Government Procurement Agreement: History and Future

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Content

• Introduction
• Framework of our research project
• GPA: History
• GPA: Present
• GPA: Future
• Conclusion – SWOT analysis
Public Procurement

• Definition (OECD):
  – Public procurement refers to the purchase by governments and state-owned enterprises of goods, services and works.
  – As public procurement accounts for a substantial portion of the taxpayers’ money, governments are expected to carry it out efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest.

• Public procurement:
  – Above threshold
  – Below threshold
Public Procurement

Estimates vary from 7 to 18 %

USA – app. 10 % of the GDP
EU – app. 14 % of the GDP

Public Procurement to the GDP (%)

Czech Republic
OECD Average
International public procurement = cross-border public procurement

Cross-border procurement

Direct: Foreign contractor

Indirect: Domestic contractor

Contractor has a foreign partner or subcontractor

Contractor supplies goods or services from abroad

Contractor is a foreign subsidiary

Globalised business

- Internationalised ownership

- Internationalised research & development

- Internationalised organisational structure

- Globalised supply chains
Public Procurement and the WTO: 3 Main Pillars

- The main goal of the Government Procurement Agreement is to ensure creating open and transparent procurement markets, including guarantees of national treatment and non-discrimination.
- Plurilateral agreement, individually determined market access commitments based on reciprocity.
Regional Trade Agreements of the European Union
Low share of direct cross-border public procurement (3–5 % in the EU)

Why???
Possible Obstacles

- **External barriers:**
  - Regulatory deficiencies
  - Home-biased governments
  - Complicated processes (SMEs)
  - Other economic factors

- **Internal barriers:**
  - Lack of experience
  - Language barriers
  - ... (see next slide)
Figure 4: Businesses’ view on several possible obstacles to cross-border bidding

Based on your experience, how do you assess the relevance of the following possible obstacles?

<table>
<thead>
<tr>
<th>Obstacle</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of experience with doing business abroad</td>
<td>61.3%</td>
</tr>
<tr>
<td>Language barriers</td>
<td>50.3%</td>
</tr>
<tr>
<td>High extent of competition with national bidders</td>
<td>48.6%</td>
</tr>
<tr>
<td>Legal requirements leading to market entry barriers in the awarding country (e.g., special allowances necessary for offering services abroad)</td>
<td>47.6%</td>
</tr>
<tr>
<td>Cost level in general higher at home than abroad (e.g., because of labour costs etc.)</td>
<td>36.6%</td>
</tr>
<tr>
<td>Resources necessary for participating in cross-border tender procedures higher compared to procedures in home country</td>
<td>34.6%</td>
</tr>
</tbody>
</table>
Unfamiliar formal requirements demanded (e.g. certificates to provide, etc.)
- To a high extent: 34.2%
- To a medium extent: 28.9%
- To a low extent: 18.9%
- Not at all: 18.1%

Risks imposed by possible currency exchange rate fluctuations
- To a high extent: 32.5%
- To a medium extent: 25.9%
- To a low extent: 21.1%
- Not at all: 20.5%

Additional costs due to geographic distance, i.e. implementation of contract more costly compared to delivery close to own location
- To a high extent: 24.9%
- To a medium extent: 40.4%
- To a low extent: 17.9%
- Not at all: 16.8%

Different kinds of technical specifications that are demanded compared to experiences in your own Member State (e.g. different IT standards and the like)
- To a high extent: 24.5%
- To a medium extent: 35.2%
- To a low extent: 14.9%
- Not at all: 25.5%

Tax or social insurance differences leading to cost disadvantages
- To a high extent: 24.0%
- To a medium extent: 35.1%
- To a low extent: 21.8%
- Not at all: 19.1%

N = between 260 and 274
Research Project

- F2/70/2018 University of Economics, Prague, Czech Republic
- Cross-border public procurement: analysis of the international framework and obstacles to involvement of Czech companies in it

1. Desk research – Government Procurement Agreement
2. Desk research – Regional Trade Agreements
3. Desk research – Cross-border procurement in the EU
4. Field research – in-depth interviews with pilot companies
5. Field research – survey
The goal of this paper is to identify possible shortcomings of the Revised GPA and challenges for the future development. In our analysis, the historical background of the Government Procurement Agreement will be taken into consideration.

Methodology: desk research
- Analysis of primary sources – official documents of the World Trade Organization including the Government Procurement Agreement and the revised Government Procurement Agreement
- SWOT analysis of the Government Procurement Agreement – strengths, weaknesses, opportunities, and threats

The following slides cover brief history of the GPA, the revised GPA, and future challenges
History of the GPA

• “Tokyo Round Code on Government Procurement” (1979)
  – Apr. 1979: 1979 Code signed
  – Procurement of goods by central government entities

• Revised “Tokyo Round Code on Government Procurement” (1987)
  – Nov. 1983: Negotiations to amend 1979 Code commence
  – Adding a limited number of services and reducing thresholds

• Agreement on Government Procurement (1994)
  – Apr. 1994: GPA 1994 signed in Marrakesh
  – Procurement of goods, services, and construction services by central, sub-central and other entities
The revised GPA

- Revised Agreement on Government Procurement (2012)
  - Feb. 1997: Preparatory work for negotiations to revise GPA 1994
  - Apr. 2014: Revised GPA 1994 enters into force
- Negotiated parallel to the Uruguay Round
- Two main parts of negotiations: modernization of the text (2006) and extension of the market access commitments
- The elements of the review were to include expansion of the coverage; elimination of discriminatory measures and practices which distort open procurement; and simplification and improvement of the Agreement, including adaptation to advances in the area of information technology
## Parties to the GPA (46)

<table>
<thead>
<tr>
<th>Members of the revised GPA</th>
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<tbody>
<tr>
<td>Armenia</td>
</tr>
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<td>Republic of Moldova</td>
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<tr>
<td>Canada</td>
</tr>
<tr>
<td>Montenegro</td>
</tr>
<tr>
<td>European Union</td>
</tr>
<tr>
<td>(with regard to its 28 member states)</td>
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<tr>
<td>Netherlands</td>
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<tr>
<td>(with respect to Aruba)</td>
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<tr>
<td>Hong Kong</td>
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<tr>
<td>New Zealand</td>
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<td>Iceland</td>
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<td>Norway</td>
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<td>Israel</td>
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<td>Singapore</td>
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<tr>
<td>Japan</td>
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<tr>
<td>Chinese Taipei</td>
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<tr>
<td>Republic of Korea</td>
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<tr>
<td>Ukraine</td>
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<tr>
<td>Liechtenstein</td>
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<tr>
<td>United States</td>
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</tbody>
</table>
Coverage Schedules

- These Annexes also specify threshold values above which individual procurements are subject to the GPA disciplines.
- This, in other words, means that government procurement falls within the GPA rules if the procuring entity is covered, if the procured goods/services/construction services are covered and if the value of the procurement is above the threshold levels indicated in commitments schedules.

<table>
<thead>
<tr>
<th>Revised GPA</th>
<th>GPA 1994</th>
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<tbody>
<tr>
<td>Annex 1: central government entities</td>
<td>Annex 1: central government entities</td>
</tr>
<tr>
<td>Annex 3: other entities</td>
<td>Annex 3: other entities</td>
</tr>
<tr>
<td>Annex 4: goods</td>
<td>General rule that all goods are covered unless specifically exempted.</td>
</tr>
<tr>
<td>Annex 5: services</td>
<td>Annex 4: services</td>
</tr>
<tr>
<td>Annex 6: construction services</td>
<td>Annex 5: construction services</td>
</tr>
<tr>
<td>Annex 7: general notes</td>
<td>Included as “General Notes” under the GPA 1994.</td>
</tr>
</tbody>
</table>
Future Challenges

- Shortcomings found in insufficient regulation of international e-procurement (which remains only an option), including not establishing single point of access for procurement notices; insufficient standardization of procurement notices; and insufficient support of small and medium-size enterprises.
- The shortcomings connected with market access commitments consist in a (hypothetically) insufficient scope of covered goods/services/construction services; in a (hypothetically) insufficient scope of covered governmental entities; and in too high thresholds for covered procurement.

Future Work Programmes

- a Work Programme for SMEs
- a Work Programme on the Collection and Reporting of Statistical Data
- a Work Programme on Sustainable Procurement
- a Work Programme on Exclusions and Restrictions in Parties’ Annexes
- a Work Programme on Safety Standards in International Procurement
SWOT Analysis

• Plurilateral agreement – flexibility in comparison with the WTO Rounds
• Interconnection with the General Agreement on Tariffs and Trade (GATT) and with the General Agreement on Trade in Services (GATS) – synergies
• Anchoring the possibility of e-commerce (however, a permissive approach)
• *Flexibility in coverage commitments – no universal coverage commitments (?)*
SWOT Analysis

- Not ensuring interoperability of procurement system of its parties
- Insufficient commitments schemes of the parties to the GPA – covered goods/services/construction services, covered entities, and primarily high thresholds
- Insufficient support of e-procurement, primarily establishing single points of access
- *No universal coverage commitments* (?)
SWOT Analysis

- Growing membership (from 19 members at the beginning to current 46, respectively 47, parties)
- Anchoring further negotiations and improvements of the GPA (similar to the revision of the GPA)
- Support of the global struggle against corruption
- Establishing various work programmes
- Covering also public work concessions and other PPPs
- Synergies with regional trade agreements (?)
SWOT Analysis

- Low share of above threshold government procurement
- Persisting home-bias in public procurement that is, however, hard to measure
- Cost of accession to the GPA
- Concerns regarding imbalances in coverage and reciprocity
- Complicated assessment of new rules due to insufficient statistical data
- \textit{Rivalry of regional trade agreements (\textit{?})}
Thank you for your attention!