The WTO Agreement on Government Procurement

The Agreement on Government Procurement (GPA) was signed in Marrakech on 15 April 1994. The GPA is one of the "plurilateral" agreements included in Annex 4 to the Agreement establishing the WTO, meaning that not all WTO members are bound by it. Both the EU and the USA are members of the GPA.

Signatories to the Agreement undertake to provide national treatment and non-discrimination to goods, services and suppliers of the other signatories, ensuring through detailed procedures, a real chance to compete for government contracts. The Agreement applies to covered procuring entities independently of the place of the contract performance (even if such a place is, like Iraq, a non WTO country). 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 agreement.

The GPA: Scope and Coverage

Coverage of the Agreement is defined essentially by three elements:

1. The procurement concerned must be by entities that are listed by the Parties in an appendix to the Agreement. These include list of central, sub-central and local entities as well as other entities (in the case of the EC, the “bodies governed by public law”). Other annexes cover services and construction services.

2. Procurement includes purchase, lease and rental and any combination of goods and services.

3. The Agreement applies to government procurement above specified threshold values:
   - for central government purchases of goods and services, the average\(^2\) threshold is SDR\(^3\) 130 000 (EUR 162,293);
   - for purchases of goods and services by sub-central government entities, the threshold varies by country\(^2\), but it is generally in the region of SDR 200 000 (EUR 249,681);

---

1 The WTO member countries that are parties to the GPA are: Canada, the European Union, Hong Kong, China, Iceland, Israel, Japan, Korea, Liechtenstein, the Kingdom of the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and the United States.

2 Although certain Parties have higher thresholds

3 The IMF’s accounting unit of Special and Drawing Rights
- for utilities, thresholds for goods and services are generally\(^2\) in the area of SDR 400 000 (EUR 499,362); and
- for construction contracts, the threshold value is usually\(^2\) around SDR 5 000 000 (EUR 6,242,028).

**General exceptions applicable to all Parties**

Article XXIII of the GPA refers to the exceptions the Parties may apply to its own procurement when imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property, or relating to handicapped persons, philanthropic institutions or prison labour.

There is a general exception for procurement necessary for the protection of essential security interest relating to the procurement of arms, ammunition and war material or procurement indispensable for national security or national defence.

The Agreement does not apply to procurement made in furtherance of tied aid to developing countries.

**Exceptions**

Commitments made by the Parties often contain exceptions applicable to one or various Parties as a matter of balancing the different levels of coverage and is therefore reciprocity based, contrary to other WTO Agreements.

Commitments made by the Parties may contain exceptions applicable to one or more or all the Parties for a specific procurement. The EC commitments for example, exclude Canadian suppliers from procurement made by EU sub-central entities as a result of reciprocity (i.e. the Canadian offer does not include sub-central entities).

The US offer covers an explicit list of procurement made by the Department of State but at the same time excludes a long range of goods such as guns, missiles, etc.

The US list of services covered explicitly excludes services purchased in support of military forces located overseas.

Procurement made by the United States Agency for International Development (USAID) is in principle covered by the GPA but it excludes procurement in direct purpose of providing foreign assistance.

The EC offer contains similar exceptions for contracts awarded under an international agreement intended for the joint implementation or exploitation of projects (i.e. humanitarian aid, assistance, international co-operation), or for contracts awarded under an international agreement relating to the stationing of troops.

These rules apply to the tender process until the contract award. There are no WTO rules applying to the content or execution of such contracts.

**Dispute Settlement**

The WTO Dispute Settlement Understanding (DSU) also applies to the GPA. There are however some specific provisions allowing shorter time periods and, contrary to other WTO Agreements, cross-retaliation between the GPA and other WTO Agreements is excluded. Indeed, nullification or impairment of benefits under the procurement agreement may not be used as justification for suspending other WTO commitments (such as GATT or TRIPS).
Parties can however suspend benefits and obligations within the GPA itself.

**Background information:**

WTO
http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

EUROPA

Procurement opportunities and contract award for the reconstruction of Iraq published by the USAID (United States Agency for International Development)
http://www.usaid.gov/iraq/

Publication of tender notices for US federal procurement:
http://fedbizopps.gov/

Procurement Internet site of the US Department of Defence
http://progate.daps.dla.mil/home/

Other central point for procurement opportunities and legislation in the US
http://www.nist.gov/admin/od/contract/fedlink.htm

Procurement opportunities: tender notices published in the EU
http://ted.publications.eu.int/