



## ADVANCED REGIONAL GOVERNMENT PROCUREMENT WORKSHOP FOR ASIAN ECONOMIES

13-15 JANUARY 2015  
BANGKOK

### BREAKOUT SESSION 2

*Transparency, non-discrimination and institutional provisions of government procurement regimes:*

*Domestic rules vis-à-vis GPA Requirements*

#### Question 1: Domestic rules vis-à-vis GPA Requirements

1.1. In what way is your domestic legislation consistent with, or divergent from, the GPA basic principles of transparency, integrity and non-discrimination? Does your domestic legislation provide for transparent award procedures and domestic review procedures for supplier challenges?

**N.B.:** You might find the information in the table below helpful in answering the above question. The table sets out various elements of a transparent, efficient and modern government procurement system. For each element, the basic principles or rules of the GPA are indicated.<sup>1</sup> Participants are asked to indicate whether their national practices/legislation are broadly in accord with the GPA requirements or, if not, the main areas of differences.<sup>2</sup>

**N.B.:** This exercise is for educational purposes only. Non-GPA Parties are not bound by GPA requirements.

	<u>Element</u>	<u>Revised GPA<sup>3</sup> Requirement</u>	<u>National Regime(s)</u>
1.	<b>Scope of application of the rules</b>	The GPA rules apply only to entities, goods and services which Parties have specifically committed to the Agreement, and only to covered procurement opportunities valued at or above specified thresholds. <sup>4</sup>	
2.	<b>Thresholds</b>	Minimum value of proposed procurements (in SDR) to which the Agreement applies: <sup>5</sup> <ul style="list-style-type: none"> <li>for goods and services, generally: 130,000 for central government entities, 200,000 for sub-central government entities, and 400,000 "other" government entities;</li> <li>for construction services, generally: 5 million</li> </ul>	[...] <sup>6</sup>

<sup>1</sup> For full details of the relevant provisions, see the revised GPA text. Where appropriate, the relevant provisions are also indicated in footnotes.

<sup>2</sup> For reasons of simplification, the GPA requirements outlined here refer only to open or selective tendering.

<sup>3</sup> All Article references in this document relate to the revised GPA text, which can be found in document GPA/113, dated 2 April 2012 (and also available in the bound reading materials).

<sup>4</sup> Articles II and III, and Appendix I.

<sup>5</sup> Article II and Appendix I. (SDR 1 = USD 1.45, source: [http://coinmill.com/SDR\\_calculator.html#SDR=1](http://coinmill.com/SDR_calculator.html#SDR=1), accessed 4.1.2015)

<sup>6</sup> Please indicate here the thresholds in your domestic regime above which international competitive bidding is mandatory.

		for all entities.	
3.	<b>Transparency - information on the procurement system</b>	Parties to: publish relevant rules regarding their procurement system; notify the media in which they publish specified notices or statistics; be prepared to offer explanations to other Parties on request; and publish or notify any changes to the rules or media. <sup>7</sup> Publication may be made via electronic or paper media.	
4.	<b>Non-discrimination</b>	Each Party to accord treatment no less favourable to the goods, services and suppliers of any Party than that which it accords to: <sup>8</sup> its domestic goods, services and suppliers; and the goods, services and suppliers of any other Party. Parties not to: treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or discriminate against a locally established supplier on the basis that the goods or services offered by it for a particular procurement are those of any other Party.	
5.	<b>Notices</b>	Entities to, in principle, publish a notice for each case of covered procurement. Publication by electronic means mandatory for central government entities, optional but encouraged for all other entities.	
6.	<b>Participation / Qualification of suppliers</b>	To be determined in accordance with pre-established objective criteria and in a transparent and non-discriminatory manner. <sup>9</sup>	
7.	<b>Technical specifications and tender documentation</b>	Specifications preferably to be based on performance and functional requirements rather than according to design or descriptive characteristics. If descriptive specifications unavoidable, to make provision for "equivalent" offers. Tender documentation to contain all information necessary to enable suppliers to prepare and submit responsive tenders. <sup>10</sup>	
8.	<b>Time periods</b>	Minimum 40 days, but with possibility of reduction under specified situations, e.g.: <sup>11</sup> state of urgency (10 days); use of electronic tools; and procurement of commercial goods or services (10-13 days).	

<sup>7</sup> Article VI and Appendices II-IV.

<sup>8</sup> For exact wording, see Article IV.

<sup>9</sup> Articles VIII and IX.

<sup>10</sup> Article X.

<sup>11</sup> Article XI.

9.	<b>Evaluation of bids</b>	To be undertaken only on the basis of pre-determined evaluation criteria specified in the tender documents. <sup>12</sup> Evaluation through electronic auction possible. <sup>13</sup> Negotiation permitted if pre-disclosed or where evaluation results inconclusive. <sup>14</sup>	
10.	<b>Contract award and award notice</b>	Award to be made based on pre-disclosed criteria either on the basis of <u>most advantageous tender</u> , or <u>lowest price</u> if price is the only criterion. <sup>15</sup> Award notice to be published no later than 72 days after the award. <sup>16</sup>	
11.	<b>Bid challenge / Domestic review</b>	Availability of a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge an alleged breach of the rules. <sup>17</sup>	
12.	<b>Flexibilities for developing countries</b>	Developing countries have the possibility, subject to negotiation at the time of accession, to apply certain transitional measures designed to: <sup>18</sup> <ul style="list-style-type: none"> <li>• facilitate their implementation of and gradual adjustment to the GPA rules;</li> <li>• facilitate access of their local suppliers to local covered procurement markets.</li> </ul>	[...] <sup>19</sup>

## Question 2: GPA Enforcement Procedures

2.1. What are the two main enforcement procedures that are available under the GPA? What functions do they serve?

2.2. In regard to each procedure, who makes the complaint and who adjudicates it?

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