



مسقف التذاكر (Ticket slab)

إتجاه سلم النزول إلى التذاكر
ACCESS TO TICKET
SLAB

8 | Government procurement policy-making

Development and infrastructure provisions: the role of government procurement

Government procurement constitutes an important share of economic activity worldwide. It plays a key role in providing public goods and services, and is vital for development, as it provides employment and commercial opportunities for businesses and contributes to domestic and international trade. At the intersection of governments' regulatory and buying powers, government procurement is seen by many economies as an important tool for economic development.

Government procurement is also relevant to the fulfilment of the 2030 Sustainable Development Goals (SDGs), and in particular to SDG 12, "Ensure sustainable consumption and production patterns", which includes the promotion of "public procurement practices that are sustainable, in accordance with national policies and priorities". Effective procurement policies are also important to other SDGs due to their core role in the provision of public infrastructure, such as hospitals, public transportation and utility services, which is crucial to an economy's performance and social wellbeing.

As highlighted in WTO and OECD (2019), "Infrastructure services including reliable electricity and transport are key enablers in supporting economic diversification and trade. Unreliable and poor infrastructure increases costs to private enterprises, hampering the development of the private sector". Thus, access to quality infrastructure is important for the greater integration of developing countries and the fairer distribution of the gains of trade.

The WTO's revised Agreement on Government Procurement (GPA) entered into force in 2014. It is a multi-dimensional tool of trade, governance and development. Possible future participation by African countries in the GPA offers strong potential to reinforce the positive effects of government procurement for economic development.

The WTO Agreement on Government Procurement

The WTO Agreement on Government Procurement (GPA)¹ is a plurilateral agreement, which means that not all WTO members are parties to the Agreement. At present, the GPA consists of 21 parties covering 48 WTO members.² Thirty-five WTO members/observers participate in the GPA Committee as observers, including three (Cameroon, Côte d'Ivoire and the Seychelles) from the African region. While no African country is currently a party to the GPA, in recent years an increasing number of representatives from the African region have participated in WTO technical assistance activities in the area of government procurement, thus demonstrating a growing interest in the revised GPA in the region. One such activity is the five-day Advanced Workshop on Government Procurement. This workshop is held in the three WTO official languages (i.e. English, French and Spanish), enabling government officials from African countries in which English and French are among the national languages to participate effectively. Around one-third of participants in the Geneva-based advanced workshops on government procurement are usually from African countries.

An increasing number of participants from Africa have participated in WTO technical assistance activities on government procurement.

The Government Procurement Agreement has important implications for capacity-building in Africa.

The GPA aims to open up procurement markets among its parties. It applies only to procurement specifically committed to by the parties and included in their respective schedules of commitments. The GPA also sets minimum principles with regard to procurement processes, such as non-discrimination, procedural fairness and transparency.

The revised GPA has an important good governance dimension through its explicit requirement that conflicts of interest and corruption be avoided. In addition, the GPA enables economies acceding to it to negotiate special and differential (S&D) treatment (i.e. special treatment given to developing countries and LDCs in WTO agreements) for a transitional period after accession.

Thus, the GPA combines two main pillars: market-opening with S&D flexibilities to support the development priorities of developing countries, on the one hand, and good governance, on the other. These new elements in the revised version of the GPA arguably increase its relevance for the African region.

Furthermore, the revised GPA sets the stage for important synergies and greater coherence between the GPA and other international instruments. Increasingly, regional trade agreements (RTAs) incorporate GPA-style disciplines in their texts, which in many instances broaden the reach of such disciplines to non-GPA parties, including from the African region.

In addition, there is coherence between the GPA and other procurement-specific international instruments. The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, on which the national laws of many countries, including many African countries, are modelled, and the procurement guidelines of multilateral development banks, such as the WBG and the European Bank for Reconstruction and Development (EBRD), create important synergies with the GPA. National seminars held in Côte d'Ivoire and Morocco in 2019 discussed the relevance of the GPA for African economies and highlighted its complementarities both with national reform efforts and with the work of the World Bank, the AfDB and the EBRD.

Relevance of the GPA for capacity-building in Africa

The GPA has important implications for capacity-building in Africa.

First, the revised GPA requires parties to put in place an appropriate domestic government procurement framework in keeping with best practices in the area of public procurement. It sets minimum principles with regard to procurement processes, such as non-discrimination, procedural fairness and transparency and built-in mechanisms for enforcement including supplier challenges through domestic review mechanisms and the WTO's dispute settlement mechanism. Importantly, the GPA principle of non-discrimination (Article IV) also covers suppliers operating within the domestic territory, to the extent that it protects them against discrimination based on foreign affiliation or ownership. In turn, this supports GPA parties in attracting foreign direct investment (FDI), as it can help to reduce risk, boost both investor and supplier confidence and facilitate inward investments and facilitate innovation and technology transfer.

Second, through the liberalization of government procurement markets, the GPA holds the potential to generate benefits both in terms of procurement efficiency and commercial interests. As an international trade instrument, the GPA provides access to its covered procurement markets, estimated to be worth more than US\$ 1.7 trillion annually. The GPA applies to public tender processes carried out by covered domestic procuring entities purchasing covered goods, services or construction services and then only if the tender value exceeds specified threshold values. All elements are subject to negotiations during the GPA accession process.

The GPA ensures that foreign suppliers of goods and services can participate in domestic public procurement procedures conducted in line with the GPA procedural standards and that they can feel confident that they will be treated on an equal footing with domestic suppliers. The GPA consequently aims to ensure that domestic procuring entities can achieve best value for money. Many economies decide to open at least part of their procurement markets to international competition as some goods and services may not be available for purchase domestically or may be available at home only at a substantially higher cost or at lower quality. At the same time, GPA accession candidates

have the right to negotiate exceptions to their coverage (see also discussion below). These are important considerations for developing countries, including in the African region.

Third, as indicated above, the GPA is a good governance instrument. The GPA is the first WTO agreement to explicitly reference the prevention of corruption and the avoidance of conflicts of interest (Preamble, Article IV:4). Increased competition through liberalization of public procurement markets also plays a role in preventing corruption. In addition, the availability of the GPA enforcement mechanisms, i.e. the domestic review procedure (Article XVIII) and the WTO's Dispute Settlement Mechanism, increases legal certainty and can be used to address procurement cases that involve corruption.

Corruption has significant implications for the economy and for public welfare. According to some estimates, African economies lose at least US\$ 50 billion annually to illicit financial flows. Not only does corruption discourage public investment, it also diminishes its quality, lowers productivity, and leads to inferior infrastructure and services, to the ultimate cost of taxpayers and the consuming public. In this regard, an effective procurement system in line with international best practices is a key tool for the promotion of good governance and the prevention of corruption. The GPA has an important potential to contribute to these objectives. In fact, the most recent GPA accessions by developing countries demonstrate the good governance and anti-corruption angle as a salient motivation to seek GPA membership.

Fourth, the GPA encourages (but does not require) the use of e-procurement as an alternative to paper-based procurement. E-procurement is widely advocated as an effective tool to lower the costs associated with identifying tendering opportunities, accessing tender documentation as well as preparing and submitting tenders. Lower participation costs can notably lead to greater participation in public procurement procedures by MSMEs – an important consideration for developing countries. E-procurement contributes to ensuring predictability and transparency, promoting integrity and competition, helping

to curb corruption in government procurement processes and promoting the efficient and effective management of public resources.

Fifth, the GPA provides policy space to pursue domestic socio-economic policies. As noted, the GPA's rules do not apply to public procurements below GPA thresholds. Furthermore, the coverage under the GPA is subject to negotiations during the accessions process, thus allowing GPA accession candidates to negotiate exemption of certain sensitive sectors. In that regard, the GPA incorporates provisions on S&D treatment for developing and least-developed countries.³ Importantly, in its preamble, the revised GPA recognizes "the need to take into account the development, financial and trade needs of developing countries, in particular the least developed countries". The GPA S&D provisions provide for tailor-made transitional measures, subject to negotiations during the GPA accession. Two broad categories of transitional measures are set out in relation to (i) market access commitments and (ii) the implementation of the Agreement (Article V of the revised GPA). They are designed to respond to the development, financial and trade needs and circumstances of developing countries.

Overall, the GPA has an important potential to help Africa meet its infrastructure and development objectives. Through its role in providing a transparent, predictable and non-discriminatory government procurement regime, the GPA appears to be an ideal complementary tool to IDDA III. It can provide a major boost in international investor and business confidence in procurement under IDDA III. Adherence to GPA standards and other international best practices in government procurement would provide enhanced assurance of better value for money for Africa's taxpayers and development partners, contribute to anti-corruption efforts, and encourage more efficient and effective management of public resources. This could contribute to delivering not only employment and business opportunities for citizens and domestic firms, but also to investing to build productive capacity and help better integrate African industries into global value chains.⁴

The Government Procurement Agreement has an important potential to help Africa meet its infrastructure and development objectives.

1 For more information, see https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

2 For more information, see https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

3 For additional detail on S&D treatment, see Mueller.

4 For additional detail, see Niggli and Osei-Lah.