

E-ALERT | International Trade Policy Government Contracts

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THE WORLD TRADE ORGANIZATION ADOPTS A REVISED AGREEMENT ON GOVERNMENT PROCUREMENT

On March 30, 2012, the parties to the World Trade Organization's Agreement on Government Procurement (commonly referred to as the "GPA") formally adopted a revised version of the pact. The revised text expands the market access commitments made by signatories. Supporters claim these revisions will result in at least \$80 billion in new global procurement opportunities for businesses in signatory countries, including the United States.

The new commitments require the ratification of two-thirds of the parties before entering into force. The U.S. Ambassador to the WTO, Michael Punke, has welcomed the revised Agreement because he believes the revised GPA "will provide U.S. firms with new and expanded opportunities to sell their goods and services to foreign governments." In this respect, the United States is already examining what steps it will need to take in order to deposit its instrument of acceptance. As part of this process, the U.S. government plans to consult with key domestic stakeholders. Entry into force of the revised GPA may not come quickly, however. Korea and Japan have suggested that it may be difficult to secure the approval of their legislatures in the near term. In fact, Japan has indicated that the Diet may not approve the revised GPA before the summer of 2013. As a result, while the revised GPA holds tremendous promise, it remains somewhat unclear how quickly the new Agreement will enter into force.

BACKGROUND ON THE GPA

The GPA establishes rules guaranteeing fair conditions for competition for government procurement contracts and prohibits discriminatory treatment among local and foreign suppliers and between foreign suppliers from different GPA parties. Signatories must treat suppliers of goods and services in other signatory countries no less favorably than they treat domestic suppliers in all procurement transactions covered by the Agreement. In addition, signatories must ensure that they maintain transparent and fair government procurement laws, regulations, and procedures.

The 15 current GPA signatories are: Armenia, Canada, the European Union (and its 27 member states – Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom), Hong Kong, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Taiwan (Chinese Taipei), and the United States. These signatories account for 42 of the WTO's 153 members.

Each party to the GPA has identified specific types of procurement contracts; individual departments, agencies, and state-procuring entities; and contract value thresholds, that it will consider subject to

GPA disciplines. Acceding countries must negotiate with current parties on their specific commitments.

KEY ELEMENTS OF THE NEW GPA PACKAGE

The revised GPA broadens the application of the Agreement in the following key respects:

- The new Agreement identifies an estimated 300 to 400 additional eligible procuring entities across all GPA parties.
 - This includes more than 150 additional central government entities in European Union Member States and the addition of a number of new sub-central entities by several signatories, including Japan, Korea, and Israel.
 - Canada also has agreed to include procurement by provincial authorities under the revised Agreement.
- Several countries, most notably Japan and Israel, have reduced the thresholds for the application of GPA rules to procurement activities by covered entities.
- Aruba, Hong Kong, Israel, Japan, Korea, Singapore, and Switzerland have added more than 50 categories of procurement services. This includes complete coverage of the telecommunications sector by several parties.
- The revised GPA better reflects contemporary procurement practices by clarifying requirements related to electronic procurement; encouraging increased transparency of procurement practices through electronic methods; and providing more flexibility for procuring entities, especially when buying off-the-self goods and services.

The United States did not substantially expand the types of procurement contracts, covered entities, or value thresholds that it will consider subject to GPA disciplines. Under the revised Agreement, it maintains all of its current exclusions and exceptions, including set-asides for small and minority business enterprises.

U.S. - EU BILATERAL PROCUREMENT FORUM

In conjunction with the revised GPA, the United States and the European Union agreed to establish a Bilateral Procurement Forum that will expand the procurement relationship between the two parties. The Forum is designed to address procurement regulatory issues and international procurement issues, such as China's accession to the GPA. In addition, the United States and the European Union will explore the possible expansion of procurement commitments with each other, primarily on a national treatment basis.

ACCESSION OF NEW MEMBERS TO THE GPA

Article V of the revised GPA should help facilitate the accession of developing countries to the GPA in so far as it identifies certain "special and differential" transitional measures applicable to developing countries. Indeed, WTO Director-General, Pascal Lamy, issued a statement saying that the conclusion of the revised agreement "bodes well" for planned WTO efforts to secure the accession of additional countries to the GPA. Nicholas Niggli, the Swiss trade diplomat who chaired the negotiations, has already pledged that his next step will be to "move on to intensive work on expanding the membership of the agreement."

A number of countries are currently seeking membership to the GPA. Perhaps the most important of these is China, which promised as part of its 2001 WTO membership agreement to accede to the GPA. An October 2011 working paper prepared by the WTO secretariat found that China's accession to the GPA could yield market access gains in the range of \$113 to \$289 billion. China submitted its third market access offer in November 2011 and negotiations are still on-going.

Other countries in line for GPA membership include Albania, Georgia, Jordan, Kyrgyzstan, Moldova, Oman, Panama, and the Ukraine. In addition, Russia promised as part of its December 2011 WTO accession deal to submit an offer for accession to the GPA within four years of its accession to the WTO.

Covington's Government Contracts and International Trade practice group professionals are well positioned to advise clients on a wide range of international procurement transactions and concerns related to procurement in foreign markets. Covington recently added Robert Nichols to the team as co-chair of the Government Contracts practice group. He has extensive experience with international government contracting, particularly in the defense industry. If you have any questions regarding the specific implications of the revised GPA for your business, please contact one of the following Covington attorneys:

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