

ANNEX 16B
BOT CONTRACTS AND PUBLIC WORKS CONCESSION CONTRACTS

Scope of Application

1. This Annex shall apply to BOT contracts and public works concession contracts the value of which is above 15,000,000 SDR.
2. For Korea, this Annex covers BOT contracts of the procuring entities listed in Sections A and B of Annex 16A.
3. For Peru, this Annex covers BOT contracts and public works concession contracts of the procuring entities listed in Sections A and B of Annex 16A.

National Treatment and Non-Discrimination

4. With respect to any measure regarding BOT contracts and public works concession contracts covered by this Annex, each Party, including its procuring entities, shall accord immediately and unconditionally to the suppliers of the other Party, treatment no less favorable than the treatment the Party, including its procuring entities, accords to domestic suppliers.
5. With respect to any measure regarding BOT contracts and public works concession contracts covered by this Annex, a Party, including its procuring entities, shall not treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership.

Notice of Intended Contract

6. Each Party shall ensure that a notice of intended contract for BOT contracts and public works concession contracts covered by this Annex is made publicly available in an electronic medium listed in Section H of Annex 16A, so that interested suppliers are allowed to submit tenders or requests for participation in that contract.

Award Publication

7. Within a reasonable period of time after the award of each contract for BOT contracts and public works concession contracts covered by this Annex, each Party shall ensure that the award of that contract is made publicly available in an electronic medium listed in Section H of Annex 16A.

Challenge Procedure

8. Each Party shall ensure that there is an effective system for review of decisions by its competent authorities. This obligation shall not require the creation of a special system of administrative or judicial review.

Other Rules and Procedures

9. Subject to paragraphs 4 through 8, this Annex is without prejudice to the measures undertaken by the Parties to encourage small and medium-sized enterprises to participate in BOT contracts and public works concession contracts in accordance with their respective legislations.

Definition

10. **BOT (build-operate-transfer) contracts** and **Public Works Concession Contracts** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract.