

**PUBLIC PROCUREMENT**

**SECTION A**

**RELEVANT PROVISIONS OF THE GPA**

Articles I to III, IV.1.a, IV.2 to IV.7, VI to XV, XVI.1 to XVI.3, XVII and XVIII.

**SECTION B:**

**MARKET ACCESS COMMITMENTS**

For the purposes of this Section, "CPC" means the Provisional Central Product Classification (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

## SUB-SECTION B1

### European Union

In accordance with Article 277(2) and (3) of this Agreement, Title VI of Heading One of Part Two of this Agreement applies, in addition to the procurement covered by the annexes of the European Union to Appendix I to the GPA, to the procurement covered by this Sub-section.

The Notes in Annexes 1 to 7 of the European Union to Appendix I to the GPA also apply to the procurement covered by this Sub-section, unless otherwise provided for in this Sub-section.

Procurement covered by this Sub-section

#### 1. Additional procuring entities

Procurement of goods and services as set out in Annexes 4 to 6 of the European Union to Appendix I to the GPA, and in paragraph 2 of this Sub-section, by the following procuring entities of the Member States:

- (a) all contracting entities whose procurement is covered by Directive 2014/25/EU of the European Parliament and of the Council<sup>1</sup> (the "EU Utilities Directive") which are contracting authorities (e.g. those covered under Annex 1 and Annex 2 to Appendix I to the GPA) or public undertakings<sup>2</sup> and which have as one of their activities:
- (i) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat or the supply of gas or heat to such networks; or
  - (ii) any combination between such activity and those referred to in Annex 3 to Appendix I to the GPA;
- (b) privately-owned procuring entities that have as one of their activities any of those referred to in point (a) of this paragraph, in point 1 of Annex 3 to Appendix I to the GPA, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State;

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<sup>1</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ EU L 94 28.3.2014, p. 243).

<sup>2</sup> According to the EU Utilities Directive, a public undertaking is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- (i) hold the majority of the undertaking's subscribed capital,
- (ii) control the majority of the votes attaching to shares issued by the undertaking, or
- (iii) can appoint more than half of the undertaking's administrative, management or supervisory body.

with regard to procurement equal to or above the following thresholds:

- 400 000 SDR for procurement of goods and services,
- 5 000 000 SDR for procurement of construction services (CPC 51).

## 2. Additional services

Procurement of the following services, in addition to the services listed under Annex 5 of the European Union to Appendix I to the GPA, for entities covered under Annexes 1 to 3 of the European Union to Appendix I to the GPA or under paragraph 1 of this Sub-section:

- Hotel and restaurant services (CPC 641);
- Food serving services (CPC 642);
- Beverage serving services (CPC 643);
- Telecommunication related services (CPC 754);
- Real estate services on a fee or contract basis (CPC 8220);
- Other business services (CPC 87901, 87903, 87905-87907);
- Education services (CPC 92).

Notes:

1. Hotel and restaurant services (CPC 641), food serving services (CPC 642), beverage serving services (CPC 643) and education services (CPC 92) contracts are included under the national treatment regime for the suppliers, including service providers, of the United Kingdom, provided that their value equals or exceeds EUR 750 000 when they are awarded by procuring entities covered under Annexes 1 and 2 of the European Union to Appendix I to the GPA and that their value equals or exceeds EUR 1 000 000 when they are awarded by procuring entities covered under Annex 3 of the European Union to Appendix I to the GPA or by procuring entities covered by paragraph 1 of this Sub-section.
  
2. The supply of gas or heat to networks which provide a service to the public by a procuring entity other than a contracting authority shall not be considered as an activity within the meaning of this Sub-section where:
  - (a) the production of gas or heat by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in this Sub-section or in paragraphs (a) to (f) of Annex 3 of the European Union to Appendix I to the GPA; and
  
  - (b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.

3. Title VI of Heading One of Part Two of this Agreement and this Annex do not cover procurement of the following services:
- (a) Human health services (CPC 931);
  - (b) Administrative healthcare services (CPC 91122); and
  - (c) Supply services of nursing personnel and supply services of medical personnel (CPC 87206 and CPC 87209).

#### SUB-SECTION B2

##### United Kingdom

In accordance with Article 277 (2) and (3) of this Agreement, Title VI of Heading One of Part Two of this Agreement applies, in addition to the procurement covered by Article II of the GPA, to the procurement covered by this Sub-section.

The Notes in Annexes 1 to 7 of the United Kingdom to Appendix I to the GPA also apply to the procurement covered by this Sub-section, unless otherwise provided for in this Sub-section.

## Procurement covered by this Sub-section

### 1. Additional procuring entities

Procurement of goods and services as set out in Annexes 4 to 6 of the United Kingdom's Appendix I to the GPA, and in paragraph 2 of this Sub-section, by the following procuring entities of the United Kingdom:

- (a) all contracting entities whose procurement is covered by the Utilities Contracts Regulation 2016 and the Utilities Contracts (Scotland) Regulations 2016 which are contracting authorities (e.g. those covered under Annex 1 and Annex 2 to Appendix I to the GPA) or public undertakings (see Note:1) and which have as one of their activities:
  - (i) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat or the supply of gas or heat to such networks; or
  - (ii) any combination between such activity and those referred to in Annex 3 to Appendix I to the GPA;
- (b) privately-owned procuring entities that have as one of their activities any of those referred to in point (a) of this paragraph, in point 1 of Annex 3 to Appendix I to the GPA, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of the United Kingdom;

with regard to procurement equal to or above the following thresholds:

- 400 000 SDR for procurement of goods and services,
- 5 000 000 SDR for procurement of construction services (CPC 51).

Notes to paragraph 1:

1. According to the Utilities Contracts Regulations 2016, a "public undertaking" means any undertaking over which contracting authorities may exercise directly or indirectly a dominant influence by virtue of:
  - (a) their ownership of that undertaking;
  - (b) their financial participation in that undertaking; or
  - (c) the rules which govern that undertaking.
2. According to the Utilities Contracts (Scotland) Regulations 2016, a "public undertaking" means a person over which one or more contracting authorities are able to exercise, directly or indirectly, a dominant influence by virtue of one or more of the following:
  - (a) their ownership of that person;
  - (b) their financial participation in that person;



(c) the rights accorded to them by the rules which govern that person.

3. According to both the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016, a dominant influence on the part of contracting authorities is presumed in any of the following cases in which those authorities, directly or indirectly:

(a) hold the majority of the undertaking's subscribed capital;

(b) control the majority of the votes attaching to shares issued by the undertaking;

(c) can appoint more than half of the undertaking's administrative, management or supervisory body.

2. Additional services

Procurement of the following services, in addition to the services listed under Annex 5 of the United Kingdom to Appendix I to the GPA, for entities covered under Annexes 1 to 3 of the United Kingdom to Appendix I to the GPA or under paragraph 1 of this Sub-section:

– Hotel and restaurant services (CPC 641);

– Food serving services (CPC 642);

– Beverage serving services (CPC 643);

- Telecommunication related services (CPC 754);
- Real estate services on a fee or contract basis (CPC 8220);
- Other business services (CPC 87901, 87903, 87905-87907);
- Education services (CPC 92).

Notes:

1. Hotel and restaurant services (CPC 641), food serving services (CPC 642), beverage serving services (CPC 643) and education services (CPC 92) contracts are included under the national treatment regime for the suppliers, including service providers, of the European Union, provided that their value equals or exceeds GBP 663 540 when they are awarded by procuring entities covered under Annexes 1 and 2 of the United Kingdom to Appendix I to the GPA and that their value equals or exceeds GBP 884 720 when they are awarded by procuring entities covered under Annex 3 of the United Kingdom to Appendix I to the GPA or by procuring entities covered by paragraph 1 of this Section.
2. The supply of gas or heat to networks which provide a service to the public by a procuring entity other than a contracting authority shall not be considered as an activity within the meaning of this Section where:

- (a) the production of gas or heat by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in this Section or in paragraphs (a) to (f) of Annex 3 of the United Kingdom to Appendix I to the GPA; and
  - (b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover on the basis of the average for the preceding three years, including the current year.
3. Title VI of Heading One of Part Two of this Agreement and this Annex do not cover procurement of the following services:
- (a) Human health services (CPC 931);
  - (b) Administrative healthcare services (CPC 91122); and
  - (c) Supply services of nursing personnel and supply services of medical personnel (CPC 87206 and CPC 87209).
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