

TRANS-PACIFIC PARTNERSHIP AGREEMENT

CHAPTER SUMMARY: GOVERNMENT PROCUREMENT

The Government Procurement Chapter sets high quality standards for government procurement that are robust, transparent and allow suppliers to participate fairly in procurement processes. Critically, the Chapter will ensure that governments do not discriminate against foreign suppliers when assessing tenders and awarding contracts. Under the CPTPP, governments must follow world-class procurement processes that provide increased levels of transparency and greater certainty for businesses, big and small. CPTPP Parties will be required to establish a review mechanism so that suppliers (both foreign and domestic) can challenge government procurements that do not follow proper processes.

Getting government procurement rules right in CPTPP countries matters. According to the OECD, approximately 15 percent of a country's GDP comprises government procurement. Making sure that governments enter into contracts fairly and transparently is therefore critical for Australian businesses operating overseas. It is also important for foreign governments, as improved procurement standards encourage foreign investment, reduce transaction costs and discourage corruption.

MORE INFORMATION ON THE CHAPTER

The Government Procurement Chapter sets standards for government purchases of goods and/or services. CPTPP Parties are required to adopt fair and transparent procurement rules, allowing Australian suppliers to compete for foreign government contracts on an even playing field and more easily discover new market opportunities.

The CPTPP obliges countries to treat foreign suppliers fairly when they are competing for government contracts, irrespective of the type of tender process used. This means that governments cannot treat suppliers from other CPTPP Parties less favourably than their own domestic suppliers (known as the national treatment obligation) or discriminate against local suppliers just because they are partly foreign-owned or use foreign goods and/or services. This also means that governments cannot create specifications or procedures that create obstacles for foreign suppliers to compete for the contract. The contract must be awarded to the supplier offering the best value for money solely on the basis of the stated evaluation criteria.

A major feature of the Government Procurement Chapter is that governments must generally use an open tendering procedure for contracts above a certain threshold (see below) to ensure that government procurement is open to all suppliers. This is already standard practice in Australia but not necessarily in other CPTPP countries. This obligation does not mean that governments can only use open tendering. Governments may use pre-qualified tendering (where suppliers are pre-qualified for contracts on a registration system) or limited tendering (where only a few suppliers are considered for contracts), but only in specific circumstances outlined in the Government Procurement Chapter.

For open tenders, the Chapter requires governments to:



- put information about procurement (including notices and tender documentation) online and make such information freely available;
- encourage procuring entities to publish as early as possible in the financial year a notice outlining its future procurement plans (known in Australia as an Annual Procurement Plan);
- allow suppliers 40 days to submit a tender, 25 days if the tender process is solely electronic, or 10 days if very strict criteria are met; and
- limit any conditions for participating in a procurement to the legal, financial, commercial and technical abilities of suppliers.

Where a government uses prequalified tendering, the system of pre-qualification must not create unnecessary obstacles to the participation of suppliers. The government must publish an invitation for suppliers to participate in the procurement sufficiently in advance of the procurement. A government may also use multi-use lists if it publishes a notice that invites suppliers to apply for inclusion on the list and contains key information about the procurement, such as a description of the work to be performed and the deadline for applications.

A government may only use limited tendering in a narrow range of circumstances and, crucially, only if the government is not using limited tendering to discriminate or circumvent competition rules. If a government uses limited tendering it must publicly justify its use. These technical requirements for all types of tendering ensure that CPTPP Parties have twenty-first century processes that enable businesses to plan in advance, find new market opportunities and better understand government processes in foreign environments.

Importantly, the Chapter requires governments to ensure that criminal or administrative measures exist to address corruption, fraud and conflicts of interests in its government procurement. Additionally, each Party must establish an impartial administrative or judicial authority to hear challenges or complaints to government procurement decisions. This complaints process must be timely, non-discriminatory and effective. Taken together, these rules create a powerful incentive for Parties to improve their governance, and build supplier confidence to participate in the government procurement market.

Finally, the Chapter makes clear that the rules in the agreement do not prevent governments from promoting compliance with its laws (e.g. preventing forced or child labour), protecting health (including human, animal or plant life) or promoting environmental measures (e.g. energy efficiency requirements).

CURRENT GOVERNMENT PROCUREMENT THRESHOLDS UNDER THE CPTPP

The thresholds listed below are valid until the end of 2020.

Australia

- Section A - Central Government Entities: AUD 251,000
- Section B - Sub-Central Government Entities: AUD 685,000
- Section C - Other Entities: AUD 771,000
- Construction services for all entities: AUD 9,641,000