



7 January 2021

(21-0317)

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Committee on Government Procurement

Original: English

**NOTIFICATION OF PROPOSED MODIFICATIONS AND RECTIFICATIONS TO COVERAGE
UNDER THE REVISED AGREEMENT ON GOVERNMENT PROCUREMENT**

COMMUNICATION FROM SWITZERLAND

The following communication, dated 7 January 2021, is being circulated at the request of the Delegation of Switzerland.

Notifying Party	SWITZERLAND
Legal Basis	<input type="checkbox"/> Article XIX:1(a) of the revised Agreement <input checked="" type="checkbox"/> Article XIX:1(b) of the revised Agreement
Annex(es) of Appendix I affected	<ul style="list-style-type: none">• Central Government Entities (Annex 1)• Sub-Central Government Entities (Annex 2)• Other Entities (Annex 3)• Goods (Annex 4)• Services (Annex 5)• Construction Services (Annex 6)• General Notes (Annex 7)
Description of the proposed modification(s): <p>Pursuant to paragraph 1(b) of Article XIX of the revised Agreement on Government Procurement (hereinafter "the revised Agreement"), Switzerland hereby notifies the Committee on Government Procurement of proposed modifications to its Appendix I to the revised Agreement. There are five types of modifications being notified:</p> <p>a. General (presentational) modifications, in line with the formatting changes suggested by the Secretariat in GPA/W/326 to ensure consistency among the Annexes of all Parties to the revised Agreement, upon the entry into force of that revised Agreement for them.</p> <p>These include modifications to the titles and the structure of Switzerland's Annexes as well as to the presentation of thresholds, lists of entities and the lists of goods, services, and construction services.</p> <p>b. Reflection of Switzerland's terms of accessions of Australia (Attachment C to GPA/CD/1) and the United Kingdom in its own right to the Agreement (Attachment C to GPA/CD/2).</p> <p>c. Corrections and clarifications in Annex 7:</p> <ul style="list-style-type: none">• Corrections and clarifications of General Note 1.3.b.: "Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n°8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne plus les marchés passés pour les produits relevant des n°85012099, 85015299, 85015199, 85015290, 85014099, 85015390 8504, 8535, et 8536, 8537 et 8544 du SH.	

- Correction of General Note 3.1.: "La Suisse comprend qu'en vertu de l'article II, ~~lit a)~~, ch. 2 a) ii, le présent Accord ne couvre pas les placements des fonds des assurés effectués par des organisations de droit public telles que des assurances de droit public et des caisses de pension de droit public."

d. Rectification in Annex 7:

- Add "... de la République de Moldavie, du Monténégro ... et de l'Ukraine" to the list of members to which the exception provided for under General Note 1.1.a. applies.

Upon the entry into force of the revised Agreement on Government Procurement (hereinafter "the revised Agreement") for Switzerland on 1 January 2021, and considering that the Parties with regard to which the revised Agreement applies concerning procurement by the entities listed in paragraph 2 of Annex 2 need to be explicitly mentioned in Annex 7, Annex 7 of Appendix I of Switzerland will have to be rectified. The purpose of this rectification is to continue ensuring the same rights and obligations between Switzerland and the Republic of Moldova, Montenegro and Ukraine as under the Agreement on Government Procurement done at Marrakesh on 15 April 1994 (hereinafter the "1994 Agreement") regarding the coverage of local districts and municipalities. Such rectification reflects the Committee's Decisions regarding the accessions of the Republic of Moldova (GPA/131 of 16 September 2015), Montenegro (GPA/124 of 29 October 2014) and Ukraine (GPA/133 of 11 November 2015) to the revised Agreement in Switzerland's Annex 7 of Appendix I of the revised Agreement.

e. Modification in Annex 1:

- Add a footnote "À l'exception de Caisse fédérale de pensions PUBLICA sous Département fédéral des finances (DFF)" to paragraph 1.

PUBLICA is the pension fund of the Swiss Confederation. It is an independent collective pension institution established under public law. In the course of the deliberations regarding the revision of the federal law on government procurement, the Federal Assembly adopted an amendment to the draft legislation providing for the exclusion of public pension funds of the Confederation from the coverage of the revised law on government procurement (see art 10.1 (i) of the revised federal law on government procurement of 21 June 2019: <https://www.admin.ch/opc/fr/official-compilation/2020/641.pdf>).

Since PUBLICA will no longer be covered by the federal law on government procurement that entered into force on 1 January 2021, Switzerland has to modify its Annex 1 to Appendix I of the revised Agreement and exclude such entity from the Central Government Entities covered.

Information of the likely consequences of the change for the mutually agreed coverage provided for by the Agreement:

The proposed modifications a. to d. are of a purely formal nature and do not alter the level of mutually agreed coverage provided for by the revised Agreement.

Regarding the proposed modification e., it is to note that according to footnote 1 of Switzerland's Annex 5 to Appendix I of the revised Agreement, the revised Agreement does not apply to contracts for financial services in connection with the issue, purchase, sale, transfer of securities or other financial instruments and central bank services. Moreover, General note 3.1 of Switzerland's Annex 7 to Appendix I clarifies Switzerland's understanding that the revised Agreement does not cover the placement of insured persons' assets by public-law institutions such as public-law insurances and pension funds under its Article II, paragraph 2(a)(ii). The main activity of PUBLICA, which is to allocate assets in the form of pensions funds, is therefore not a

covered procurement under the revised Agreement. As far as procurement related to its own operation and infrastructure is concerned, a detailed analysis of the public tenders carried out by PUBLICA between the adoption of the revised Agreement on 30 March 2012 and 2019 [published on simap.ch] revealed that PUBLICA had not conducted any procurement subject to the provisions of the Agreement on Government Procurement done at Marrakech on 15 April 1994 (hereinafter the "1994 Agreement"), which was applicable to Switzerland until 31 December 2020. For these reasons, it can be concluded that the proposed modification e. does not alter the level of mutually agreed coverage nor the balance of rights and obligations provided for by the revised Agreement.

Attachments¹:

- Attachment A to this document shows (in red, bold, strikeout or underlining) the proposed modifications to the corresponding pages of Annexes 1 to 7 to Appendix I of Switzerland under the revised Agreement.
- Attachment B indicates how the relevant pages would appear after the proposed modifications have become effective.

¹ Attachments A and B are in French only.

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