



# GENEVA GROUP INTERNATIONAL

## INTENTIONS, REGULATIONS, SOLUTIONS

### Subject:

- How the public sector is procuring in the world
- How much is the cross-border part of public procurement
- What are the obstacles
- What can we – advisers – do for our clients?

### I.

Public procurement is a regulated market, based on transparency and equal treatment.

- WTO Procurement (Government Procurement Agreement; GPA; 1994.)
- European Public Procurement Directives (2004/17/EC and 2004/18/EC)
- Rest of the world (own tendering rules)

Basic tools are common all around the world!!! (The devil is hiding in the details...)

### II.

#### GDP and Public Consumption Expenditure in developed and major developing countries

STATE	GDP (Bn USD)	PUBLIC CONSUMPTION EXPENDITURE (Bn USD)	PCE/GDP (%)
USA	14.624,5	2,120	14,5
CANADA	1.563	285,9	18,3
<i>EU (27)</i>	<i>16.106</i>	<i>1.994</i>	<i>12,4</i>
JAPAN	5.391	1.049	19,4
RUSSIA	1860	213	11,4
AUSTRALIA	1.219	235,5	19,3
BRAZIL	2.023	243	12,0
<i>CHINA</i>	<i>9.299</i>	<i>1.952</i>	<i>21,0</i>
INDIA	1.430	429	30
SOUTH AFRICA	354	46	12,9
Summa:	<b>53869</b>	<b>8567,4</b>	
Summa public Procurement		<b>Cca:7.000</b>	
Summa potential cross-border PP. (above threshold)		<b>Cca: 5.500</b>	
Cross-border PP in practice		<b>Cca: 70</b>	

**Members joined GPA (WTO has 158 member states)**

**(Public procurement expenditure:7-8.000 Bn USD/year)**

Canada	1 January 1996
European Communities with regard to its 27 member States:	
Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom	1 January 1996
Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic and Slovenia	1 May 2004
Bulgaria and Romania	1 January 2007
<i>Hong Kong , China</i>	<i>19 June 1997</i>
Iceland	28 April 2001
Israel	1 January 1996
Japan	1 January 1996
Korea	1 January 1997
Liechtenstein	18 September 1997
the Netherlands with respect to Aruba	25 October 1996
Norway	1 January 1996
Singapore	20 October 1997
Switzerland	1 January 1996
United States	1 January 1996

What about the others?

**III.**

**Common principles – different practices**

**Common part**

1. *non-discrimination and transparency*
2. Parties are required to accord to the products, services and suppliers of any other Party to the Agreement/Directive treatment “*no less favourable*” than they give to their domestic products, services and suppliers.
3. Each Party is required to ensure that its entities do not treat domestic suppliers differently on the basis of a greater or lesser degree of foreign affiliation or ownership as well as to ensure that its entities *do not discriminate against non domestic suppliers because their good or service is produced in the territory of another Party.*
4. There is a general requirement *to publish any procedures* regarding government procurement covered by the Agreement.
5. Tendering procedures are the same

- Both regulations *contains a number of detailed procedural obligations* which procuring entities have to fulfill to ensure the effective application of its basic principles.
- The Agreement/Directive allows the use of *open, selective and limited tendering* procedures
- The Agreement/Directive prescribes *certain minimum deadlines* that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering. The minimum time-limits for receipt of tenders may be reduced to 24 or even 10 days in certain well-defined circumstances — for instance, 10 days in the case of a state of urgency.
- The Agreement/Directive contains *obligations on technical specifications* in order to ensure that entities do not discriminate.
- Only tenders that *conform to the essential requirements* of the tender notice or documentation and are from a supplier which complies with the conditions for participation can be considered for award.
- *An entity that has received a tender abnormally lower than other tenders may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.*
- Entities have the obligation to award contracts to the tenderer who has been determined to be *fully capable* of undertaking the contract and whose tender is either the lowest tender or the tender which is determined to be the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation

#### Different part

	GPA	EU Directive
1.	<p>plurilateral" agreement, (it applies to a number of WTO Members, but not all Members.)</p> <p>Based on bilateral agreements</p>	<p>Multilateral (it applies to all EU members)</p> <p>Based on GPA</p>
2.	WTO Members are not required to join the GPA	EU Members are required to join the EU Directives
3.	Threshold values are different in member countries	Threshold values are the same in every country

<p>4.</p>	<p><b>Special and Differential Treatment for Developing Countries</b></p> <p>Take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:</p> <ol style="list-style-type: none"> <li>1. safeguard their balance-of-payments position;</li> <li>2. promote the establishment or development of domestic industries</li> <li>3. facilitate increased imports from developing countries,</li> <li>4. A developing country may negotiate about exclusions from the rules on national treatment</li> <li>5. A developing country Party may modify its coverage lists regard to its development, financial and trade needs.</li> <li>6. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties</li> <li>7. Developed country Parties shall establish, individually or jointly, information centers, and provide assistance in least-developed countries in submitting their tenders.</li> </ol>	<p><b>Special targets for the EU in 2020.</b></p> <ol style="list-style-type: none"> <li>1. Employment 75% of the 20-64 year-olds to be employed</li> <li>2. R&amp;D / innovation 3% of the EU's GDP (public and private combined) to be invested in R&amp;D/innovation</li> <li>3. Climate change / energy greenhouse gas emissions 20% (or even 30%, if the conditions are right) lower than 1990 ; 20% of energy from renewables; 20% increase in energy efficiency;</li> <li>4. Education Reducing school drop-out rates below 10% ; at least 40% of 30-34-year-olds completing third level education;</li> <li>5. Poverty / social exclusion at least 20 million fewer people in or at risk of poverty and social exclusion</li> </ol>
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## IV.

What can we do?

- Try to attempt the impossible – the client’s interest is “the” first.
  - Understand the other states regulation
  - Find the other states experts
  - Find personal contacts to the decision-makers (Lobby!)
    - In critical economic periods -importance of government relations is growing
  - (Keep your eyes on China... or-India)

### Summary:

1. The intention is common: regulate the public sector, to make their transactions clear, transparent based on equal treatment all over the world (WTO)
2. Both regulations distorting (means: not only regulating) the free market:
  - a. Developing countries are preferred, subsidized, get special advantage,(GPA)
  - b. EU 2020. strategy hampers difficulties over EU’s “sober” procuring methods.
2. Regulations, agreements are insufficient tools to increase cross-border public procurement transportation.
3. States, countries have excuses, tricks to defend their own, domestic suppliers on their own, domestic market.
4. Determined suppliers (our clients) need special adviser, consultant, lobby expert.