

Taiwan Government Procurement Understanding
Understanding on Government Procurement
Between the Separate Customs Territory of
Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)
and the Government of the United States

[*Note: On July 15, 2009, Taiwan acceded to the
WTO Agreement on Government Procurement (GPA)*]

Delegations representing the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the Government of the United States held a series of bilateral consultations in the context of Chinese Taipei's accession to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). These consultations were intended to clarify: (1) provisions of Chinese Taipei's laws and regulations relating to implementation of GPA requirements, and (2) Chinese Taipei's proposed modifications to its market access offer for accession to the GPA.

On the basis of these consultations, the United States and Chinese Taipei have reached the following understandings. The measures referred to in these understandings will be implemented upon Chinese Taipei's accession to the WTO, unless specifically noted otherwise. Both sides understand that the United States' final acceptance of the terms of Chinese Taipei's GPA accession will be subject to U.S. review and acceptance of Chinese Taipei's final and complete Appendix I market access offer.

Laws and Regulations Relating to Government Procurement

1. Chinese Taipei shall ensure that, for all contracts covered by its GPA commitments, its procuring entities will not: (1) require any U.S. supplier to participate in local industry or business associations as a condition for that supplier to participate in a tendering process, and (2) will not consider a supplier's participation or lack of participation in such associations in the assessment of tenders and decisions on contract awards. Following the award of such a contract, Chinese Taipei agrees that any requirements for suppliers to join a local industry or business association and any requirements imposed on the members of such associations shall be applied on a non-discriminatory basis, and, other than reasonable membership fees, shall not constitute an obstacle to trade. These measures will be implemented by December 31, 2001.
2. Chinese Taipei confirms that the application of sub-paragraph 13 of Paragraph 1 of Article 22 of the Chinese Taipei Government Procurement Law (which refers to "other circumstances as prescribed by the responsible entity") to a procurement that is covered by the GPA shall be limited to circumstances permitted under Articles XV and XXIII of the GPA.
3. Chinese Taipei confirms that decisions relating to a supplier's qualifications (including those related to financial, commercial and technical capacity) shall take into account that supplier's global business experience, and shall not be limited to consideration of contracts or other activities that supplier has previously performed in Chinese Taipei, including for Chinese Taipei's government entities, public schools or government-owned enterprises. These measures will be implemented as of the date of signature of this Understanding (hereinafter referred to as "date of signature").
4. Chinese Taipei shall ensure that its procuring entities include appropriate standard contract clauses from Chinese Taipei's "Essential Requirements for Procurement Contracts" in all contracts covered by Chinese Taipei's GPA commitments. Chinese Taipei will formally notify its procuring entities of this requirement prior to the entry

into force of its GPA commitments and will, at the same time, provide a copy of this notification to the United States.

5. Chinese Taipei shall ensure that its procuring entities include the text of Articles 20 and 24 of Chinese Taipei's "Essential Requirements for Procurement Contracts" in all contracts covered by Chinese Taipei's GPA commitments. Chinese Taipei will formally notify its procuring entities of this requirement prior to the entry into force of its GPA commitments and will, at the same time, provide a copy of this notification to the United States.

6. Chinese Taipei shall ensure that its procuring entities do not require suppliers to participate in joint tendering for procurement contracts. In addition, Chinese Taipei shall ensure that its procuring entities do not unreasonably reject any U.S. supplier's request to participate in joint tendering for GPA-covered contracts, where such request meets the requirements of Article 25 of Chinese Taipei's Government Procurement Law and is submitted pursuant to Article 41 of the same Law. If a procuring entity denies any U.S. supplier's request to participate in joint tendering, Chinese Taipei shall ensure that the procuring entity promptly provides such suppliers with a detailed written explanation of the reasons for denying their request.

7. Chinese Taipei shall ensure that its procuring entities set any bond requirements, including bid and performance bonds, at levels that are consistent with international practice for contracts covered by Chinese Taipei's GPA commitments. In particular, Chinese Taipei's procuring entities shall set:

- a) bid bonds at no more than 5% of the estimated value of the relevant contract or NT\$ 50 million, whichever is less; and
- b) performance bonds at no more than 15% of value of the procurement contract.

These measures will be implemented as of the date of signature.

8. Chinese Taipei confirms that under contracts covered by its GPA commitments, a supplier's delay or failure to perform due to an event of "force majeure" will not constitute the basis for the termination of the contract for default, forfeiture of any performance security, or imposition of liquidated damages. Where, due to an event of force majeure, the procuring entity proposes to terminate the contract for convenience, the entity shall negotiate a settlement agreement with the supplier. The term "force majeure" means an event, situation, or circumstance beyond the control of the supplier that is not foreseeable, is unavoidable and does not involve the supplier's fault or negligence. Events of "force majeure" include acts of commission or omission of Chinese Taipei or the procuring entity, wars and revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes. These measures will be implemented as of the date of signature.

Procedures for Reviewing Challenges Relating to Tendering and Contract Awards

9. In the event of a complaint by a U.S. supplier that there has been a breach of the GPA, Chinese Taipei shall, in accordance with the provisions of GPA Article XX:7, take such reasonable steps as are necessary to preserve the relevant commercial opportunities pending the completion of its complaint review procedures.

10. Chinese Taipei shall ensure that, for any complaint relating to a GPA-covered contract that a U.S. supplier files with a procuring entity in accordance with published laws and regulations, that procuring entity does not award a contract before the procuring entity has made a determination on the merits of the complaint and has informed the interested supplier in writing of its determination, unless that entity:

- a) determines that overriding adverse consequences, including to the public interest, require that the procurement award proceed without delay; and
- b) provides the supplier that filed the complaint with a written explanation of the overriding adverse consequences that require the entity to award the contract before making its determination on the merits of the complaint.

Post-Award Mediation of Contract Disputes

11. Chinese Taipei shall ensure that the Complaint Review Board (CRB) accepts any request by U.S. suppliers participating in tendering procedures for GPA-covered contracts for CRB mediation of disputes relating to the performance of such contracts. Chinese Taipei shall encourage procuring entities to make use of CRB mediation procedures, and to cooperate fully when such procedures are invoked. These measures will be implemented as of the date of signature.

Chinese Taipei's Offer of Accession to the GPA

12. Pursuant to the existing Note 6 to the "Notes to Annex 3" of its GPA accession offer (July 1999 offer), Chinese Taipei confirms that Chunghwa Telecom will procure in accordance with the provisions of the GPA.

13. To clarify its existing offer of accession to the GPA, Chinese Taipei agrees to add the following language to Note 2 of Chinese Taipei's Notes to Annex 1 of its GPA accession offer: "and entities transferred to the central government pursuant to the October 28, 1998 'Law on the Reorganization of the Taiwan Provincial Government,' in effect and as amended on December 6, 2000."

14. Recognizing that several subordinate entities of the principal entities listed in Annex 1 of Chinese Taipei's GPA accession offer may not be explicitly listed in the laws referred to in Note 2 of that Annex, Chinese Taipei confirms that, as of the date of signature, Note 2 applies to the attached list of subordinate entities. Chinese Taipei confirms that all the entities on this list shall procure in accordance with the provisions of the GPA. Chinese Taipei agrees to inform the United States of any changes that it may propose to make to this list either before or after Chinese Taipei's accession to the GPA.

15. Chinese Taipei agrees that the Central Police University will be included in Annex 3 of its final Appendix I offer for accession to the GPA.

Bilateral Consultations

16. On request of either side, Chinese Taipei and the United States agree to consult bilaterally and to work positively and constructively to resolve any concerns either side may have relating to the implementation of this Understanding. If Chinese Taipei's GPA accession process is not completed by June 30, 2003, both sides agree to consult to determine the extent to which issues need to be renegotiated.

[signature]

For Chinese Taipei [signature]

For the United States

Date:

Response to the U.S. Request

List of Administrative Units of Annex 1 Entities

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

1. Presidential Office

Academia Sinica

Academia Historica

2. Executive Yuan

3. Ministry of Interior

National Police Administration

Construction and Planning Administration

National Fire Fighting Administration

Building Research Institute

Child Bureau

4. Ministry of Finance

Department of National Treasury

Department of Taxation

Bureau of National Properties

Taipei National Tax Administration

Kaohsiung National Tax Administration

National Tax Administration of Northern Taiwan Province

National Tax Administration of Central Taiwan Province

National Tax Administration of Southern Taiwan Province

Taipei Regional Disbursing Office

Data Processing Center

Directorate General of Customs

Public Finance Training Institute

Bureau of Monetary Affairs

Securities and Futures Commission

Taxation and Tariff Commission

5. Ministry of Economic Affairs

Industrial Development Bureau

Board of Foreign Trade

Intellectual Property Office

Bureau of Standards Metrology and Inspection

Energy Commission

Water Resources Planning Commission

Small and Medium Business Administration

Export Processing Zone Administration

Central Geological Survey

Water Conservancy Agency

Bureau of Mines

Taipei Water Resources Management Commission

Commission of National Corporations

Investment Commission

International Trade Commission

Professional Training Center

6. Ministry of Education

7. Ministry of Justice

Public Prosecutor Offices

Investigation Bureau

Administrative Enforcement Department

Judges and Prosecutors Training Institute

Training Institute for Correctional Officials

8. Ministry of Transportation and Communications

Directorate General of Telecommunications

Directorate General of Post

Civil Aeronautics Administration

Central Weather Bureau

Tourism Bureau

Taiwan Area National Freeway Bureau

Taiwan Area National Expressway Engineering Bureau

High Speed Rail Engineering Bureau

Engineering Office of the Taipei Railway Underground Project

Institute of Transportation

Highway Bureau

9) Mongolian & Tibetan Affairs Commission

10) Overseas Chinese Affairs Commission

11. Directorate General of Budget, Accounting and Statistics

Electronic Data Processing Center

12) Department of Health

National Laboratories of Foods and Drugs

National Bureau of Controlled Drugs

Center of Disease Control

Committee on Chinese Medicine and Pharmacy

Bureau of National Health Insurance

Maternal and Child Health Institute

Institute of Family Planning

Institute of Public Health

13) Environmental Protection Administration

National Institute of Environmental Analysis
National Institute of Environmental Training
14) Government Information Office
15. Central Personnel Administration
Housing and Welfare Commission
Civil Service Development Institute
Local Administration Studying Center
16. Mainland Affairs Council
17) Council of Labor Affairs
Employment and Vocational Training Administration
Institute of Occupational Safety and Health
18. Research, Development and Evaluation Commission
19. Council for Economic Planning and Development
20. Council for Cultural Affairs
21) Veterans Affairs Commission
22) Council of Agriculture
Fisheries Administration
Bureau of Animal and Plant Health Inspection and Quarantine
Seed Improvement and Propagation Station
Tea Experiment Station
Agricultural Improvement Station
Endemic Species Research Institute
Taiwan Agricultural Research Institute
Taiwan Forestry Research Institute
Taiwan Fisheries Research Institute
Taiwan Livestock Research Institute
Taiwan Animal Health Research Institute
Taiwan Agriculture Chemicals and Toxic Substances Research Institute
Food Administration Department
Soil and Water Conservation Bureau
Forestry Bureau
23) Atomic Energy Council
Institute of Nuclear Energy Research
Fuel Cycle and Materials Administration

Radiation Monitoring Center
24) National Youth Commission
25) National Science Council
Science-based Industrial Park Administration
Science and Technology Information Center
Precision Instrument Development Center
Synchrotron Radiation Research Center
National Laboratory Animal Breeding and Research Center
National Center for High-Performance Computing
National Center for Research on Earthquake Engineering
National Nano Device Laboratories
National Space Program Office
26. Fair Trade Commission
27. Consumer Protection Commission
28. Public Construction Commission
29. Ministry of Foreign Affairs
Bureau of Consular Affairs
Foreign Service Institute
30. Ministry of National Defense
General Headquarters, Army
General Headquarters, Navy
General Headquarters, Air Force
General Headquarters, Combined Services Command
Armed Forces Reserves Command
Armed Forces Police Command
General Political Warfare Department
Joint Inspection Command
Bureau of Comptroller
Military Law Bureau
Bureau of Procurement
Military History & Translation Bureau
Communications & Electronic Information Bureau
Medical Bureau
General Military Affairs Bureau

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