annex. The notices shall be accessible to interested suppliers free of charge, if possible through a single point of access, so that interested suppliers may submit tenders or requests for participation in that contract. Each notice of intended contract shall include the following information:

- (a) the name and the address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the contract;
- (b) a description of the contract;
- (c) the address and the final date for the submission of tenders or requests for participation;
- (d) the language or languages in which tenders or requests for participation may be submitted;
- (e) a list and brief description of any conditions for participation of suppliers; and
- (f) the main criteria to be used for the award of the contract.

Award Publication

4. Within a reasonable period of time after the award of each contract covered by Article 3 of this Annex, each Party shall ensure that the award of that contract is made publicly available in an appropriate official paper or electronic medium listed in Article 4 of this Annex, indicating the name and the address of the procuring entity and of the successful supplier.

Review

5. Each Party shall ensure that there is an effective system of review of decisions by competent authorities covered by this Annex. This obligation does not require the creation of a special system of administrative or judicial review.

Other Rules and Procedures

6. Subject to paragraphs 1 through 5, this Annex is without prejudice to the measures undertaken by the Parties to encourage small and medium-sized businesses to participate in BOT contracts or public works concessions in accordance with their legislation.

Security and General Exceptions

7. Nothing in this Annex shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

8. Subject to the requirement 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 international trade, nothing in this Annex shall be construed to prevent any Party from imposing or enforcing 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 persons with disabilities, philanthropic institutions or prison labour.

ARTICLE 3: SCOPE AND COVERAGE

1. This Annex shall apply to BOT contracts and public works concessions the value of which is above 15,000,000 SDR.

2. As regards the European Union, this Annex covers public works concessions of the entities listed in Annexes 1 and 2 of the European Union's GPA 1994 Appendix I and their corresponding Annexes in any agreement which replaces or amends the GPA 1994, in the sectors set out therein.

3. As regards Korea, this Annex covers BOT contracts of the entities listed in Annexes 1 and 2 of Korea's GPA 1994 Appendix I and their corresponding Annexes in any agreement which replaces or amends the GPA 1994, and, further to this, BOT contracts of all local governments¹ located in Seoul City, Busan City, Incheon City and Gyonggi-do.

ARTICLE 4: MEANS OF PUBLICATION

1. For Korea,

the Internet homepage of each entity in Annexes 1 and 2 of Korea's GPA 1994 Appendix I and their corresponding Annexes in an agreement which replaces or amends the GPA 1994 and all local governments located in Seoul City, Busan City, Incheon City and Gyonggi-do and daily press.

2. For the European Union,

the information system for European public procurement:

¹ For Korea, **local government** means a local government as defined in the *Local Autonomy Act*.

http://simap.europa.eu/index_en.html

The Official Journal of the European Union