



# Trade in Services Agreement (TiSA) Annex on Government Procurement (April 2015)

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**Restraint:** LIMITED Without prejudice - For TISA participants only

**Title:** Trade in Services Agreement (TiSA) Annex on Government Procurement

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## Description

This is a secret April 2015 bracketed draft of the Trade in Services Agreement (TiSA) Annex on Government Procurement, including negotiating positions. TiSA is currently under negotiation between the United States, the European Union and 23 other countries. The Agreement creates an international legal regime which aims to deregulate and privatize the supply of services - which account for the majority of the economy across TiSA countries. The draft Annex aims to regulate the processes by which TiSA governments procure services to ensure that service markets are opened up to international competition and to give foreign services suppliers footing to contest domestic services suppliers in government tendering and procurement procedures. This April 2015 text dates from shortly after the 12th round of TiSA negotiations held from 13-17 April 2015 in Geneva, Switzerland.

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**[EU/NO/LI/IS propose: Annex on Government Procurement<sup>1</sup>**

- (1) This Annex applies to government procurement of services<sup>2</sup> for which there is a prior publication of a procurement notice.
- (2) Each Party shall ensure that the service suppliers of any other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a juridical person are accorded national treatment (pursuant to Article I-4 of the Agreement) as regards government procurement of services of the Party in its territory.
- (3) Each Party shall ensure that the government procurement of services is conducted in a transparent and impartial manner that:
  - (a) ensures that the service market is opened up to competition;
  - (b) avoids conflicts of interest; and
  - (c) prevents corruptive practices.
- (4) The procurement procedures shall be appropriate to the potential competition and the value, object and complexity of the procurement. When domestic legislation requires a procuring entity to publish a notice of intended procurement, the procurement procedure should at least follow the basic provisions set out in the Appendix on Government Procurement.
- (5) This Annex is without prejudice to commitments relating to Government Procurement undertaken by and of the Parties:
  - (a) among themselves under the WTO Agreement on Government Procurement (GPA) or their preferential trade agreements on the basis of GATS, Article V; or
  - (b) towards other Parties to the GPA or to preferential trade agreements on the basis of GATS, Article V.]

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<sup>1</sup> Definition of government procurement equivalent to the definition found in GATS Article XIII: 1, will be added to the definitions in the core text, or in the Annex.

<sup>2</sup> For the purposes of this Annex, a government procurement of services is a government procurement the object of which predominately consists of services, and which is conducted under an open tendering procedure. Procedures to grant concessions to offer a service to the public are not considered to be government procurement for the purposes of this Annex

**[EU/NO/LI/IS: Appendix to the Annex on Government Procurement**

***Procurement notices***

(1) The Parties shall ensure that notices of intended procurement are published in a manner that is sufficient to allow any interested supplier to have appropriate access to information regarding the contract prior to the award and to express its interest in obtaining the contract.

(2) A notice of intended procurement shall contain at least the essential details of the subject-matter of the procurement, the conditions for participation, the procurement method and any other information that the suppliers reasonably need to decide whether to participate in the procurement.

***Awarding of contracts***

(3) This impartiality of the procurement procedure shall be ensured especially through the non-discriminatory description of the subject-matter of the contract, equal access for all suppliers, appropriate time-periods and a transparent and objective approach.

(4) When describing the characteristics of the required service a procuring entity (of a party) shall, where appropriate:

- (a) set out the technical specification in terms of performance and functional requirements, rather than descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations or recognized national standards.

(5) The procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders.

(6) The applicable rules, conditions for participation and evaluation criteria shall be made available to all interested suppliers in advance. These rules and criteria must apply to all participants in the same way.

(7) A procuring entity may use a registration system under which interested suppliers are required to register and provide certain information, provided that the list of qualified suppliers is compiled by means of a sufficiently published, transparent and open procedure. Contracts falling within the scope of such a system shall be awarded on a non-discriminatory basis.

(8) The Parties shall ensure that contracts are awarded to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that has submitted the most advantageous tender or the tender with the lowest price, based solely on the evaluation criteria specified in the notice or the tender documentation.

(9) A procuring entity shall promptly inform participating suppliers of the entity's contract award decision. Where national legislation provides for a review procedure, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful suppliers tender in sufficient detail to allow for the review of the decision on the request of an unsuccessful supplier.]