



USAID Trade Project

Government Procurement Agreement (GPA) in Pakistan

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Executive Summary

The WTO's Government Procurement Agreement (GPA) is a plurilateral agreement aimed at promoting fair and transparent competition for government procurements among the suppliers of the member states that have joined the GPA. Currently there are 15 signatories comprising 43 WTO members (counting the European Union and its 28 member states, all of which are covered by the Agreement as one party). An additional 28 members have observer status at the WTO's GPA Committee, and 10 of these are in the process of negotiating accession to the GPA. The aggregate value of multilateral trade under the GPA reached USD 1.7 trillion in 2011, and is steadily increasing without taking into consideration the potential addition of 10 more signatories.

Signatories to the GPA undertake to provide national treatment and non-discrimination with respect to the goods, services and suppliers of the other signatories, ensuring - through detailed procedures - a meaningful opportunity for such goods, services and suppliers to compete for government contracts of the other signatories. The GPA lays down rules guaranteeing fair and non-discriminatory conditions for international competitive tendering. Participating governments are required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event such decisions are found to be inconsistent with the rules of the GPA.

The GPA is composed of two parts: the text of the Agreement and parties' market access schedules of commitments. The text of the Agreement establishes rules requiring that open, fair, and transparent conditions of competition be ensured in government procurement. However, these rules do not automatically apply to all procurement activities of each party. Rather, the coverage schedules play a critical role in determining whether a procurement activity is covered by the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services, or construction services of a value exceeding specified threshold values are covered by the Agreement.

The principal piece of legislation governing federal government procurements in Pakistan is the Public Procurement Regulatory Authority Ordinance, 2002. The Ordinance establishes the Public Procurement Regulatory Authority (the "PPRA") and authorizes the Government of Pakistan to promulgate the Public Procurement Rules (the "Rules"), governing federal public procurements. The Ordinance also authorizes the PPRA to issue more detailed regulations, the Public Procurement Regulations (the "Regulations"), as necessary to ensure the proper implementation of the Rules. Currently, the Public Procurement Rules, 2004 and Public Procurement Regulations 2008 and 2010 provide a complete regulatory framework for federal government procurements in Pakistan.

The drafters of the Rules and Regulations made substantial efforts to base those pieces of legislation on best government procurement practices; therefore, the procurement system in Pakistan already reflects many of the principal features of the GPA. (A detailed comparison of the Public Procurement Rules and the provisions of GPA is attached to this report as an annex). Correcting remaining differences would not take a major effort, but only targeted amendments, to adjust the Rules to meet the mandatory requirements of the GPA.

The implementation of a compliant and effective procurement grievance system appears to be the greatest challenge. Particularly noteworthy is that Pakistan's current Rules place no restrictions on the ability of foreign suppliers to compete for federal government contracts. Consequently, from a cost/benefit perspective, the potential benefits from GPA membership for Pakistan suppliers should (depending, of course, on the schedule of commitments that Pakistan negotiates) reasonably be expected to outweigh any concomitant loss of domestic procurement opportunities to suppliers from other GPA members. In any event, it is strongly recommended that the Government join the WTO's GPA Committee as an observer.

Overview of GPA

Agreement on Government Procurement¹

To ensure open, fair and transparent competition in government procurement markets, certain members of the WTO have acceded to the Agreement on Government Procurement (GPA). The GPA is a plurilateral agreement within the framework of the WTO, which means that not all WTO members are parties to the Agreement. At present, the Agreement has 15 parties comprising 43 WTO members. Another 28 WTO members participate in the GPA Committee as observers, of which 10 members are in the process of acceding to the GPA.

The fundamental aim of the GPA is to open government procurement markets among its parties for higher value procurements. Following several rounds of negotiations, the GPA parties have opened procurement activities worth an estimated USD 1.7 trillion annually to international competition (i.e. to suppliers from other GPA parties offering goods, services or construction services).

The GPA is composed of two parts; the text of the Agreement and the parties' market access schedules of commitments. The text of the Agreement establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement. These rules, however, do not automatically apply to all procurement activities of each party. Rather, the coverage schedules play a critical role in determining whether a procurement activity is covered by the Agreement. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement.

As a binding international treaty, the GPA is administered by the WTO's Committee on Government Procurement which is composed of representatives of all its parties. The enforcement of the Agreement is realized through two mechanisms; the domestic review mechanism at the national level and the WTO dispute settlement mechanism at the international level.

Accession to GPA

All WTO members are eligible to accede to the GPA. As of August 2014, 10 WTO members are in the process of acceding. These include China, New Zealand, Montenegro, Albania, Georgia, Jordan, Kyrgyzstan, Moldova, Oman and Ukraine. Five other WTO members have undertaken commitments in their WTO accession protocols, to initiate accession to the GPA. They include the Former Yugoslav Republic of Macedonia, Mongolia, the Russian Federation, Saudi Arabia and Tajikistan.

The accession process starts with the submission of an application for accession and has two main aspects; negotiations between the acceding member and parties of the GPA on the former's coverage offer and verification that the acceding member's procurement legislation is consistent with the GPA's requirements, such as those regarding transparency, procedural fairness for suppliers, and domestic review.

Pursuant to Article V of the revised GPA, special and differential treatment for developing countries in the form of transitional measures, such as offsets, price preference programmes, initially higher thresholds, and phasing-in of entities can be negotiated by a developing acceding country in the accession process. Such preferential treatment is subject to the agreement of the other parties and the acceding member's development needs.

Once the terms of accession have been agreed between the GPA parties and the acceding WTO member, the Committee adopts a decision inviting the member to accede to the Agreement. The

¹ From the WTO website at <http://www.wto.org>

decision specifies the agreed terms and provides a timeframe for the acceding member to deposit its instrument of accession with the WTO Director-General (typically three to six months). Any WTO member or observer may submit a written request to the Government Procurement Committee to participate in the Committee as an observer, and may be accorded observer status.

Current Procurement Markets of GPA Member Countries

A 2011 study² by the Asian Development Bank (ADB) states that the Organization for Economic Cooperation and Development (OECD) has estimated that public procurement globally amounts to 15% of GDP, but can exceed 25% of in developing countries such as China, India and Vietnam. And in certain developed countries aggregate government procurement expenditures can substantially exceed the estimated global average of 15% of GDP; for example, in Australia government procurement equalled some 20% of its GDP in 2000. And the regular year-on-year increases in global government spending leads to regular increases in the aggregate value of government procurements.

The ADB study assessed the magnitude of government procurements and the market potential of a select group of GPA member countries. The study found that the combined GDP³ of the five largest GPA member countries was USD 43.726 trillion in 2013, meaning that the aggregate value of government procurements of these countries, conservatively estimated at 15% of GDP, would equal USD 6.559 trillion.

Table 1
GDP and Estimated Aggregate Public Procurement for
the Five Largest GPA Member Countries

	<u>2013 GDP (USD trillions)</u>	<u>2013 Estimated Aggregate Procurement (USD trillions)</u>
USA	16.800	2.520
European Union	16.566	2.485
Japan	4.900	0.735
Germany	3.635	0.545
Canada	1.825	0.274
	<u>43.726</u>	<u>6.559</u>

Because GPA signatories are obligated to allow unrestricted procurement access to companies from other GPA member countries (subject to the coverage and thresholds specified in the each country's negotiated schedule), Pakistani companies could possibly gain a material share of this market if Pakistan accedes to GPA.

Compliance with the Pakistan Public Procurement Rules

In Pakistan, according to discussions with the PPRA, it is believed that compliance with the Procurement Rules has improved over the past several years. Public sector entities (PSEs) in Pakistan are reported to be generally compliant with the advertisement requirements, but not all PSEs are regularly uploading their bid evaluation reports on the PPRA website. PSEs also appear to be following the methods of procurement stated in the Procurement Rules. However, the establishment of a fair and effective grievance remedy mechanism has yet to be implemented by the government. This is a major requirement of both the Procurement Rules and the GPA. In addition, the Procurement Rules require that each PSE establish a grievance remedy committee to conduct an administrative review of a procurement complaint; however, a substantial number of PSEs have yet to comply with

² The Strategic Importance of Public Procurement, at 2 (ADB, November 23, 2011).

³ World Bank database.

this requirement. Even where such a committee has been established, if an aggrieved bidder is not satisfied with the committee's decision, an action may be filed in the court. The administrative review only covers decisions made during a tender and cannot be used to challenge, for instance, the choice of the procurement method or decisions made in adjudication procedures other than tendering. Also, no specific administrative review procedure was established by the Procurement Rules. Instead, each procuring agency must set its own procedures. A 2006 joint ADB-OECD report⁴ reviewed Pakistan's procurement system and made the following recommendations, which we believe still merit serious consideration:

Pakistan is invited to stabilize its procurement system by passing a comprehensive framework for public procurement as parliamentary law. Pakistan may also consider reviewing and modernizing the procurement frameworks in place at the subnational levels, where a large percentage of procurement decisions are made. Pakistan is further encouraged to strengthen some elements of the current framework. Standard tender documents would contribute to greater transparency of bidding. A clear and uniform definition of conditions for disqualification and debarment would limit the risk of abuse of these mechanisms. A standardized review mechanism at the administrative level would ensure greater consistency and is likely to bolster trust in the fairness of the process.

⁴ Curbing Corruption in Public Procurement in Asia and the Pacific; Progress and Challenges in 25 Countries (ADB/OECD, 2006).

Potential Costs and Advantages to Pakistan of GPA Membership

For any country, the decision to accede to the GPA should be based on an assessment of potential advantages and increase in the value of the export potential as a result of improved market access through the Agreement. For Pakistan, an advantage to join the GPA is assured potential export market gains from accessing other GPA members' procurement markets, subject to the terms and conditions set out in GPA schedules. Being a non-GPA member, Pakistani suppliers currently do not have access to government procurement opportunities and, therefore, encounter barriers to participate in those markets.

To gauge the potential market access through GPA, the Government of Pakistan will need to determine supply and demand complementarity under the government procurement by the GPA members. Data on the types and volumes of goods and services traded under the GPA and the capacity of Pakistan to export those goods and services in the short to medium terms will provide a better assessment of the potential trade gains of acceding to the WTO GPA.

The potential costs involved in GPA accession include the direct – but relatively modest - public budgetary costs of preparing an offer and negotiating with existing Parties, as well as the public institutional costs occasioned by the implementation of GPA requirements (such as transparency of procurement procedures and the implementation of an independent domestic review system). More significant are the more generalized adjustment costs that domestic firms will incur as a consequence of having to compete with foreign entities from other GPA countries; however, it is believed that these costs will be more than offset by (i) the increased foreign procurement opportunities available to Pakistan firms; (ii) the long-term cost-savings that will be realized from the competition-induced adjustment to increased foreign competition for domestic Pakistan procurements; and the cost savings to the Pakistan government that can be expected to result from increased competition for those procurements.

Government procurement in Pakistan is regulated by the Public Procurement Regulatory Authority Ordinance 2002, and the Public Procurement Rules 2004 (the Rules). Currently, as per the prevalent government procurement regime and the Rules, there are no restrictions on any foreign company to participate in government procurement of goods, services, and works. Many foreign companies have been participating in government tenders. Even the thresholds as admissible under GPA are not applicable upon any foreign bidder presently. If the GoP accedes to GPA, Pakistani companies will have un-restricted access to a very large export markets of goods and services. However, in order to harness this potential, GoP will have to make some structural changes in line with the requirements of GPA, and also provide support to Pakistani companies to participate and compete for new opportunities.

Government Procurement System in Pakistan

The government procurement in Pakistan is regulated by the Public Procurement Regulatory Authority Ordinance 2002, and the Public Procurement Rules 2004 (the Rules). Presently, as per the prevalent government procurement regime and the Rules, there are no restrictions on any foreign company to participate in government procurement of goods, services, and works. Many foreign companies have been participating in government tenders. Even the thresholds as admissible under GPA are not applicable upon any foreign bidder presently. If the GoP accedes to GPA, Pakistani companies will have unrestricted access to a very large export markets of goods and services. However, in order to harness this potential, GoP will have to make some structural changes in line with the requirements of GPA, and also provide support to Pakistani companies to participate and compete for new opportunities.

Previously, the procurement of goods, services and works in Pakistan was governed by the General Financial Rules (GFR) issued in 1951, later updated in 1977. However, the GFR were unable to

ensure transparency, accountability, and value for money in public procurement, and did not have any procurement provisions for emergencies. Moreover, due to large scale nationalization of commercial entities by the Bhutto regime in 1973, a very large public sector came into existence. The federal government has the following three types of entities that undertake the procurement of goods, services and works:

- 1) Federal Government Ministries, Divisions and their attached Departments;
- 2) Autonomous bodies having their own Boards of Directors, established under the Companies Ordinance of 1984;
- 3) Statutory bodies, having their own statutes.

With a view to introducing transparency, efficiency, and accountability and improving governance, management, and the quality of procurements the GoP promulgated the Public Procurement Regulatory Authority Ordinance, 2002, on May 15, 2002. This Ordinance established the Public Procurement Regulatory Authority (the Authority) as the regulator of federal government procurement. The ordinance also empowered the Government to promulgate implementing rules (the Rules) and assigned the Authority the responsibility to issue supporting regulations governing federal procurements. The Authority enjoys all powers required for the discharge of its functions. It does not, however, enjoy any punitive powers as they are not provided for in the main body of the legislation. As per the section 5 of the Ordinance, the functions and powers of the Authority are stated as follows.

- 1) Subject to other provisions of this Ordinance, the authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector.
- 2) Without prejudice to the generality of the powers conferred by sub-section (1), the Authority may;
 - a. Monitor application of the laws, rules, regulations, policies and procedures in respect of, or relating to, procurement;
 - b. Monitor the implementation of and evaluate laws, rules, regulations, policies and procedures in respect of, or relating to, inspection or quality of goods, services and
 - c. Recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement;
 - d. Make regulations and lay down codes of ethics and procedures for public procurement, inspection or quality of goods, services and works;
 - e. Monitor public procurement practices and make recommendations to improve governance, transparency, accountability and quality of public procurement;
 - f. Monitor overall performance of procuring agencies and make recommendations for improvements in their institutional set up;
 - g. Provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities;
 - h. Submit reports to the Government in respect of public procurement activities of procuring agencies;
 - i. Call any functionary of procuring agencies to provide assistance in its functions and call for any information from such agencies in pursuance of its objectives and functions;
 - j. Perform any other function assigned to it by the Federal Government.

The Authority thereafter recommended to the GoP a regulatory framework for federal procurements (the Public Procurement Rules 2004). These were notified by the Ministry of Finance in 2004 and made obligatory for all federal public sector entities. Subsequently, the Authority also promulgated the Public Procurement Regulations in 2008 and the Consultancy Services Regulations in 2010.

These Rules not only provide a complete procurement system that the procuring agencies have to follow, but also provide a framework for monitoring of government procurements and contain provisions relating to Principles of Procurement, Procurement Planning, Advertisement of Procurement Opportunities, Qualification & Disqualification of Contractors, Methods of Procurement, Opening Evaluation & Rejection of Bids, Procedure for Open Competitive Bidding, Acceptance of Bids and Award of Contracts, Redressal of Grievance, and Settlement of Disputes. The grievance remedy system was non-existent in the earlier procurement systems. With the promulgation of the Rules and Regulations, the level of accountability and transparency in government procurements has improved.

In compliance with a directive from the Prime Minister of Pakistan issued to the provincial governments to follow the Public Procurement Rules, 2004, the Sindh government took a lead in 2006 to set up Sindh Public Procurement Regulatory Authority and adopted these Rules. The Government of Punjab set up its Authority in 2007 and adopted these Rules. The Baluchistan government promulgated its Act in 2009 and also adopted these Rules. Among the provincial governments, the KPK government was the first to promulgate the NWFP Procurement Act 2002 and procurement of goods, services and works Rules 2003.

Government Procurement in Pakistan is completely de-centralized. All Ministries and Divisions undertake their purchases in exercise of the powers delegated to them by the Ministry of Finance. The Autonomous bodies have their own Boards of Directors and are fully empowered to make their procurement decisions and are completely independent in their decision making. Similarly, the statutory bodies also enjoy full financial powers for procurement of goods, services and works. Such powers are normally stated in their statutes. However, their procurement procedures and practices must comply with the Rules promulgated by the government and the Regulations promulgated by the Authority.

Annex 1: Pakistan's Exports to the GPA Member Countries

Pakistan's total export of goods to GPA members in 2013 is estimated at US\$ 11.14 billion, which accounts for 50 % of Pakistan's total exports to the world.

Table 2 illustrates that USA is the second largest export destination of Pakistani goods among all GPA members. US procured USD 3.7 billion worth of goods from Pakistan in 2013. The other major GPA markets that procure goods from Pakistan are Hong Kong, China, Canada, Japan, Chinese Taipei and Singapore.

Table 3 indicates Pakistan's market access opportunities for products in GPA compliant procurement markets. In 2013, GPA members procured USD 8.3 billion worth of textile and textile articles from Pakistan. Other major products exported by Pakistan to GPA member countries include hides and skins, vegetable products, optical instruments, prepared food stuffs and mineral products.

Table 2: Pakistan's Export of Products to GPA Member Countries (2013)

Section	Description of Sector (HTS Chapters)	Export Value in 2013 (USD billions)	% of Pakistan's Total Export to GPA Members
XI	TEXTILE & TEXTILE ARTICLES (50-63)	8,347,008	74.9%
VIII	HIDES AND SKINS, LEATHER, ETC. (41-43)	941,847	8.5%
II	VEGETABLE PRODUCTS (06-14)	454,174	4.1%
XX	MISCELLANEOUS MANUFACTURED ARTICLES (93-99)	247,816	2.2%
XVIII	OPTICAL & PRECISION INSTRUMENTS ETC. (90-92)	232,387	2.1%
IV	PREPARED FOODSTUFFS, BEVERAGES, ETC. (16-24)	221,404	2.0%
V	MINERAL PRODUCTS (25-27)	165,218	1.5%
XV	BASE METALS & PRODUCTS (72-83)	149,096	1.3%
VII	PLASTICS & RUBBER (39-40)	114,276	1.0%
XII	FOOTWEAR, HEADGEAR, ETC. (64-67)	81,064	0.7%
I	LIVE ANIMALS & ANIMAL PRODUCTS (01-05)	67,220	0.6%
VI	CHEMICAL PRODUCTS (28-38)	37,091	0.3%
XVI	MACHINERY & ELECTRICAL EQUIPMENT (84-85)	34,122	0.3%
XIV	PRECIOUS STONES, JEWELRY ETC (71)	17,310	0.2%
XVII	TRANSPORT EQUIPMENT (86-89)	17,013	0.2%
XIII	ARTICLES OF STONE, CEMENT, ETC. (68-70)	11,669	0.1%
IX	WOOD & ARTICLES OF WOOD ETC. (44-46)	1,069	0.0%
III	ANIMAL & VEGETABLE FATS AND OILS (15)	494	0.0%

Source: www.trademap.org

Pakistan's Exports of Services to GPA Members

Procurement under the GPA covers goods procurement and services procurement. And there are contract value thresholds established for each type of procurement; only where a procurement contract has a value exceeding the applicable threshold does the GPA require that competition for such contract be opened to suppliers from GPA countries. In Pakistan services contracts currently account for about 60-65% of the value of all government procurements. Pakistan's exports of total services to the world were estimated at USD 8 billion, of which commercial services exports were estimated at USD 3.2 billion and government services exports were estimated at USD 1.6 billion.

Other major services exported by Pakistan include transportation services, other business services, and communication services.

Table 3: Pakistan Exports of Services by Sector to GPA Members (2012)

Services Sector	Export Value in 2012 (USD billions)	% Share of Pakistan's Total Exports to GPA Countries
Grand Total	6,312,083	100%
Government	2,202,696	34.9%
Commercial	2,054,699	32.6%
Transportation	759,040	12.0%
Other Business	437,469	6.9%
Travel	307,309	4.9%
Communication	262,448	4.2%
Computer & information	200,783	3.2%
Insurance	42,639	0.7%
Financial	33,417	0.5%
Royalties & license	5,168	0.1%
Construction	3,588	0.1%
Personal, cultural & recreation	2,827	0.0%

Source: Trademap.org, ITC, IMF

Bilateral trade of services between Pakistan and GPA member states was estimated at USD 6.3 billion in 2012. Among the GPA member states, USA procured about USD 4.1 billion worth of services from Pakistan, which amounts to 66% of Pakistan's total export of services to GPA members. European Union (EU) is the second major importer of Pakistan's services and imported services worth USD 1.3 billion in 2012. Pakistan also exports services to Singapore, Switzerland, and Hong Kong.

Table 4: Pakistan's Total Exports of Services to World (2013)

Services	Value (USD billions)
Total Services	8,049,578
Commercial	3,217,169
Government	1,615,239
Transportation	1,176,213
Other Business	731,501
Communication	555,141
Computer & information	308,127
Travel	287,330
Financial	70,000
Insurance	57,508
Construction	19,144
Personal, cultural & recreational	6,600
Royalties & license	5,606

Source: www.trademap.org, ITC, IMF

Major services procured by GPA members from Pakistan are government services that were estimated at USD 2.2 billion in 2012 and commercial services that were estimated at USD 2.0 billion.

Table 5: Pakistan's Services Exports to GPA in 2012

Importing Countries	Export value (USD billions)	% Share of Total Exports to GPA
USA	4,180,408	66.2%
EU 28	1,359,330	21.5%
Singapore	380,122	6.0%
Switzerland	142,116	2.3%
Hong Kong, China	110,387	1.7%
Japan	80,457	1.3%
Canada	33,981	0.5%
Norway	24,510	0.4%
Korea	558	0.0%
Iceland	214	0.0%
Grand Total	6,312,083	100.0%
Source: Trade Map, ITC, IMF		

Annex 2: GPA vs. PPR 2004 Rules

The Parties to this Agreement (hereinafter referred to as “the Parties”),

Recognizing the need for an effective multilateral framework for government procurement, with a view to achieving greater liberalization and expansion of, and improving the framework for, the conduct of international trade;

Recognizing that measures regarding government procurement should not be prepared, adopted or applied so as to afford protection to domestic suppliers, goods or services, or to discriminate among foreign suppliers, goods or services;

Recognizing that the integrity and predictability of government procurement systems are integral to the efficient and effective management of public resources, the performance of the Parties’ economies and the functioning of the multilateral trading system;

Recognizing that the procedural commitments under this Agreement should be sufficiently flexible to accommodate the specific circumstances of each Party;

Recognizing the need to take into account the development, financial and trade needs of developing countries, in particular the least developed countries;

Recognizing the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption;

Recognizing the importance of using, and encouraging the use of, electronic means for procurement covered by this Agreement;

Desiring to encourage acceptance of and accession to this Agreement by WTO Members not party to it;

Hereby *agree* as follows:

As in WTO GPA	As in Public Procurement Law or Rules, 2004
<p>Article I — Definitions</p> <p>For purposes of this Agreement:</p> <p>a. commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non- governmental buyers for non-governmental purposes;</p> <p>b. Committee means the Committee on Government Procurement established by Article XXI:1;</p> <p>c. construction service means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the</p>	<p>Definitions</p> <p>“goods” means articles and objects of every kind and description including raw materials, products, equipment, machinery, spares and commodities in any form and includes services incidental to installation, transport, maintenance and similar obligations related to the supply of goods if the value of these services does not exceed the value of such goods;</p> <p>“service” means any object of procurement other than goods or works; No provision in PPR 2004</p> <p>“works” means any construction work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site</p>

<p>United Nations Provisional Central Product Classification (CPC);</p> <p>d. country includes any separate customs territory that is a Party to this Agreement. In the case of a separate customs territory that is a Party to this Agreement, where an expression in this Agreement is qualified by the term “national”, such expression shall be read as pertaining to that customs territory, unless otherwise specified;</p> <p>e. days means calendar days;</p> <p>f. electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re ranking of tenders;</p> <p>g. in writing or written means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;</p> <p>h. limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;</p> <p>i. measure means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;</p> <p>j. multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;</p> <p>k. notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;</p> <p>l. offset means any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter trade and similar action or requirement;</p> <p>m. open tendering means a procurement method</p>	<p>preparation, excavation, installation of equipment or materials and decoration, finishing and includes incidental services such as drilling, mapping, satellite photography, seismic investigations and similar activities, if the value of those services does not exceed that of the works themselves.</p> <p>No definition in Public Procurement Regulatory Authority Ordinance 2002, or PPR 2004 because the Ordinance is only applicable in Pakistan.</p> <p>No definition in Public Procurement Regulatory Authority Ordinance 2002, or PPR 2004</p> <p>No definition in Public Procurement Regulatory Authority Ordinance 2002 or PPR 2004 as electronic bidding or auction is not undertaken in Pakistan.</p> <p>No definition in Public Procurement Regulatory Authority Ordinance 2002, or PPR 2004.</p> <p>Rule 42 provide for limited tendering.</p> <p>Public Procurement Regulatory Authority Ordinance, 2002, Public Procurement Rules, 2004 and Public Procurement Regulations are in place.</p> <p>The Procurement agencies can pre-qualify a supplier of contractor under Rule 15-18. There is no bar on re use of the pre-qualified contractors, provided the transparency is not compromised.</p> <p>Necessary provisions exist in the Public Procurement Rules, 2004.</p> <p>Provision for price preference to locally manufactured goods exists.</p> <p>Provision exists in Rule 21.</p>
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<p>whereby all interested suppliers may submit a tender;</p> <p>n. person means a natural person or a juridical person;</p> <p>o. procuring entity means an entity covered under a Party's Annex 1,2 or 3 to Appendix I;</p> <p>p. qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;</p> <p>q. selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;</p> <p>r. services includes construction services, unless otherwise specified;</p> <p>s. standard means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;</p> <p>t. supplier means a person or group of persons that provides or could provide goods or services; and</p> <p>u. technical specification means a tendering requirement that:</p> <ul style="list-style-type: none"> i. lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or ii. addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service. 	<p>Provision exist in Section 2(1)(k) of Rules.</p> <p>The Ordinance defines a procuring agency in Section 2(j).</p> <p>Provided for in Rule 15.</p> <p>Provision exist.in Rules</p> <p>Construction services are defined as works in Section 2(p) the Ordinance.</p> <p>Provisions of Standard Bidding Documents exist.</p> <p>Defined in Section 2(k) of Rules.</p> <p>Defined in Rule 10.</p>
<p><u>Article II Scope and Coverage</u></p> <p><u>Application of Agreement</u></p> <p>1. This Agreement applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.</p> <p>2. For the purposes of this Agreement, covered procurement means procurement for governmental purposes:</p> <ul style="list-style-type: none"> a. of goods, services, or any combination thereof: <ul style="list-style-type: none"> i. as specified in each Party's annexes to Appendix I; and ii. not procured with a view to commercial sale or resale, or for use 	<p>Public Procurement Rules cover procurement of goods, services and works by all federal government entities in Pakistan.</p> <p>Some government agencies do purchase for commercial sale or resale.</p>

<p>in the production or supply of goods or services for commercial sale or resale;</p> <p>b. by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;</p> <p>c. for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to Appendix I, at the time of publication of a notice in accordance with Article VII;</p> <p>d. by a procuring entity; and</p> <p>e. that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to Appendix I.</p>	<p>Lease and rental are not included Ordinance or Rules.</p> <p>No provision at the present.</p>
<p>3. Except where provided otherwise in a Party's annexes to Appendix I, this Agreement does not apply to:</p> <p>a. the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;</p> <p>b. non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;</p> <p>c. the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;</p> <p>d. public employment contracts;</p> <p>e. procurement conducted:</p> <p>i. for the specific purpose of providing international assistance, including development aid;</p> <p>ii. under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or</p> <p>iii. under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Agreement.</p>	<p>No comments</p> <p>Rentals are not covered by Rules.</p> <p>The Rules have a provision under Rule 5 supporting this situation.</p>
<p>4. Each Party shall specify the following information in its annexes to Appendix I:</p> <p>a. in Annex 1, the central government entities whose procurement is covered by this</p>	<p>No comment at present. If Pakistan decides to join the GPA, the requisite information could be provided in the relevant Annexures.</p>

<p>Agreement;</p> <p>b. in Annex 2, the sub-central government entities whose procurement is covered by this Agreement;</p> <p>c. in Annex 3, all other entities whose procurement is covered by this Agreement;</p> <p>d. in Annex 4, the goods covered by this Agreement;</p> <p>e. in Annex 5, the services, other than construction services, covered by this Agreement;</p> <p>f. in Annex 6, the construction services covered by this Agreement; and</p> <p>g. in Annex 7, any General Notes.</p> <p>5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to Appendix I to procure in accordance with particular requirements, Article IV shall apply mutatis mutandis to such requirements.</p> <p>Valuation</p> <p>6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:</p> <p>a. neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement; and</p> <p>b. include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:</p> <p>i. premiums, fees, commissions and interest; and</p> <p>ii. where the procurement provides for the possibility of options, the total value of such options.</p> <p>7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:</p> <p>a. the value of recurring contracts of same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or</p> <p>b. the estimated value of recurring</p>	<p>PPRs also prohibit splitting a procurement into separate procurements under Rule 9. However, a process for converting prices quoted in foreign currencies to local currencies exist.</p> <p>This would be a part of Bid Evaluation Criteria.</p> <p>The PPRs do not have any specific provision dealing with this issue. However, the PPRA can incorporate it in Rules.</p>
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contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- a. in the case of a fixed-term contract:
 - i. where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
 - ii. where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- b. where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- c. where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be use

Article III — Security and General Exceptions

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:

- a. necessary to protect public morals, order or safety;
- b. necessary to protect human, animal or plant life or health;
- c. necessary to protect intellectual property; or
- d. relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

Article IV — General Principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the

The PPRs do not address the issue of lease or rentals.

Necessary provisions under Rule 14 exist.

The Procurement Rules neither differentiate between any local or supplier and a foreign suppliers, nor any advantage is extended to local supplier or manufacturers. However the procuring agencies can restrict any procurement under Rule 24.to certain

<p>goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:</p> <ol style="list-style-type: none"> a. domestic goods, services and suppliers; and b. goods, services and suppliers of any other Party. <p>2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:</p> <ol style="list-style-type: none"> a. treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or b. discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party. <p>Use of Electronic Means</p> <p>3. When conducting covered procurement by electronic means, a procuring entity shall:</p> <ol style="list-style-type: none"> a. ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and b. maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access. <p><u>Conduct of Procurement</u></p> <p>4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:</p> <ol style="list-style-type: none"> a. is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering; b. avoids conflicts of interest; and c. prevents corrupt practices. <p><u>Rules of Origin</u></p> <p>5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.</p> <p>Offsets</p> <p>6. With regard to covered procurement, a Party,</p>	<p>nationalities.</p> <p>It is not done in Pakistan.</p> <p>No such provision supporting this situation exists in PP Rules.</p> <p>Only procurement opportunities are advertised on Internet. No bids are received and opened on Internet.</p> <p>The Public Procurement Rules require that all purchases are conducted in a transparent and impartial manner.</p> <p>All such methods are provided in Public Procurement Rules, 2004.</p> <p>No discrimination based on Rules of Origin are made. However, Rule 5 of PP Rules, states that whenever these rules are in conflict with an obligation or commitment of the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution the provisions of such international treaty or agreement shall prevail to the extent of such conflict.</p> <p>Offsets are not practiced in government procurements</p>
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<p>including its procuring entities, shall not seek, take account of, impose or enforce any offset.</p>	<p>in Pakistan.</p>
<p><u>Measures Not Specific to Procurement</u></p> <p>7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.</p>	<p>No comments.</p>
<p><u>Article V Developing Countries</u></p> <p>1. In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries (collectively referred to hereinafter as “developing countries”, unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and on request, the Parties shall accord special and differential treatment to:</p> <ul style="list-style-type: none"> a. least developed countries; and b. any other developing country, where and to the extent that this special and differential treatment meets its development needs. 	<p>Pakistan would qualify as a developing country.</p>
<p>2. Upon accession by a developing country to this Agreement, each Party shall provide immediately to the goods, services and suppliers of that country the most favourable coverage that the Party provides under its annexes to Appendix I to any other Party to this Agreement, subject to any terms negotiated between the Party and the developing country in order to maintain an appropriate balance of opportunities under this Agreement.</p>	<p>No comments.</p>
<p>3. Based on its development needs, and with the agreement of the Parties, a developing country may adopt or maintain one or more of the following transitional measures, during a transition period and in accordance with a schedule, set out in its relevant annexes to Appendix I, and applied in a manner that does not discriminate among the other Parties:</p> <ul style="list-style-type: none"> a. a price preference programme, provided that the programme: <ul style="list-style-type: none"> i. provides a preference only for the part of the tender incorporating goods or services originating in the developing country applying the preference or goods or services originating in other developing countries in respect of which the developing country applying the preference has an obligation to provide national treatment under a 	<p>No comments.</p>

<p>preferential agreement, provided that where the other developing country is a Party to this Agreement, such treatment would be subject to any conditions set by the Committee; and</p> <p>ii. is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement;</p> <p>b. an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;</p> <p>c. the phased-in addition of specific entities or sectors; and</p> <p>d. a threshold that is higher than its permanent threshold.</p> <p>4. In negotiations on accession to this Agreement, the Parties may agree to the delayed application of any specific obligation in this Agreement, other than Article IV:1(b), by the acceding developing country while that country implements the obligation. The implementation period shall be:</p> <p>a. for a least developed country, five years after its accession to this Agreement; and</p> <p>b. for any other developing country, only the period necessary to implement the specific obligation and not to exceed three years.</p> <p>5. Any developing country that has negotiated an implementation period for an obligation under paragraph 4 shall list in its Annex 7 to Appendix I the agreed implementation period, the specific obligation subject to the implementation period and any interim obligation with which it has agreed to comply during the implementation period.</p> <p>6. After this Agreement has entered into force for a developing country, the Committee, on request of the developing country, may:</p> <p>a. extend the transition period for a measure adopted or maintained under paragraph 3 or any implementation period negotiated under paragraph 4; or</p> <p>b. approve the adoption of a new transitional measure under paragraph 3, in special circumstances that were unforeseen during the accession process.</p> <p>7. A developing country that has negotiated a transitional measure under paragraph 3 or 6, an implementation period under paragraph 4 or any extension under paragraph 6 shall take such steps during the transition period or implementation period as may be necessary to ensure that it is in compliance with this Agreement at the end of any such period. The</p>	<p>It could be done.</p> <p>Offsets are not normally practiced in Pakistan. However if allowed under GPA, it could be done.</p> <p>Instead of phasing in, there would be phasing out of entities due to their privatization.</p> <p>No comments for the time being.</p> <p>Refers to non-discrimination in goods, services and suppliers of any other Party.</p> <p>No comment.</p> <p>Applicable on joining the Agreement. The Public Procurement Rules would need to be amended accordingly.</p>
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<p>developing country shall promptly notify the Committee of each step.</p> <p>8. The Parties shall give due consideration to any request by a developing country for technical cooperation and capacity building in relation to that country's accession to, or implementation of, this Agreement.</p> <p>9. The Committee may develop procedures for the implementation of this Article. Such procedures may include provisions for voting on decisions relating to requests under paragraph 6.</p> <p>10. The Committee shall review the operation and effectiveness of this Article every five years.</p>	<p>No comment.</p> <p>No comment.</p>
<p>Article VI — Information on the Procurement System</p>	
<p>1. Each Party shall:</p> <p>a. promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and</p> <p>b. provide an explanation thereof to any Party, on request.</p>	<p>No comment.</p>
<p>2. Each Party shall list:</p> <p>a. in Appendix II, the electronic or paper media in which the Party publishes the information described in paragraph 1;</p> <p>b. in Appendix III, the electronic or paper media in which the Party publishes the notices required by Articles VII, IX:7 and XVI:2; and</p> <p>c. in Appendix IV, the website address or addresses where the Party publishes:</p> <p>i. its procurement statistics pursuant to Article XVI:5; or</p> <p>ii. its notices concerning awarded contracts pursuant to Article XVI:6.</p>	<p>This information only need to be provided on joining GPA.</p> <p>As above.</p> <p>No such procurement statistics are published by any government agency It could be provided upon joining.</p>
<p>3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Appendix II, III or IV.</p>	<p>Applicable only upon joining.</p>
<p>Article VII — Notices Notice of Intended Procurement</p>	
<p>1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in</p>	<p>It is already being done in Pakistan. All procurement opportunities are advertised on PPRA's website. All</p>

<p>Appendix III, except in the circumstances described in Article XIII. 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. The notices shall:</p> <ol style="list-style-type: none"> a. for procuring entities covered under Annex 1, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Appendix III; and b. for procuring entities covered under Annex 2 or 3, where accessible by electronic means, be provided, at least, through links in a gateway electronic site that is accessible free of charge. <p>Parties, including their procuring entities covered under Annex 2 or 3, are encouraged to publish their notices by electronic means free of charge through a single point of access.</p> <p>2. Except as otherwise provided in this Agreement, each notice of intended procurement shall include:</p> <ol style="list-style-type: none"> a. the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any; b. a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity; c. for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement; d. a description of any options; e. the time-frame for delivery of goods or services or the duration of the contract; f. the procurement method that will be used and whether it will involve negotiation or electronic auction; g. where applicable, the address and any final date for the submission of requests for participation in the procurement; h. the address and the final date for the submission of tenders; i. the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity; j. a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such 	<p>procurement opportunities over Rs. 20.0 million are also advertised in print media.</p> <p>Access to PPRA's website is free of charge.</p> <p>It is already being done.</p> <p>A small amount is charged for publication of these notices on PPRA's website</p> <p>Items (a) to (l) are already included in the Tender Documents.</p>
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requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

k. where, pursuant to Article IX, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

l. an indication that the procurement is covered by this Agreement.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages. The summary notice shall contain at least the following information:

a. the subject-matter of the procurement;

b. the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

c. the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix III as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as “notice of planned procurement”). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex 2 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article VIII — Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation,

Already included in the advertisement on PPRA’s website.all notices published on PPRA’s website are in English.

The Public Procurement Rules 2004 prescribe that procuring agencies would prepare and make public their annual requirements of goods, services and works. (Rule 8). However, these are not procurement notices and interest of prospective bidder is not invited at this stage.

No comments for the time being.

Relevant conditions exist in the Rules..

<p>a procuring entity:</p> <ul style="list-style-type: none"> a. shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and b. may require relevant prior experience where essential to meet the requirements of the procurement. <p>3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:</p> <ul style="list-style-type: none"> a. shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and b. shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation. <p>4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:</p> <ul style="list-style-type: none"> a. bankruptcy; b. false declarations; c. significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts; d. final judgments in respect of serious crimes or other serious offences; e. professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or f. failure to pay taxes 	<p>No such condition is supported in Public Procurement Rules. 2004.</p> <p>It is included in the pre-qualification of contractors or suppliers.</p> <p>Included in Public Procurement Rules, 2004.</p> <p>Bid evaluation criteria has to be stated in the Tender documents.(Rule 29)</p> <p>Necessary provision for this purpose exists in the Rules.</p>
<p><u>Article IX — Qualification of Suppliers</u> <u>Registration Systems and Qualification Procedures</u></p> <p>1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.</p> <p>2. Each Party shall ensure that:</p> <ul style="list-style-type: none"> a. its procuring entities make efforts to minimize differences in their qualification procedures; and b. where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems. <p>3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.</p>	<p>Procuring agencies do maintain registration of suppliers system</p> <p>There is no distinction in local or foreign suppliers.</p> <p>Not yet relevant.</p> <p>There is no distinction in local or foreign suppliers.</p>

<p><u>Selective Tendering</u></p> <p>4. Where a procuring entity intends to use selective tendering, the entity shall:</p> <ol style="list-style-type: none"> a. include in the notice of intended procurement at least the information specified in Article VII:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and b. provide, by the commencement of the time-period for tendering, at least the information in Article VII:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article XI:3(b). <p>5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.</p> <p>6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.</p> <p><u>Multi-Use Lists</u></p> <p>7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:</p> <ol style="list-style-type: none"> a. published annually; and b. where published by electronic means, made available continuously, in the appropriate medium listed in Appendix III. <p>8. The notice provided for in paragraph 7 shall include:</p> <ol style="list-style-type: none"> a. a description of the goods or services, or categories thereof, for which the list may be used; b. the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions; c. the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; d. the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and e. an indication that the list may be used for procurement covered by this Agreement. 	<p>All intending suppliers are allowed to participate in a procurement opportunity.</p> <p>No comments.</p> <p>The procuring agencies pre-qualify and maintain lists of suppliers which are regularly updated.</p> <p>The information from para (a) to (d) is normally included in such notices.</p>
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<p>9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:</p> <ul style="list-style-type: none"> a. states the period of validity and that further notices will not be published; and b. is published by electronic means and is made available continuously during the period of its validity. <p>10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.</p> <p>11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article XI:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.</p> <p><u>Annex 2 and Annex 3 Entities</u></p> <p>12. A procuring entity covered under Annex 2 or 3 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:</p> <ul style="list-style-type: none"> a. the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VII:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and b. the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VII:2, to the extent such information is available. <p>13. A procuring entity covered under Annex 2 or 3 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.</p>	<p>Presently not covered under the Rules.</p> <p>This provision be deleted as it is against the principles of transparency. Moreover, the concept of maintenance of multi-use list for a certain period gets defeated by this clause.</p> <p>- As above.-</p> <p>As per comment above under para 10 above.</p> <p>No comments.</p>
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<p><u>Information on Procuring Entity Decisions</u></p> <p>14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity’s decision with respect to the request or application.</p> <p>15. Where a procuring entity rejects a supplier’s request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.</p> <p><u>Article X — Technical Specifications and Tender Documentation</u></p> <p><u>Technical Specifications</u></p> <p>1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.</p> <p>2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:</p> <ol style="list-style-type: none"> a. set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and b. base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes. <p>3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.</p> <p>4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as “or equivalent” in the tender documentation.</p> <p>5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding</p>	<p>Although it is implied in the Rules, it is not explicitly stated. An explicit statement can be included in the Rules or Regulations.</p> <p>Although it is implied in the Rules, it is not explicitly stated. An explicit statement can be included in the Rules or Regulations.</p> <p>It is already included in the Rules that the specifications would be generic and shall include the words “or equivalent” when any reference to any brand name is to be made.</p> <p>Already included in Rules.</p>
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<p>competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.</p> <p>6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.</p> <p><u>Tender Documentation</u></p> <p>7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:</p> <p>a. the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;</p> <p>b. any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;</p> <p>c. all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;</p> <p>d. where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;</p> <p>e. where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;</p> <p>f. where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;</p> <p>g. any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and</p> <p>h. any dates for the delivery of goods or the supply of services.</p>	<p>Already included in Rules.</p> <p>Already included in Rules.</p> <p>Already included in Rules.</p> <p>Already included in Rules.</p> <p>Not relevant for Pakistan.</p> <p>Not relevant to Pakistan</p> <p>Already included in Rules.</p> <p>Not relevant to Pakistan.</p> <p>Already included in Rules.</p>
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<p>8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.</p> <p>9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.</p> <p>10. A procuring entity shall promptly:</p> <ol style="list-style-type: none"> a. make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders; b. provide, on request, the tender documentation to any interested supplier; and; c. reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers. 	<p>The procuring agencies are required to undertake this exercise and advertise in the Tender Documents.</p> <p>An appropriate evaluation criteria has to be devised and designed by the procuring agency and stated in the tender documents.</p> <p>Already provided for in the Rules</p> <p>Already provided for in the Rules</p> <p>Already provided for in the Rules</p>
<p><u>Modifications</u></p> <p>11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:</p> <ol style="list-style-type: none"> a. to all suppliers that are participating at the time of the modification, amendment or re issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and b. in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate. 	<p>Already provided for in the Rules.</p>
<p><u>Article XI — Time-Periods</u></p> <p><u>General</u></p> <p>1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:</p> <ol style="list-style-type: none"> a. the nature and complexity of the procurement; b. the extent of subcontracting anticipated; and c. the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used. 	<p>Already included in the Rules. The procurement agencies are required to allow a minimum period of 15 days for local tenders and a minimum period of 30 days for international tenders. The procuring agencies will themselves determine the time limit required for submission of tenders depending upon the complexity of the equipment to be purchased. In case such time period is to be extended, the procuring agencies are required to communicate to all entities who have purchase d tender documents on a non-discriminatory basis.</p>

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- a. in the case of open tendering, the notice of intended procurement is published; or
- b. in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- a. the procuring entity has published a notice of planned procurement as described in Article VII:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
 - i. a description of the procurement;
 - ii. the approximate final dates for the submission of tenders or requests for participation;
 - iii. a statement that interested suppliers should express their interest in the procurement to the procuring entity;
 - iv. the address from which documents relating to the procurement may be obtained; and
 - v. as much of the information that is required for the notice of intended procurement under Article VII:2, as is available;
- b. the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- c. a state of urgency duly substantiated by the procuring entity renders the time-period

The time limit for local tenders shall not be less than 15 days and not less than 30 days for international tenders. In the case of emergency, no time limit shall be applicable.

Under the Rules, the minimum time for local tenders would be 15 days, while for international tenders, it would be 30 days. There would not be any time limit in case of Emergency.

Advance notices of procurement are neither included in Rules, nor practiced in Pakistan.

<p>for tendering established in accordance with paragraph 3 impracticable.</p> <p>5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:</p> <ol style="list-style-type: none"> a. the notice of intended procurement is published by electronic means; b. all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and c. the entity accepts tenders by electronic means. <p>6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.</p> <p>7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.</p> <p>8. Where a procuring entity covered under Annex 2 or 3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.</p>	<p>In emergency, there is no time limit.</p> <p>No entity in Pakistan accepts tenders electronically. While in case of emergency, there is no time limit ,in other cases it is 15 days for local procurement, and 30 days for foreign procurement.</p> <p>There is no provision of reducing time period by mutual consent. Moreover, the time period would be stated in the tender document which shall not be less than 15 days for local tendering or 30 days for foreign tenders.</p>
<p><u>Article XII — Negotiation</u></p> <p>1. A Party may provide for its procuring entities to conduct negotiations:</p> <ol style="list-style-type: none"> a. where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VII:2; or b. where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation. <p>2. A procuring entity shall:</p> <ol style="list-style-type: none"> a. ensure that any elimination of 	<p>Financial negotiations are not generally allowed except in certain cases as prescribed in Rule 36 and 42.</p> <p>There is no provision in Rules to modify the evaluation criteria after bids have been opened.</p> <p>It is mandatory for procuring entities to evaluate in</p>

<p>suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and</p> <p>b. where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.</p> <p>Article XIII — Limited Tendering</p> <p>1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VII through IX, X (paragraphs 7 through 11), XI, XII, XIV and XV only under any of the following circumstances:</p> <p>a. where:</p> <ul style="list-style-type: none"> i. no tenders were submitted or no suppliers requested participation; ii. no tenders that conform to the essential requirements of the tender documentation were submitted; iii. no suppliers satisfied the conditions for participation; or iv. the tenders submitted have been collusive, <p>provided that the requirements of the tender documentation are not substantially modified;</p> <p>b. where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:</p> <ul style="list-style-type: none"> i. the requirement is for a work of art; ii. the protection of patents, copyrights or other exclusive rights; or iii. due to an absence of competition for technical reasons; <p>c. for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:</p> <ul style="list-style-type: none"> i. cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and ii. would cause significant inconvenience or substantial duplication of costs for the procuring 	<p>accordance with the advertised evaluation criteria.</p> <p>As above.</p> <p>There is a provision of limited tendering in the Rules, but the circumstances are different. In the circumstances stated at para (a) below, the procuring agency has to re-tender under the Rules.</p> <p>A provision for similar situations exist under Rules 42(c) and 42(d).</p> <p>A provision for similar situations exist in Rule 42(c).</p>
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<p>entity;</p> <p>d. insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;</p> <p>e. for goods purchased on a commodity market;</p> <p>f. where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;</p> <p>g. for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or</p> <p>h. where a contract is awarded to a winner of a design contest provided that:</p> <p>i. the contest has been organized in a manner that is consistent with the principles of this Agreement, in particular relating to the publication of a notice of intended procurement; and</p> <p>ii. the participants are judged by an independent jury with a view to a design contract being awarded to a winner.</p> <p>2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.</p> <p>Article XIV — Electronic Auctions</p> <p>1. Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:</p> <p>a. the automatic evaluation method,</p>	<p>A provision for similar situations exist in Rules.</p> <p>No provision for such instances exist.</p> <p>A provision for similar situations exist in Rule 42(d).</p> <p>No specific provision for this situation exist in Rules.</p> <p>Normal procurement Rules are applicable in this case.</p> <p>Services of Consultants are utilised to examine the proposals in such cases.</p> <p>Normally the bid evaluation report contain all requisite data and the bidders have a right to get a copy.</p> <p>(To whom this report is intended to be given)</p> <p>Electronic auctions are not prevalent in Pakistan.</p>
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<p>including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;</p> <p>b. the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and</p> <p>c. any other relevant information relating to the conduct of the auction.</p>	
<p><u>Article XV — Treatment of Tenders and Awarding of Contracts</u></p>	
<p><u>Treatment of Tenders.</u></p>	
<p>1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.</p>	<p>Included in Rule 4 “Principles of Procurement”.</p>
<p>2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.</p>	<p>Late receipt of tenders is not allowed in Rules.</p>
<p>3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.</p>	<p>It is admissible in the Rules.</p>
<p><u>Awarding of Contracts</u></p>	
<p>4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.</p>	<p>Similar provision is incorporated in the Rule 38.</p>
<p>5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:</p> <p>a. the most advantageous tender; or</p> <p>b. where price is the sole criterion, the lowest price.</p>	<p>As above</p>
<p>6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.</p>	<p>No such provision in Rules.</p>
<p>7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this</p>	

Agreement.

Article XVI — Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVII, 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 supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Agreement, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Appendix III. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- a. a description of the goods or services procured;
- b. the name and address of the procuring entity;
- c. the name and address of the successful supplier;
- d. the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- e. the date of award; and
- f. the type of procurement method used, and in cases where limited tendering was used in accordance with Article XIII, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- a. the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XIII; and
- b. data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

As per Rule 35, the procuring agency is required to give a copy of the bid evaluation report to each bidder

The bid evaluation report includes all such information which is listed in paras (a) to (f).

Under the procurement rules, each purchasing entity is required to keep all documents for at least five years. However since electronic procurement is not practiced in Pakistan, there is no system in place for the traceability of covered procurements electronically.

No system is in place for getting this information. Thus a reporting system will have to be put in place..

<p>a. for Annex 1 procuring entities:</p> <ul style="list-style-type: none"> i. the number and total value, for all such entities, of all contracts covered by this Agreement; ii. the number and total value of all contracts covered by this Agreement awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and iii. the number and total value of all contracts covered by this Agreement awarded by each such entity under limited tendering; <p>b. for Annex 2 and 3 procuring entities, the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex; and</p> <p>c. estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.</p> <p>5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such statistics.</p> <p>6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such data.</p> <p><u>Article XVII — Disclosure of Information</u> <u>Provision of Information to Parties</u></p> <p>1. On request of any other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Agreement, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.</p> <p><u>Non-Disclosure of Information</u></p>	<p>A website is maintained by PPRA but data in the requisite form is not readily available. However, the PPRA's website can be expanded to collect this information.</p> <p>Requisite data is available on PPRA's website.</p> <p>The Rules provide that requisite information shall be provided to the bidding parties. However, for full compliance with this provision, Rules may have to be amended.</p>
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2. Notwithstanding any other provision of this Agreement, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Agreement shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

- a. would impede law enforcement;
- b. might prejudice fair competition between suppliers;
- c. would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property;
- or
- d. would otherwise be contrary to the public interest.

Article XVIII — Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- a. a breach of the Agreement; or
- b. where the supplier does not have a right to challenge directly a breach of the Agreement under the domestic law of a Party, a failure to comply with a Party's measures implementing this Agreement, arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and

Rule 47 states that when a contract has been awarded, all information relating to the contract shall be made public. This provision is however not applicable in case of information of proprietary nature or where such disclosure is against national interest.

Rule 48 provides for a grievance redressal mechanism which is in addition to judicial recourse available to a bidder. Under this Rule, an aggrieved party may lodge a complaint to a grievance redressal committee set up within the procuring agency. Rule 49 also states that any disputes arising out of any contract would be settled through arbitration. However, there is no bar on any party not to approach the judicial fora for grievance redressal.

The requisite minimum period is already stated in Rules.

An administrative authority would have to be set up in Pakistan. Maybe this role can be assigned to PPRA.

<p>review a challenge by a supplier arising in the context of a covered procurement.</p> <p>5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.</p> <p>6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:</p> <ul style="list-style-type: none"> a. the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body; b. the participants to the proceedings (hereinafter referred to as “participants”) shall have the right to be heard prior to a decision of the review body being made on the challenge; c. the participants shall have the right to be represented and accompanied; d. the participants shall have access to all proceedings; e. the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and f. the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation. <p>7. Each Party shall adopt or maintain procedures that provide for:</p> <ul style="list-style-type: none"> a. rapid interim measures to preserve the supplier’s opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and b. where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both. <p><u>Article XIX — Modifications and Rectifications to Coverage</u> <u>Notification of Proposed Modification</u></p>	<p>It has been provided in the Rules. However, consideration needs to be given for setting up a procurement Ombudsman for grievance redressal in procurement disputes.</p> <p>A new agency has to be created in Pakistan for this purpose. Maybe a procurement ombudsman could do the job.</p> <p>A provision already exist in the Rules wherein the procuring agency has been refrained to sign contract with the lowest evaluated bidder for a period of 10 days, during which an aggrieved bidder, if any, can lodge a complaint. The grievance redressal committee can consider the requisite aspect also.</p> <p>The superior courts can grant compensation</p>
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<p>1. A Party shall notify the Committee of any proposed rectification, transfer of an entity from one annex to another, withdrawal of an entity or other modification of its annexes to Appendix I (any of which is hereinafter referred to as “modification”). The Party proposing the modification (hereinafter referred to as “modifying Party”) shall include in the notification:</p> <p>a. for any proposed withdrawal of an entity from its annexes to Appendix I in exercise of its rights on the grounds that government control or influence over the entity’s covered procurement has been effectively eliminated, evidence of such elimination; or</p> <p>b. for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Agreement.</p>	<p>It can be done and an organization can be authorized to do the needful.</p>
<p><u>Objection to Notification</u></p> <p>2. Any Party whose rights under this Agreement may be affected by a proposed modification notified under paragraph 1 may notify the Committee of any objection to the proposed modification. Such objections shall be made within 45 days from the date of the circulation to the Parties of the notification, and shall set out reasons for the objection.</p>	<p>No comments for the time being.</p>
<p><u>Consultations</u></p> <p>3. The modifying Party and any Party making an objection (hereinafter referred to as “objecting Party”) shall make every attempt to resolve the objection through consultations. In such consultations, the modifying and objecting Parties shall consider the proposed modification:</p> <p>a. in the case of a notification under paragraph 1(a), in accordance with any indicative criteria adopted pursuant to paragraph 8(b), indicating the effective elimination of government control or influence over an entity’s covered procurement; and</p> <p>b. in the case of a notification under paragraph 1(b), in accordance with any criteria adopted pursuant to paragraph 8(c), relating to the level of compensatory adjustments to be offered for modifications, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement.</p>	<p>No comments for the time being.</p>
<p><u>Revised Modification</u></p> <p>4. Where the modifying Party and any objecting Party resolve the objection through consultations, and the modifying Party revises its proposed modification as a result of those consultations, the modifying Party shall notify the Committee in accordance with paragraph 1, and any such revised modification shall only be effective after fulfilling the requirements of this Article.</p>	<p>No comments for the time being.</p>

Implementation of Modifications

5. A proposed modification shall become effective only where:
- a. no Party submits to the Committee a written objection to the proposed modification within 45 days from the date of circulation of the notification of the proposed modification under paragraph 1;
 - b. all objecting Parties have notified the Committee that they withdraw their objections to the proposed modification; or
 - c. 150 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification.

No comments for the time being.

Withdrawal of Substantially Equivalent Coverage

6. Where a modification becomes effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage. Notwithstanding Article IV:1(b), a withdrawal pursuant to this paragraph may be implemented solely with respect to the modifying Party. Any objecting Party shall inform the Committee in writing of any such withdrawal at least 30 days before the withdrawal becomes effective. A withdrawal pursuant to this paragraph shall be consistent with any criteria relating to the level of compensatory adjustment adopted by the Committee pursuant to paragraph 8(c).

No comments for the time being.

Arbitration Procedures to Facilitate Resolution of Objections

7. Where the Committee has adopted arbitration procedures to facilitate the resolution of objections pursuant to paragraph 8, a modifying or any objecting Party may invoke the arbitration procedures within 120 days of circulation of the notification of the proposed modification:
- a. Where no Party has invoked the arbitration procedures within the time-period:
 - i. notwithstanding paragraph 5(c), the proposed modification shall become effective where 130 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification; and
 - ii. no objecting Party may withdraw coverage pursuant to paragraph 6.
 - b. Where a modifying Party or objecting Party has invoked the arbitration procedures:
 - i. notwithstanding paragraph 5(c), the proposed modification shall not become effective before the completion of the

Requires promulgation of appropriate Rules/Regulations.

arbitration procedures;

- ii. any objecting Party that intends to enforce a right to compensation, or to withdraw substantially equivalent coverage pursuant to paragraph 6, shall participate in the arbitration proceedings;
- iii. a modifying Party should comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c); and
- iv. where a modifying Party does not comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage pursuant to paragraph 6, provided that any such withdrawal is consistent with the result of the arbitration procedures.

Committee Responsibilities

- 8. The Committee shall adopt:
 - a. arbitration procedures to facilitate resolution of objections under paragraph 2;
 - b. indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement; and
 - c. criteria for determining the level of compensatory adjustment to be offered for modifications made pursuant to paragraph 1(b) and of substantially equivalent coverage under paragraph 6.

Article XX — Consultations and Dispute Settlement

- 1. Each Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultation regarding any representation made by another Party with respect to any matter affecting the operation of this Agreement.
- 2. Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of:
 - a. the failure of another Party or Parties to carry out its obligations under this Agreement; or
 - b. the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement,

it may, with a view to reaching a mutually satisfactory solution to the matter, have recourse to the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "the Dispute Settlement Understanding").

No comments for the time being.

<p>3. The Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, with the exception that, notwithstanding paragraph 3 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in Appendix 1 of the Dispute Settlement Understanding.</p>	<p>No comments for the time being.</p>
<p><u>Article XXI — Institutions</u> <u>Committee on Government Procurement</u></p> <p>1. There shall be a Committee on Government Procurement composed of representatives from each of the Parties. This Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.</p> <p>2. The Committee may establish working parties or other subsidiary bodies that shall carry out such functions as may be given to them by the Committee.</p> <p>3. The Committee shall annually:</p> <ol style="list-style-type: none"> a. review the implementation and operation of this Agreement; and b. inform the General Council of its activities, pursuant to Article IV:8 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and of developments relating to the implementation and operation of this Agreement. 	<p>No comments for the time being.</p> <p>No comments for the time being.</p> <p>No comments for the time being. Only applicable in case of joining GPA.</p>
<p><u>Observers</u></p> <p>4. Any WTO Member that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer by submitting a written notice to the Committee. Any WTO observer may submit a written request to the Committee to participate in the Committee as an observer, and may be accorded observer status by the Committee.</p>	<p>Pakistan should immediately join as observer. Joining as observer does not create any liability upon it.</p>
<p><u>Article XXII — Final Provisions</u> <u>Acceptance and Entry into Force</u></p> <p>1. This Agreement shall enter into force on 1 January 1996 for those governments¹ whose agreed coverage is contained in the Annexes of Appendix I of this Agreement, and which have, by signature, accepted the Agreement on 15 April 1994, or have, by that date, signed the Agreement subject to ratification</p>	<p>No comment.</p>

<p>and have subsequently ratified the Agreement before 1 January 1996.</p> <p><u>Accession</u></p> <p>2. Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision of the Committee. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for a Member acceding to it on the 30th day following the deposit of its instrument of accession.</p> <p><u>Reservations</u></p> <p>3. No Party may enter a reservation in respect of any provision of this Agreement.</p> <p><u>Domestic Legislation</u></p> <p>4. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by its procuring entities, with the provisions of this Agreement.</p> <p>5. Each Party shall inform the Committee of any changes to its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.</p> <p><u>Future Negotiations and Future Work Programmes</u></p> <p>6. Each Party shall seek to avoid introducing or continuing discriminatory measures that distort open procurement.</p> <p>7. Not later than the end of three years from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012, and periodically thereafter, the Parties shall undertake further negotiations, with a view to improving this Agreement, progressively reducing and eliminating discriminatory measures, and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, taking into consideration the needs of developing countries.</p> <p>8. (a)The Committee shall undertake further work to facilitate the implementation of this Agreement and the negotiations provided for in paragraph 7, through the adoption of work programmes for the following items:</p> <ul style="list-style-type: none"> i. the treatment of small and medium-sized enterprises; ii. the collection and dissemination of statistical data; iii. the treatment of sustainable procurement; 	<p>Only relevant upon accession to the Agreement.</p> <p>Only relevant upon accession to the GPA.</p> <p>Only relevant to GPA acceding countries.</p>
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<p>iv. exclusions and restrictions in Parties' Annexes; and</p> <p>v. safety standards in international procurement.</p> <p>(b)The Committee:</p> <p>vi. may adopt a decision that contains a list of work programmes on additional items, which may be reviewed and updated periodically; and</p> <p>vii. shall adopt a decision setting out the work to be undertaken on each particular work programme under subparagraph (a) and any work programme adopted under subparagraph (b)(i).</p> <p>9. Following the conclusion of the work programme to harmonize rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A to the WTO Agreement and negotiations regarding trade in services, the Parties shall take the results of that work programme and those negotiations into account in amending Article IV:5, as appropriate.</p> <p>10. Not later than the end of the fifth year from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, the Committee shall examine the applicability of Article XX:2(b).</p> <p><u>Amendments</u></p> <p>11. The Parties may amend this Agreement. A decision to adopt an amendment and to submit it for acceptance by the Parties shall be taken by consensus. An amendment shall enter into force:</p> <p>a. except as provided for in subparagraph (b), in respect of those Parties that accept it, upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it;</p> <p>b. for all Parties upon acceptance by two thirds of the Parties if it is an amendment that the Committee, by consensus, has determined to be of a nature that would not alter the rights and obligations of the Parties.</p> <p><u>Withdrawal</u></p> <p>12. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date the Director-General of the WTO receives written notice of the withdrawal. Any Party may, upon such notification, request an immediate meeting of the Committee.</p> <p>13. Where a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect on the date on which it ceases to be a Member of the WTO.</p>	<p>Only relevant upon accession to the GPA.</p> <p>Only relevant upon accession to the GPA.</p> <p>Only relevant upon accession to the GPA.</p>
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<p><u>Non-application of this Agreement between Particular Parties</u></p> <p>14. This Agreement shall not apply as between any two Parties where either Party, at the time either Party accepts or accedes to this Agreement, does not consent to such application.</p> <p><u>Appendices</u></p> <p>15. The Appendices to this Agreement constitute an integral part thereof.</p> <p><u>Secretariat</u></p> <p>16. This Agreement shall be serviced by the WTO Secretariat.</p> <p><u>Deposit</u></p> <p>17. This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to Article XIX and of each amendment pursuant to paragraph 11, and a notification of each accession thereto pursuant to paragraph 2 and of each withdrawal pursuant to paragraphs 12 or 13.</p> <p><u>Registration</u></p> <p>18. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.</p>	<p>Only relevant upon accession to the GPA.</p> <p>No comment.</p> <p>No comment</p> <p>No comment</p> <p>No comment.</p>
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