

*This **document** is the European Union's (EU) proposal for a legal text on public procurement in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER [XX]

PUBLIC PROCUREMENT

Article X.1

Scope of Application

This Chapter shall apply to the procurements set out in Annex/es [X-X] of this Agreement.

Article X.2

Application of Rules Set Out in the WTO Government Procurement Agreement

The Parties shall apply on a bilateral basis the Articles I-IV, VI-XV, XVI.1-XVI.3, XVIII of the WTO Government Procurement Agreement (hereinafter referred to as "GPA") to the procurement covered by this Chapter.

Article X.3

Additional Disciplines

In addition to the provisions referred to under Article X.2 (Application of Rules Set Out in the WTO Government Procurement Agreement), the Parties shall apply the following rules:

Local Establishment

1. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a legal person are accorded national treatment with regard to any government procurement of the Party in its territory. This obligation applies irrespectively of whether or not the procurement is covered by the Parties' annexes to the GPA or by Annex/es [X-X] of this Agreement. However, the general exceptions set forth in Article III of the GPA shall be applied.

Use of Electronic Means in Procurement

2. The Parties shall conduct covered procurement by electronic means to the widest extent possible and shall cooperate in developing and expanding the use of electronic means in government procurement systems.

When conducting covered procurement by electronic means, a procuring entity shall use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and shall use electronic means for the submission of tenders to the widest extent practicable.

Electronic Publication of Procurement Notices

3. All the notices of intended procurement shall be directly accessible by electronic means free of charge through a single point of access on the internet. In addition, the notices may also be published in an appropriate paper medium. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

Sub-central Procurement Funded by Central Government Entities

4. With regard to procurement by sub-central entities which is funded fully or in part by central government entities listed in Annex X-A, the use of such funds shall not be conditional upon the application of discriminatory measures by the sub-central entity.

Registration Systems and Qualification Procedures

5. Where a Party or one of its procuring entities, pursuant to Article IX.1 of the GPA, maintains a supplier registration system, it shall ensure that interested suppliers have access to information on the registration system [if possible, through electronic means] and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

Conditions for Participation

6. Where a supplier, as a condition for the submission of a tender, must demonstrate to have prior experience, a procuring entity cannot impose that the supplier has prior experience in the territory of that Party. It shall be sufficient for him to demonstrate that this prior experience has been acquired in any territory.

Selective Tendering

7. Where, pursuant to Article IX.4 of the GPA, a selective tendering procedure is used, an invitation to submit a tender shall be addressed to a number of suppliers that is sufficient to ensure effective competition.

Environmental and Labour Considerations

8. A Party may:
 - (a) allow contracting authorities to take into account environmental and labour considerations throughout the procurement procedure, provided they are non-discriminatory and they are linked to the subject-matter of the contract; and
 - (b) take appropriate measures to ensure compliance with their obligations in the fields of environmental and labour law, including the obligations under Chapter [YY] (Trade and Sustainable Development).

Exchange of Statistics

9. The Parties shall exchange statistics on procurement on an annual basis.

Domestic Review Procedures

10. The Parties shall, as a general rule, provide for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.
11. Where a review body has determined that there has been a breach or a failure as referred to in Article XVIII.1 of the GPA, each Party shall adopt or maintain procedures that provide for:
 - (a) corrective action consisting in setting aside or ensuring the setting aside of decisions taken unlawfully by a procuring entity and declaring ineffective contracts concluded by a procuring entity in violation of this Chapter;
 - (b) compensation for the loss or damages suffered.

Article X.4

Modifications and Rectifications to Coverage

1. A Party may modify or rectify its Annex/es [X-X].

Modifications

2. When a Party modifies an Annex, the Party shall:
 - (a) notify the other Party in writing; and
 - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding subparagraph 2 (b), a Party need not provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence; Government control or influence over the covered procurement of entities listed in Annex/es [X-X] to this Chapter is deemed to be effectively eliminated if the procuring entity performs a competitive activity.
4. If the other Party disputes that:
 - (a) an adjustment proposed under subparagraph 2 (b) is adequate to maintain a comparable level of mutually agreed coverage;
 - (b) the modification covers an entity over which the Party has effectively eliminated its control or influence under paragraph 3;

it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2 (a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter [YY] (Dispute Settlement).

Rectifications

5. The following changes to a Party's Annexes shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in the Chapter:
 - (a) a change in the name of an entity;
 - (b) a merger of two or more entities listed within an Annex; and
 - (c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.
6. In the case of proposed rectifications to a Party's Annexes, the Party shall notify the other Party every two years [, in line with the cycle of notifications provided for under the GPA,] following the entry into force of this Chapter.
7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in

writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

[Article X.5
Institutional Provisions]

[placeholder]

1. [...] On request of a Party, the [joint working body defined by the Agreement] shall meet to address matters related to the implementation and operation of this Chapter, such as:
 - (a) the modification of Annex/es [X-X];
 - (b) issues regarding government procurement that are referred to it by a Party;
 - (c) any other matter related to the operation of this Chapter.

ANNEX [X-X]

COVERAGE

[...]