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Government Procurement

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s Government Procurement chapter will help create export opportunities for American producers of manufactured goods and services which support high-wage employment in the United States, ranging from information technology to transport machinery, medical technologies, professional

services, and many other products. At the same time, it will support U.S. businesses and workers, including by maintaining current Buy America requirements and small business and other set asides.

CHAPTER OVERVIEW

Core Commitments and Definitions

The Government Procurement chapter includes core commitments on national treatment, which require that a TPP Party extend to bidders on covered government procurement contracts the same treatment it extends to its own firms; and on most-favored-nation treatment, which require a Party to provide U.S. and other TPP firms at least as good treatment as it extends to any other Party's firms. These procurement provisions do not apply to loans and grants or other forms of assistance from a government. For example, this means federal loans and grants provided by the Department of Transportation and the Environmental Protection Agency to U.S. states and local entities, to which Congress has attached "Buy America" requirements, will not be covered by the chapter.

Provision of Complete and Timely Information

Timely and complete information is essential if American businesses are to compete successfully for foreign government procurement contracts. For all covered procurements, TPP Parties will publish information in a timely manner on the procuring entity, the specific procurement, the time frame for submission of bids, and a description of conditions for participation of suppliers.

Fair and Transparent Procurement Procedures

The chapter ensures that TPP governments allow sufficient time for suppliers to obtain the tender documentation and submit a bid. It also includes guarantees that tenders will be treated fairly and impartially, and that confidentiality of tenders will be maintained. In addition, it includes commitments that contracts will be awarded based solely on the evaluation criteria specified in the notices and tender documentation. To ensure fairness and due process, TPP rules allow an unsuccessful bidder to request an explanation of the contract award decision and require each TPP country to have an impartial administrative or judicial review authority to review a complaint,

similar to what already is provided for in U.S. law.

Non-discriminatory and Flexible Specifications

For U.S. exporters to be able to compete on an even footing for a foreign government procurement opportunity, technical specifications must be fair and objective. The Government Procurement chapter ensures that technical specifications focus on performance and functional requirements rather than design or descriptive characteristics, are based on international standards where available, and do not create unnecessary barriers to trade. It also includes rules that allow the conditions for participating in a covered procurement to ensure that a supplier has the legal and financial capacities, and the commercial and technical abilities, to fulfill the requirements of that procurement. At the same time, the chapter allows for flexible and fair technical specifications and conditions for participation, and preserves wide latitude for U.S. procuring entities to set the requirements they consider appropriate.

Coverage

The commitments in the Government Procurement chapter apply only to procurement that each country has agreed to cover. Eight of the 11 TPP Parties have already agreed to ambitious coverage of their government procurement in past trade agreements with the United States. With those Parties, TPP's Government Procurement chapter reflects or expands past commitments. For the remaining three countries, we are seeking comparable commitments, recognizing that each is opening its government procurement market for the first time in TPP.

Buy America and Other Exclusions

Every country, including the United States, has particular programs that TPP government procurement commitments will not cover. The United States in TPP continues to exclude from coverage the same elements of procurement that are excluded from our past agreements: Buy America requirements attached to federal funds for state and local mass transit and highway projects and water projects; small business and other set-asides; procurement of transportation services; human feeding programs; and sensitive elements of Department of Defense procurement, including defense systems, materials and textiles. In addition, we are making no commitments to cover state or local government procurement at this time

NEW FEATURES

TPP marks the first government procurements commitments to the United States ever made by Vietnam, Malaysia, and Brunei, while also including additional commitments from other TPP partners beyond previous agreements. Moreover, to date, only four agreements in the world—the U.S. Free Trade Agreements (FTAs) with Peru, Panama, Colombia and Korea—clarify, for greater certainty, that technical specifications for a tender, or conditions for participation in procurement, can be designed to promote both compliance with laws regarding international labor rights and protection of the environment. TPP extends that flexibility to procurement with ten other countries. In addition, it clarifies that those procurement specifications or conditions can also be designed to promote compliance with laws related to worker safety and workplace conditions.

IMPACT

Government contracting is a key export opportunity for U.S. goods producers and services suppliers. Covering goods and services where American products are the world's standard—health equipment and supplies, information technology equipment and services, transportation machinery, infrastructure equipment, professional services, engineering, and others—government procurement purchases are estimated to represent up to 15 percent of a country's gross domestic product.

Reaching these markets, however, can be exceptionally difficult. Many governments in the Asia-Pacific and elsewhere have formal policies that put foreign bidders at a disadvantage. They also have informal barriers such as a lack of transparency, predictability and fairness in tender procedures, as well as uncertain, variable rules, which can create further challenges. By contrast, the U.S. has a transparent procurement process, where procurement information and rules for participation, including for foreign bidders, are widely available. This means U.S. companies seeking to compete in foreign government procurement markets face several challenges. To address these, the Government Procurement chapter will help:

- Create fair, transparent, predictable, and non-discriminatory rules to open foreign government procurement to U.S. exporters.
- Enable U.S. exporters to compete for procurement opportunities by ensuring that timely and accessible information is available on upcoming procurements; technical specifications and qualifications are fair and

non-discriminatory; tender procedures are transparent, and adequate time is provided for foreign bidders to participate.

- Support U.S. businesses, including small and medium-sized enterprises, by maintaining Buy America requirements and our small business and other set-asides.

In addition, we are avoiding any commitments covering U.S. state or local procurement at this time. Any future commitments could only be made if these state or local governments explicitly agree to such coverage.

