

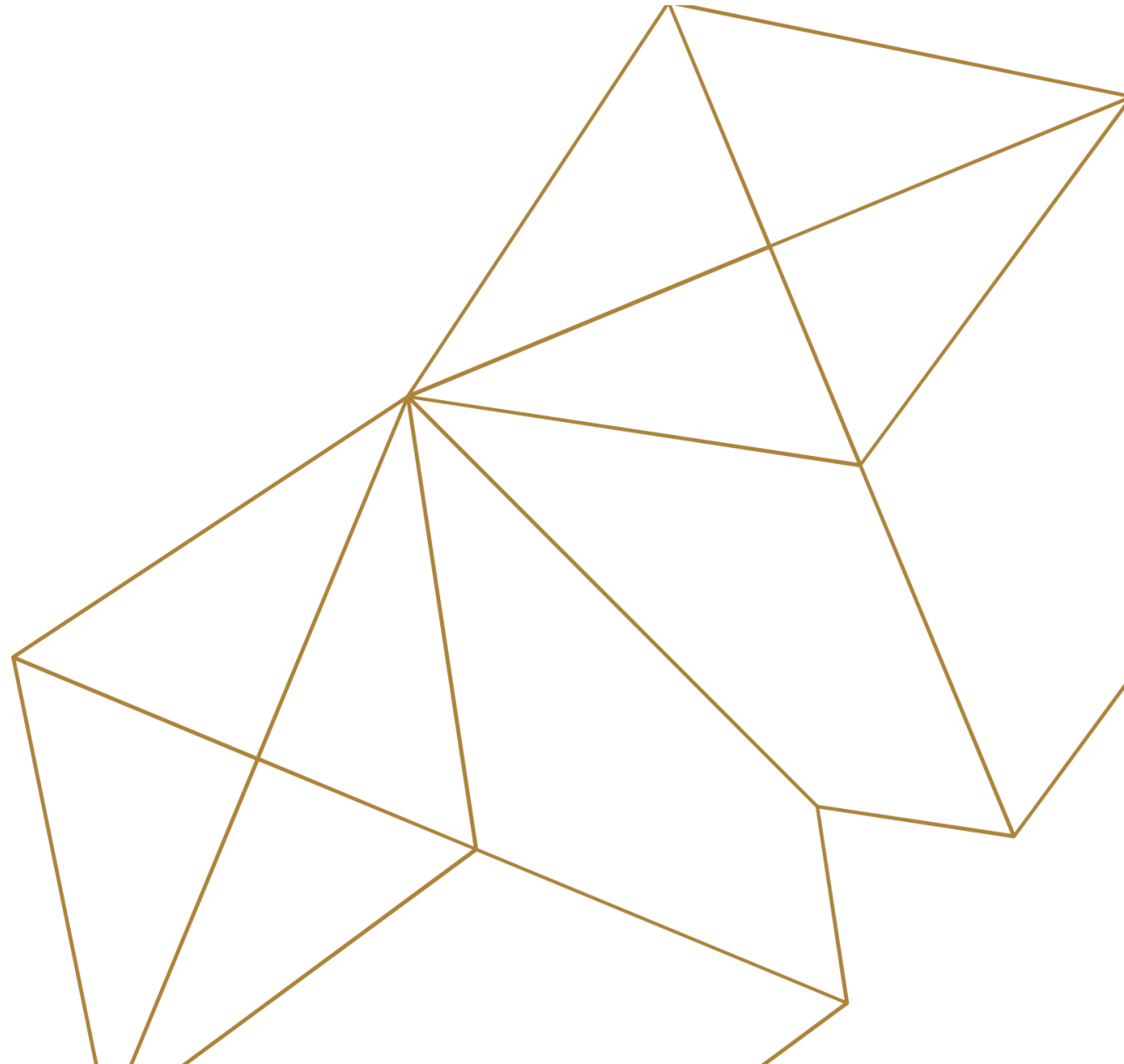
Government Procurement

Date: 30 December 2023

Outline

- Introduction to the World Trade Organization-Government Procurement Agreement (WTO-GPA)
 - Evolution
 - Principles and objectives
 - Scope and coverage
 - Provisions for domestic and foreign supplier participation
 - Key stages in the tendering process
 - Dispute Resolution in government procurement
- WTO-GPA provisions to support developing countries
- Negotiating government procurement provisions within free trade agreements (FTAs)
- Best practices guide on government procurement

Overview on Procurement



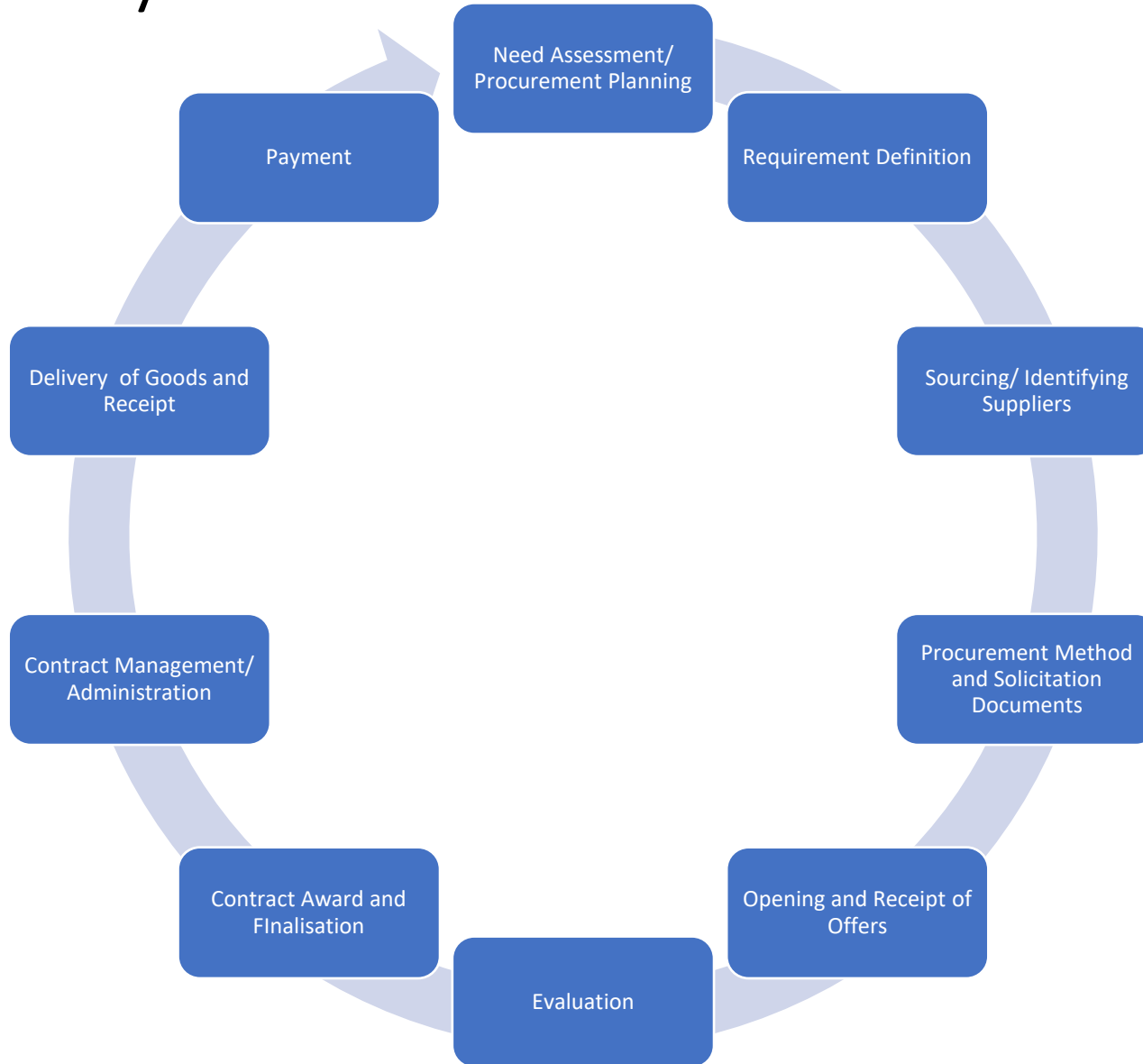
What is Procurement?

- Procurement is the overall process of acquiring goods, civil works and services
- It is undertaken by private and public entities to operate their respective supply chains
- Procurements can take different forms:
 - Direct Procurement:
 - Involves procuring the raw materials and goods that are needed for production
 - Ordered in large quantities
 - Comes from many different suppliers at the best possible cost, quality and reliability to ensure value for money
 - Indirect Procurement:
 - Procuring of services that are not used in the manufacturing element but are still fundamental for the day-to-day operations
 - Consists of utilities, maintenance of machinery, travel expenses, computers and marketing expenses

How is procurement different from purchasing?

- Procurement is a long-term approach to acquiring goods and services, whereas purchasing is the short-term direct purchasing. Purchasing is only a one-time transaction
- Procurement functions include all actions necessary for acquisition either by purchase or lease

Procurement Cycle



Source: [UN Procurement Process and Procedures](#)

What is Government Procurement?

- Government procurement (also termed public procurement) involves the public sector buying goods and/or services
 - Financed by public money raised from taxes and include government departments, councils, and the police
 - Can take place at different levels – federal, state, regional, district and local
 - State-owned Enterprises are also an active and important participant in public sector procurement
- Government procurement aims to ensure that purchase contracts are awarded to qualified suppliers to support public operations.
- Public procurement is a key pillar of strategic governance and service delivery for governments
- Governments procure from both domestic and international suppliers

Modalities for International Procurement

- **Procurement Mode 1** – direct cross-border international procurement: a foreign company submitting and winning a public contract ‘from abroad’
- **Procurement Mode 2** – commercial presence procurement: a domestic subsidiary of a foreign company wins ‘locally’ a public contract
- **Procurement Mode 3** – Value-added indirect international procurement: a foreign company participates indirectly in a bid by providing intermediate goods and services

Public Procurement as a Proportion of Government Expenditure

- Public procurement accounts for more than 30% of total government spending, this varies across countries ([OECD 2019](#))
 - In OECD countries this is 12% of the GDP
 - In developing countries this is 20-30% of the GDP
- Global expenditure on procurement is estimated at nearly 9.5 trillion US dollars per annum ([World Bank 2021](#))
- Expenditure of procurement varies by countries:
 - Health expenditures represent the largest share of public procurement (overall 30% in OECD countries except for the US, Hungary and Latvia) ([OECD 2019](#))
 - In the last six years (2015 - 2020), a total of around \$16 billion has been spent in Africa on the procurement of goods, services, and works, with works alone accounting for around \$12 billion ([African Development Bank Group 2021](#))

Challenges within Government Procurement

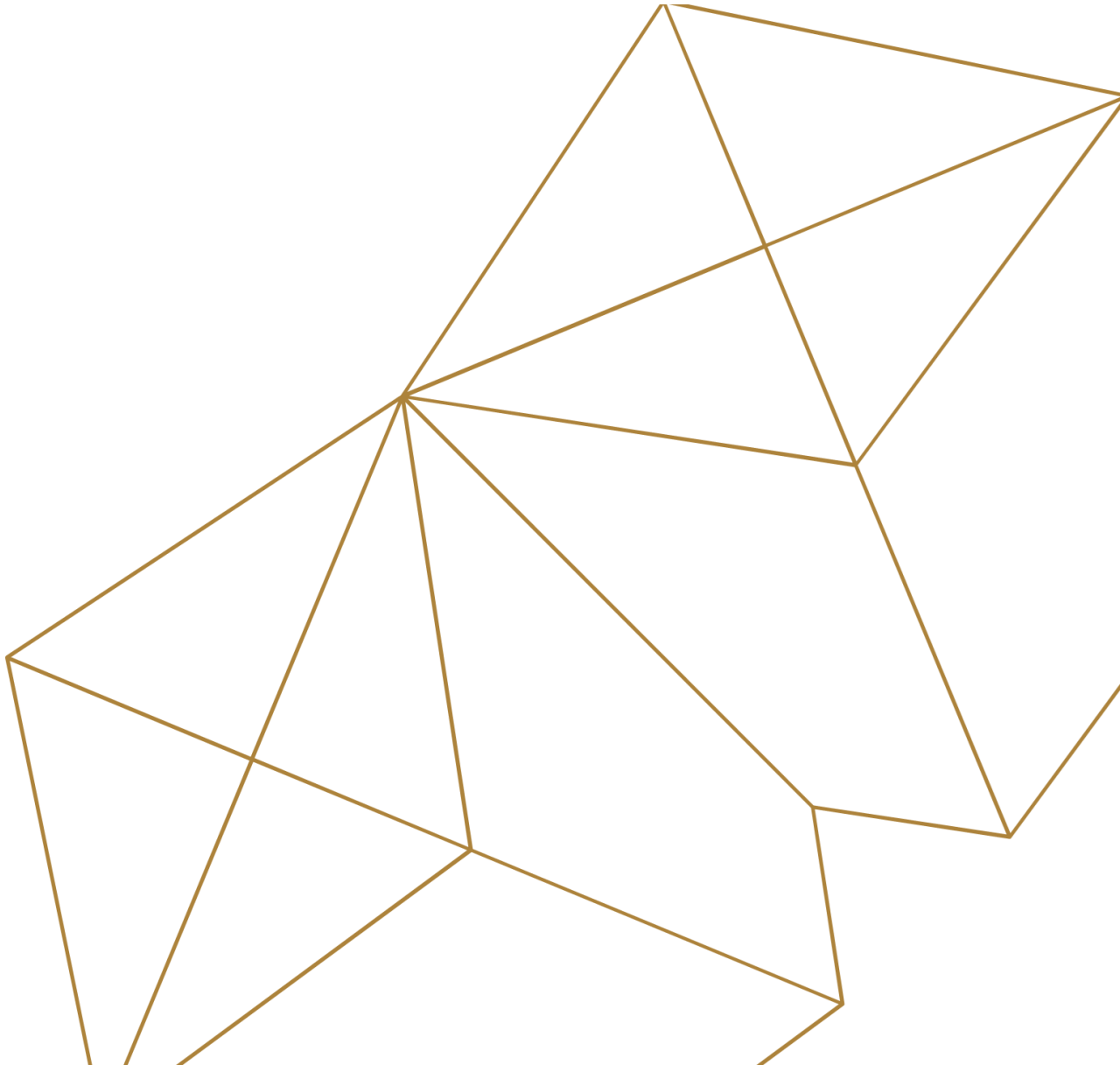
- Given that the magnitude of the projects or the amount of spending is high, government procurement is prone to the risk of corruption
- Lack of clear and detailed procurement regulations contributes to low transparency and accountability
- Procurements run the risk of inadequate cost recovery, time and cost overruns, especially in infrastructure-related projects
- Rent-seeking behavior drives procurement practices
 - Encourages fraudulent procurement practices leading to wastage of public resources
- Such risks have economic implications, as well as impact public trust



Commonly Observed Inefficiencies in Procurement

- When quantified, the challenges can lead to significant economic losses
- Corruption and mismanagement of public finance
 - In OECD countries, 29% (4.2 trillion EUR) of government expenditure goes to public procurement, but between 10-30% of this amount is lost to corruption and mismanagement practices, with public procurement contracts accounting for 57% of all bribery cases in the region ([OECD 2019](#))
- Level of development of a country matters
 - There is a direct correlation between low public procurement spending, country's level of development and socio-political stability ([World Bank 2020](#))
 - Countries that spend less than 5% of their GDP on public procurement show a general trend of being poor, and politically unstable.
 - There is a strong and positive correlation between public procurement spend as proportion of GDP, GNI in PPP, military expenditure, and revenue, excluding grant

WTO and Government Procurement



Introduction to the WTO-GPA

- The WTO-GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO members are Parties to the Agreement.
- Currently, the GPA has 22 parties as Members (covering 49 WTO members, counting the European Union and its 27 member states as one party)
- 35 WTO members/observers and several international organizations participate in the Committee on Government Procurement as observers
- Note: The signatories are called 'Parties' to the Agreement

Parties to the 2012 GPA

Armenia, Australia, Canada, European Union (27 States), Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Singapore, Switzerland, Chinese Taipei, Singapore, Ukraine, United Kingdom, United States of America

Introduction - II

- The WTO-GPA establishes an agreed framework of rights and obligations among its Parties with respect to their national laws, regulations, procedures and practices in the area of government procurement
- It aims to ensure fair, transparent and non-discriminatory conditions of competition for purchases of goods, services and construction services by the public entities covered by the Agreement

Evolution of the WTO-GPA

- The first agreement on government procurement (sometimes referred to as the “Tokyo Round Code on Government Procurement”) was signed in 1979 and entered into force in 1981
- Parties to the Agreement held negotiations to extend the scope and coverage of the agreement in parallel with the Uruguay Round
- As a result of the negotiations, the GPA 1994 was signed in Marrakesh on 15 April and entered into force on 1 January 1996
 - GPA 1994 applied, in principle, not only to entities of central government but also to the huge markets of sub-central government (provincial and local), and other entities
 - The Agreement also applied to services and construction services in addition to goods, although the precise scope of coverage of services varies between Parties.
- The importance of these extensions to the Agreement cannot be underestimated: by one estimate, the coverage offered under the original 1994 Agreement represented a ten-fold increase over that available under the Tokyo Round Code

Evolution of the WTO-GPA.....contd.

- The GPA parties initiated another round of renegotiation of the Agreement to increase its scope and coverage, this concluded in December 2011
 - Article XXIV:9 of the 1994 GPA allows for amendments based on the Parties' experience gained in GPA's implementation
- The outcome of the negotiations was formally adopted in March 2012 and the revised GPA entered into force in April 2012
- GPA 2012 harnesses an “built-in agenda” for improvement of the Agreement, provides for extension of coverage and elimination of remaining discriminatory measures through further negotiations
- It has been estimated that the market access opportunities available under the WTO-GPA 2012 are estimated to be worth more than US\$ 1.7 trillion annually

The WTO-GPA: An Overview

- Establishes rules for open, fair and transparent conditions of competition in government procurement
- The coverage schedules determine whether a procurement activity is covered by the GPA (or not)
 - Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement
- Coverage is listed through detailed Schedules (Annexes) in Appendix I of the Agreement

Key Principles and Objectives

The WTO-GPA is guided by the following core principles:

1. MFN and National Treatment

- Parties to the Agreement are required to accord to the products, services and suppliers of any other Party to the Agreement treatment “no less favorable” than they give to their domestic products, services and suppliers ([Article III:1\(a\)](#))
- 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 domestic suppliers because their good or service is produced in the territory of another Party ([Article III:2](#))

2. Non-discrimination

- Parties may not discriminate among goods, services and suppliers of other Parties ([Article III:1\(b\)](#))

Key Principles and Objectives

- The guiding principles of MFN, national treatment and non-discrimination are supported by WTO GPA's mandates on transparency and accountability
- There is a general requirement to publish laws, regulations, judicial decisions, administrative rulings of general application and any procedures regarding government procurement covered by the Agreement ([Article XIX:1](#))
- Each government must collect and provide to the other Parties, through the Committee on Government Procurement, statistics on its procurement covered by the Agreement ([Article XIX:5](#))

Dimensions of the WTO-GPA

- The obligations set out in GPA have two dimensions: substantial and procedural.
- **Substantial obligations** – Parties are required to impress upon the covered purchasing agencies not to give price and other preferences to domestic producers and also not to discriminate against foreign suppliers
- **Procedural obligations** – Parties are required to put in place a procurement system that is transparent and encourages open competition

Scope of the WTO-GPA

- The GPA consist of the main legal text and the market access schedules of commitments which are included in the Annexes of Appendix I of the agreement
- It applies to procurement of goods, services, or any combination thereof, as specified in each Party's schedules to the Agreement i.e., Annexes to Appendix
- Each Party has their respective schedule of commitments with seven Annexes

Coverage Schedules

- The coverage schedule of Parties are contained in Appendix I to the Agreement
- The schedule of each Party contains several Annexes which define the concerned Party's commitment with respect to four dimensions of coverage:
 - the procuring [entities](#) covered by the Agreement
 - the goods, services and construction services [covered](#) by the Agreement
 - the [threshold values](#) above which procurement activities are covered by the Agreement
 - [exceptions](#) to the coverage

Scope of the WTO-GPA: Entities Coverage

- **Entities covered under GPA 2012 are specified in three Annexes:**
 - Annex 1 – Central level entities
 - Annex 2 – Sub-central level entities
 - Some Parties do not cover all sub-central government entities
 - Annex 3 – Other entities
 - E.g. public utilities , state-owned enterprises

Scope of the WTO-GPA: Coverage of Areas

- **Annex 4 – Goods**
 - In principle covered unless specifically excluded i.e. it follows a negative list approach
- **Annex 5 – Services**
 - It based on UN CPCprov / WTO services classification list
 - All Parties except US and Armenia: Positive List
- **Annex 6 – Construction Services**
 - Full coverage is provided by all Parties
 - Services are listed as per the CPCprov Division 51 classification
- **Annex 7 – General Notes**
 - Provides clarity by explaining country-specific or sector-specific non-application provisions; and reciprocity provisions
 - Specifies the existing exceptions
- Coverage negotiations are conducted on the basis of mutual reciprocity which allows for flexibility

Additional Coverage: GPA 2012

- Compared to WTO-GPA 1994, the updated WTO-GPA 2012 has additional coverage that includes:
 - More than 600 additional central, local and other government agencies
 - This includes Canada's coverage of its provinces and territories (a first for including sub-central level of government)
 - Build-operate-transfer contracts covered by three Parties (European Union, Japan and Korea)
 - Additional services by almost all the Parties, especially in telecommunications services area
 - Additional goods
 - Full range of construction services, subject to relevant thresholds
 - Downward adjustments in the thresholds applied notably by Israel, Japan, Korea and the Netherlands with respect to Aruba

Additional Coverage: WTO-GPA 2012

- The Revised 2014 text incorporates for the first time a set of definitions in Article I - there are agreed common definitions for commercial goods and services and for a construction services contract
- The definition of covered procurement in Article II.2 has been clarified and draws on relevant language in other WTO multilateral agreements
- Article XIX of the revised text requires the Committee on Government Procurement to adopt criteria and procedures for dealing with modifications

Scope of the WTO-GPA: Thresholds

Thresholds Indicated in Annexes 1, 2 and 3 of Appendix I to the Revised GPA

Party	Annex 1 (Central Government Entities)		Annex 2 (Sub-central Government Entities)		Annex 3 (Other Entities)	
	Goods and Services	Construction Services	Goods and Services	Construction Services	Goods and Services	Construction Services
Thresholds applied by most Parties	130,000	5,000,000	200,000	5,000,000	400,000	5,000,000

Note: Thresholds are expressed in Special Drawing Rights (SDR)

Source: [E-GPA, WTO as of 2023](#)

- The thresholds, in IMF Special Drawing Rights (SDR), are specified in each Party's Annexes to Appendix I
- Each Party also periodically notifies the national currency equivalent of its thresholds to the WTO

Scope of the WTO-GPA: Offsets

- Offsets are any conditions or undertakings that encourages:
 - Local development
 - Improves a party's balance-of-payments accounts
- Offsets are expressed in the form of measures such as:
 - The use of domestic content
 - The licensing of technology, investment
 - Counter-trade measures and similar action or requirement
- With regards to covered procurement, a GPA Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset
- However, special exemption provisions are offered to developing countries and LDCs (covered later in the module)

Procurement Processes

- The Agreement contains a number of detailed procedural obligations which procuring entities have to fulfil to ensure the effective application of its basic principles
- The procurement process can be broadly categorised into three phases:

Pre-Tendering (Article IX)

- Prior to the actual tendering process, Parties are required to publish an invitation to participate
- In the form of a tender notice in a publicly accessible publication
- It is to inform all interested suppliers about the procurement opportunity and the relevant aspects of the procurement in question

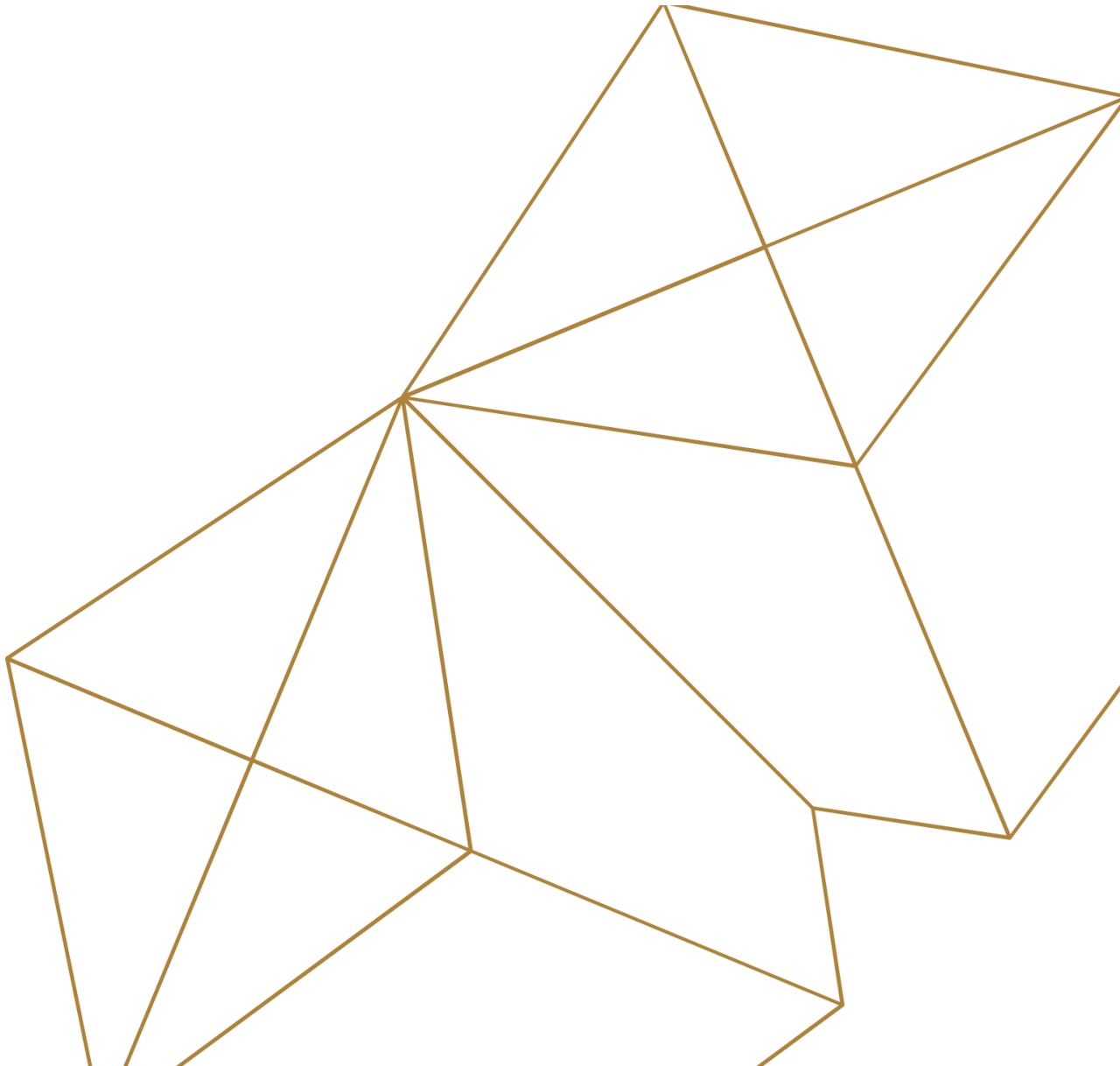
Tendering (Article VII)

- The Agreement allows use of:
 - Open tender
 - Selective tender
 - Limited tender
- Must be consistent with the provisions in Articles VII to XVI
- Entities may hold negotiations with suppliers making tenders
- Prescribes deadlines for the preparation, submission and receipt of tenders
- In the tender documentation the purchasing entity is required to necessary information:
 - ✓ economic and technical requirements
 - ✓ financial guarantees
 - ✓ criteria for awarding the contract
 - ✓ procedural information

Award of Contract (Article XIII)

- Tender will be considered based on:
 - ✓ conformity to the essential requirements of the tender notice
 - ✓ supplier which complies with the conditions for participation
- Entities have the obligation to award contracts to the tenderer who has been determined to be fully capable:
 - lowest tender
 - most advantageous in terms of the specific evaluation criteria

The WTO-GPA: Main Provisions



Main Provisions: Tendering Process

The Agreement allows the use of three tendering methods:

1. Open Tendering

- Under open tendering all interested suppliers may submit a tender ([Article VII:3\(a\)](#))

2. Selective Tendering

- Only those suppliers invited by the entity may submit a tender ([Articles VII:3\(b\)](#) and [X](#))
- Safeguards to ensure that the procedures and conditions for qualification of suppliers do not discriminate against suppliers of other Parties are set out in [Article VIII](#).
- To ensure optimum effective international competition, purchasing entities are required to invite tenders from the maximum number of foreign suppliers
- For transparency, once a year the entities using the selective tendering method are required to publish their lists of qualified suppliers, their period of validity and the conditions that need to be met for inclusion of interested suppliers in the lists

Main Provisions: Tendering Process

3. Limited Tendering

- The entity contacts the potential suppliers individually ([Article VII:3\(c\)](#))
- [Article XIV](#) mentions the cases for use:
 - In the absence of tenders in response to an open tender or selective tender
 - In cases of collusion, when the product or service can be supplied only by a particular supplier
 - For reasons of extreme and unforeseeable urgency

Main Provisions: Transparency

- Articles VI:1(a) and VI:2(a) provide for making general information on the procurement system
- Articles VI:2(b), VII, IX:7 and XVI:2 have provisions for information on procurement opportunities and processes
- Articles VI:2(c), XVI:5 and 6 provide guidelines on the post-award publication of statistical and other information
- IV:3(a) sets out related requirements regarding the general availability and interoperability of the information technology systems and software used
- Article IV:3(b) - provisions on the availability of mechanisms to ensure the integrity of requests for participation and tenders

Main Provisions: Procedural Rules I

- The WTO-GPA 2012 lays additional focus on transparency
- It contains provisions that take account of the use of electronic tools in public procurement which:
 - Makes it very clear that electronic tools can be used for various processes and decisions on a par with more traditional means of communication
 - Includes controls over the electronic means used to regulate electronic communications to prevent their use operating as barriers to trade
 - Requires entities to use generally available information technology systems and software
 - To ensure their interoperability with other generally available systems and software
 - Reduces the minimum timescales that apply to procurements under the WTO-GPA when electronic means are used
 - Recognizes the use of electronic auctions

Main Provisions: Procedural Rules II

- Article VIII.3 states expressly that suppliers may be excluded for 'significant or persistent' deficiencies in past performance, serious crimes or other offences
- Provides for shorter timescales for some phases of procurement procedures in certain types of procurement
- New provisions to control the making of changes to a concluded contract in a manner that undermines the application of the Agreement
- Article X gives explicit recognition, for the first time, to the possibility of including environmental considerations in government procurement

Main Provisions: Transparency

- Article X:7(e) and Article XIV - information on the publication of information as to how electronic auctions are to be conducted
 - If used, obligation to provide
 - Automatic evaluation method
 - Results of any initial evaluation
 - Other relevant information relating to the conduct of the auction
- Articles IX:7(b) and 9(b), X:7(d), XIV, XVI:2 list the provisions for the maintenance of data to ensure the traceability of the conduct of covered procurement by electronic means
- Articles IX:5 and Article VII: 2 have enhanced transparency rules for selecting firms to tender in selective tendering procedures

Main Provisions: Dispute Settlement

The WTO-GPA provides two independent mechanisms for settling procurement-related disputes

1. Domestic Review Mechanism:

- These permit suppliers to challenge breaches of the GPA and/or the relevant national legislation
- The review body must implement remedial measures and/or to insure compensation for the loss or damages suffered by a supplier
- Rapid interim measures must also be available to preserve a supplier's opportunity to participate in relevant procurements
- These systems should work timely, effectively, independently, transparently and in a non-discriminatory manner

Main Provisions – Dispute Settlement

2. WTO Dispute Settlement Mechanism

- Article XX of the GPA 2012 provides that the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes also applies to disputes under the WTO-GPA
- Any WTO-GPA party may initiate proceedings against another party in circumstances where it believes the other party to be in violation of its obligations under the Agreement
- Article XXII of the WTO-GPA disallows cross-retaliation:
 - Suspension of concessions or other obligations under the GPA as a result of disputes arising under the other WTO Agreements
 - Suspension of concessions or other obligations under any other WTO Agreement because of any dispute arising under the GPA

Examples of Government Procurement Related Disputes

- Three disputes between parties under the current GPA have been brought to the WTO
 - [DS73](#): Japan — Procurement of a Navigation Satellite
 - [DS88](#) — [DS95](#): United States — Measures Affecting Government Procurement (Massachusetts State Law prohibiting contracts with firms doing business with or in Myanmar)
 - [DS163](#): Korea — Measures affecting Government Procurement (procurement practices of the Korean Airport Construction Authority)

The cases can be accessed via the hyperlink above.

Small and Medium Enterprises

- SMEs are often viewed as the 'engine' of an economy
- SME support can be through :
 1. Providing them procurement preferences:
 - Set asides - Reserve some procurements for them
 - Allow preferential treatment, typically by treating their bid price as lower than it is
 2. Remove barriers to entry for SMEs:
 - Address systemic barriers:
 - Train SMEs on the procurement rules
 - Address procurement-specific barriers
 - Ensure that procurements are not too big for SMEs ("division into lots" [new EU Procurement Directive], "unbundling" [U.S.]

Provision for Developing Countries

- The WTO-GPA Article V recognizes the development, financial and trade needs of developing countries and LDCs
- Article V of the WTO-GPA also contains provisions on:
 - Technical assistance ([Article V:8-11](#))
 - Establishment of information centers giving information on procurement practices and procedures in developed countries ([Article V:11](#))
 - Special treatment for least-developed countries ([Article V:12](#) and [13](#))
 - Review of the application of article V ([Article V:14](#) and [15](#))

Special and Differential Treatment

- An acceding developing country can negotiate special and differential treatment in the form of:
 - A price preference program
 - An offset
 - The phased-in addition of specific entities and sectors
 - A threshold that is higher than [the countries'] permanent threshold
- Parties may also agree to the delayed application of any specific obligation contained in the Agreement, other than the non-discrimination provisions,
 - for a period of five years after accession to the Agreement for LDCs
 - of a maximum of three years for any other developing country
- All such transitional measures can be extended by decision of the Committee
- New measures can be authorized in special and unforeseen circumstances

Special and Differential Treatment

- Conditions for special and differential treatment:
 - The measures need to be negotiated by the individual developing country during the accession process
 - There is no standard set of measures that automatically applies but are based on development needs of a country
 - They are designed as transitional measures, i.e. they are intended to be phased out over time and not kept for an indefinite period of time
 - They are subject to subject to reciprocity considerations
- The special and differential approach is thus different from the conventional WTO SDT approach

Committee on Government Procurement

- The Committee on Government Procurement (CGP) oversees the implementation of the WTO-GPA
- It comprises representatives from each WTO members that is party to the Agreement
- Other WTO members, observer governments and intergovernmental organizations may be able to follow GCP proceedings in an observer capacity
 - Observer governments and intergovernmental organizations may submit a written request to participate in the CGP as an observer
- The main role of the CGP is to give Parties the opportunity to discuss matters relating to the operation of the Agreement and the furtherance of its objectives
- CGP discusses accessions of new Parties to the Agreement
- Each year, the CGP informs the General Council of its activities and of developments relating to the implementation and operation of the Agreement

Accession to the WTO-GPA

- Article VIII sets the conditions to participate in the WTO-GPA

Initiation

- The acceding Member submits a written application for accession to the WTO Director-General, who will circulate it to the Committee on Government Procurement (CGP)
- The acceding Member participates in CGP meetings
- The acceding Member can request technical assistance and capacity-building activities from GPA Parties or the WTO Secretariat

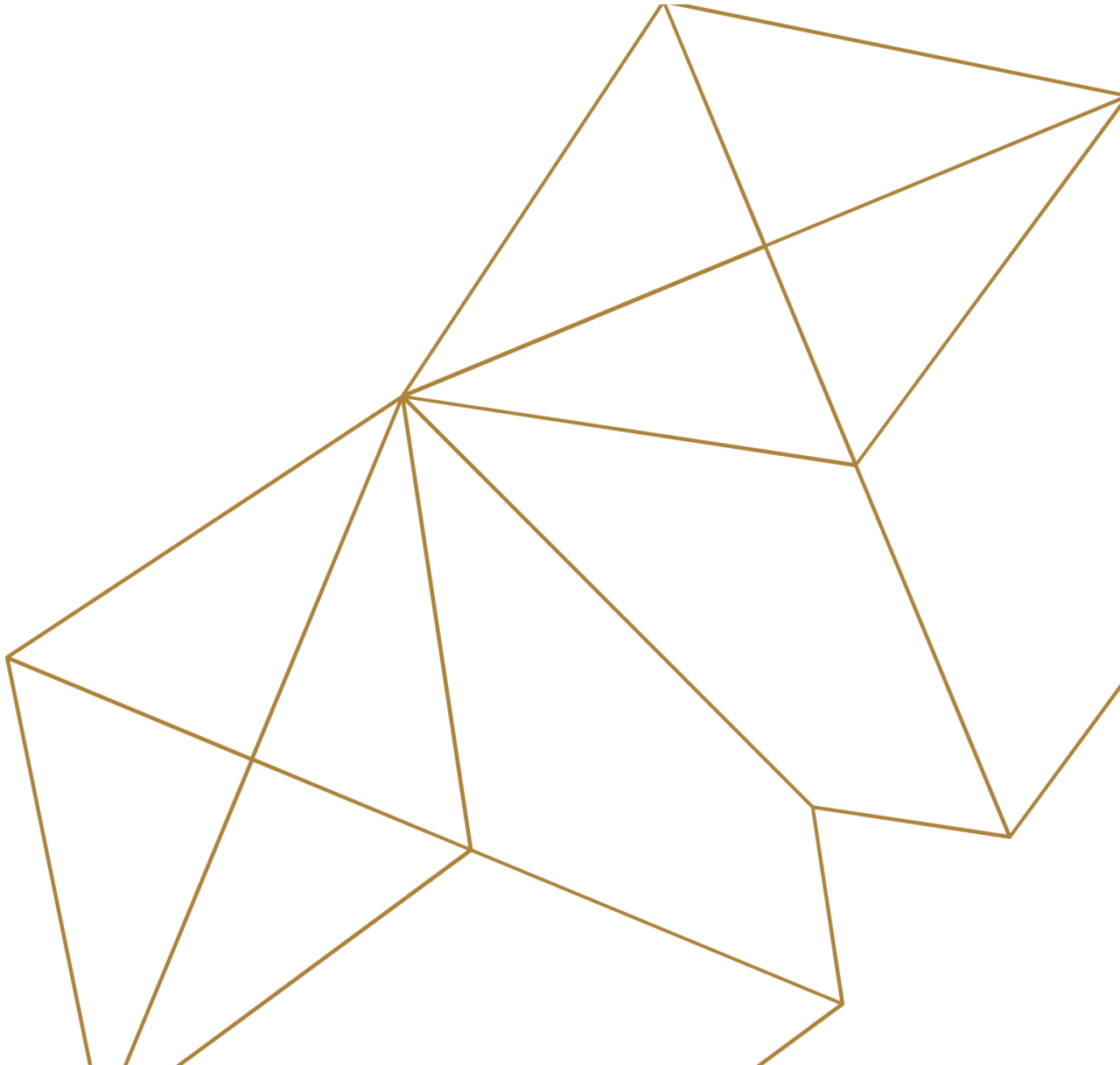
Negotiations

- The acceding Member tables an initial market access offer specifying the entities, goods and services. In the case of developing country Members, the initial offer can also include proposed transitional measures
- GPA Parties submit one or more rounds of questions and request improvements
- The acceding Member submits information regarding its domestic legislation (replies to the CGP's Checklist of Issues for Provision of Information Relating to Accession to the Revised Agreement on Government Procurement (GPA/132)), together with a copy of the relevant legislation
- Post review, GPA Parties may submit one or more rounds of questions

Conclusion and Entry into Force

- The GPA Parties and the acceding Member reach an informal agreement on a final market access offer
- If no further steps are needed to align the domestic legislation with GPA requirements, the CGP adopts a decision agreeing on the terms of accession and invites the acceding Member to accede to the GPA
- The acceding Member deposits its instrument of accession to the WTO Director-General within the set deadline
- The GPA enters into force for the acceding Member 30 days after it has deposited the instrument of accession

Government Procurement Provisions in FTAs



Growing Government Procurement Provisions in FTAs (1)

- Increasing importance of public procurement
 - High value of government procurement as proportion of GDP
 - Low tariffs but growing protectionism
- Steady increase in the total number of newly introduced discriminatory instruments over the years
 - Presence of home bias in public procurement
 - Buy-local preferences in various countries
- Huge potential of procurement liberalization
 - Not all countries have opened up their procurement market
 - The WTO-GPA is a plurilateral agreement (not a single undertaking)
 - FTAs enables partner country to follow a bilateral tailored approach

Growing Government Procurement Provisions in FTAs (2)

- Several FTAs include commitments to open the access to procurement contracts on a bilateral or regional basis
- These explicitly prohibit procurement practices that discriminate against foreign producers
 - These types of agreements tend to prohibit price discrimination and a range of other policies such as local content requirements, which favor domestic firms
- FTAs are increasingly the main vehicle for extending procurement rules to countries not Party to the WTO-GPA

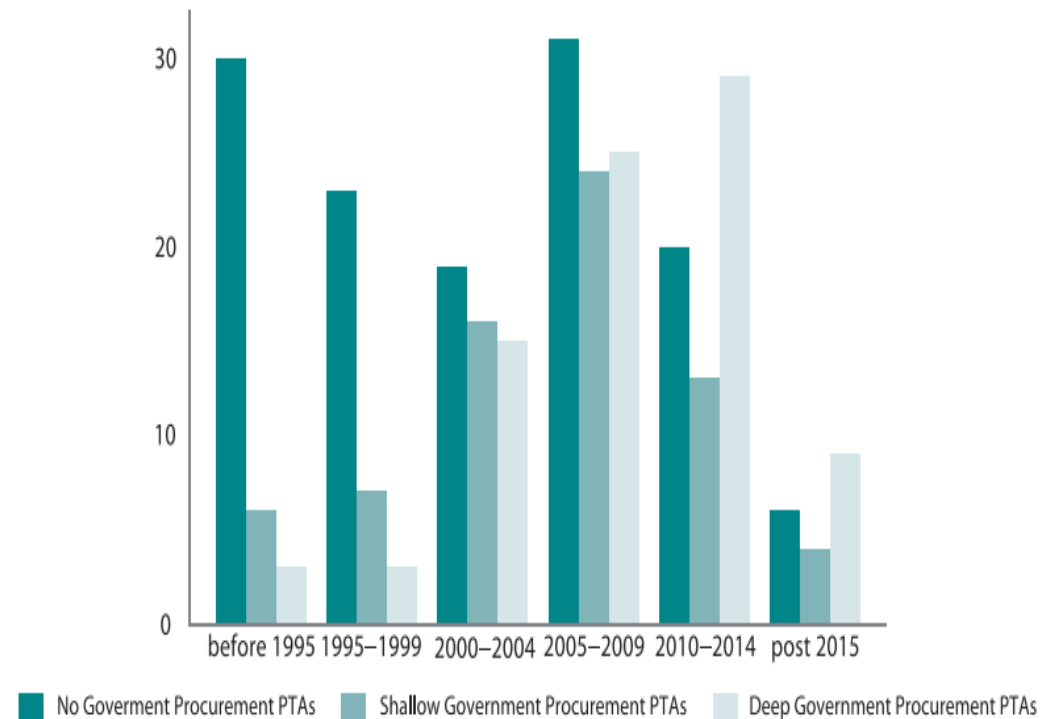
Scope and Coverage of Provisions in FTA

- Government procurement liberalization commitments under FTAs can be classified into three broad categories:
 - No coverage – do not include any provision related to government procurement
 - Broad coverage – provisions on government procurement exist but are not detailed
 - Deep coverage – detailed provisions on government procurement are included
- FTAs vary greatly in their scope and coverage of procurement provisions. Broadly the provisions:
 - Reflect existing public procurement policies
 - Include best endeavor clauses (mostly seen by developing countries)
 - Include extensive procurement commitments (mostly seen by developed countries)

Proliferation of the WTO-GPA Style Provisions

- The most recent [2020 World Bank study](#) finds:
 - Before 1995: The majority of agreements concluded did not have many procurement provisions
 - The period from 1995 to 2004 witnessed a decline in the number of no-coverage agreements
 - During 2005-2009 and after 2010, the number of no coverage agreements saw a decline
 - The period of 2005-2009 saw the highest number of shallow procurement FTAs
 - In contrast, the number of Deep procurement agreements grew steadily until 2014, and reached a maximum of 29 agreements entering into effect during 2010-2014

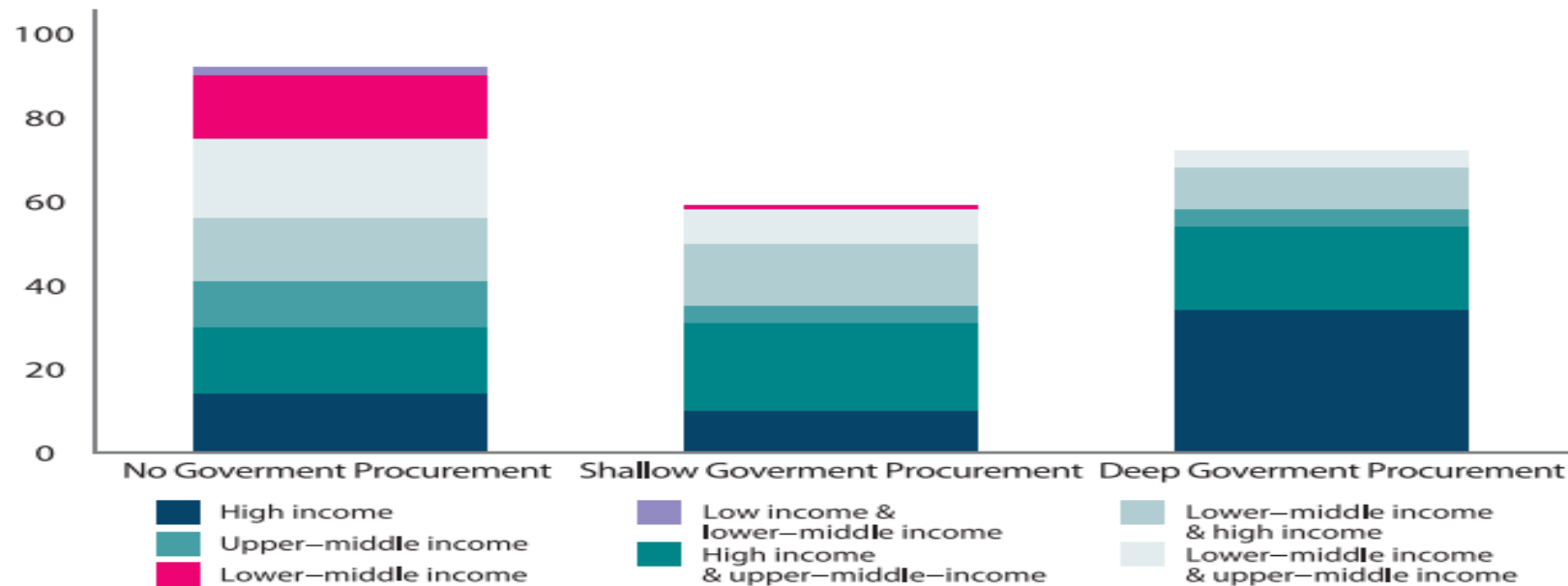
Evolution of PTA/FTA groups by government procurement coverage over time



Source: [World Bank Handbook on Deep Trade Agreements](#) based on data from Deep Trade Agreements Database

Proliferation of the WTO-GPA Style Provisions

Breakdown of PTA/FTA membership by procurement coverage and income



Source: [World Bank Handbook on Deep Trade Agreements](#) based on data from Deep Trade Agreements Database

Note: (1) Income based on World Bank income classification (WBIC) for 2017. (2) The figure includes only bilateral PTAs. (3) All EFTA and EU members are classified as high-income countries. (4) These agreements comprise 223 of the 283 WTO-notified agreements

A majority of the FTAs with public procurement provisions have been concluded among high-income country partners or involve at least one high-income country

Proliferation of WTO-GPA Style Provisions

- As of March 2017, of the 283 PTAs in force analyzed in the [World Bank study](#):
 - 129 agreements (about 45 percent) have no provisions on government procurement
 - 70 agreements (25 percent) have broad provisions
 - 84 agreements (30 percent) have deep provisions

Approach to Procurement Liberalization through FTAs

- The approach used to schedule government procurement commitments in such FTAs most often closely follow the structure of the WTO-GPA market access schedules
- Regional trade agreements (RTAs) may contain deeper commitments than the WTO-GPA in particular respects (e.g. lower thresholds for central government entities, or some additional services that are included in the coverage)
- However, they often lack coverage in other respects (e.g. with regard to sub-central government entity procurement)

Benchmarking FTA Provisions with the WTO-GPA

- Overview

- Are provisions covering government procurement explicitly mentioned in the FTA?
- Is the coverage detailed in the FTA?
- Is this an agreement between GPA signatories?
- Are procurement provisions enforceable i.e. is there a dispute settlement chapter?

- Coverage

- What are the number of entities covered by the agreement?
- Does the agreement cover central and subcentral governments and/or utilities?
- Does the agreement cover goods and/or services?
- Which and how many aggregate goods and services sectors are covered by the agreement?
- What are the threshold values for each Annex, goods, and services?
- Are threshold values adjusted for inflation?

Benchmarking FTA Provisions with the WTO-GPA

- Non-discrimination
 - Does the FTA contain explicit provisions on:
 - National Treatment
 - Prohibition of Offsets
 - Most-favored-nation treatment of third parties
 - Future negotiation of third parties
 - Review of commitments to expand coverage (more entities, more goods and services, lower thresholds)
 - Review of commitments to progressively reduce/eliminate discriminatory measures
 - Do transitional measures explicitly allow
 - Price preferences
 - Offsets
 - Phased-in addition of specific entities or sectors
 - A threshold that is higher than the permanent threshold
 - Delayed implementation periods

Benchmarking FTA Provisions with the WTO-GPA

- Procedural disciplines
 - Does the agreement contain explicit provisions on
 - Conditions of participation
 - Qualification of suppliers
 - Technical specifications
 - Tender documentation
 - Time periods and deadlines
 - Negotiations
 - Limited tendering
 - Electronic auctions
 - Treatment of tenders and award of contracts
 - Transparency of procurement information
 - Integrity in procurement practices

Benchmarking FTA Provisions with the WTO-GPA

- Transparency (ex-ante, ex-post)
 - Does the agreement contain explicit provisions on collection and reporting of statistics?
 - Does the agreement contain explicit provisions requiring that information on the procurement system (laws and regulations) be published?
 - Are there explicit provisions on information provided to bidders (results and reasons for non-selection)?
 - Are there explicit provisions on information provided to third parties (disclosure of information)?

Benchmarking e-GP Provisions in FTAs with the WTO-GPA

- e-GP supports timely and automated audit trails that provide a record of who did what, when and why. The use of e-GP:
 - Reduces corruption
 - Improves compliance
 - Creates an institutional memory
- Improves supplier confidence in the integrity of the bidding process which increases supplier participation and competition, leading to lower prices and improved purchasing power
- Procurement decisions and information can be made available to both suppliers and stakeholders in a timely manner
- Improvement in the quality of public procurement reporting, monitoring and management
- Improvement in compliance with the Standard Procurement Procedures

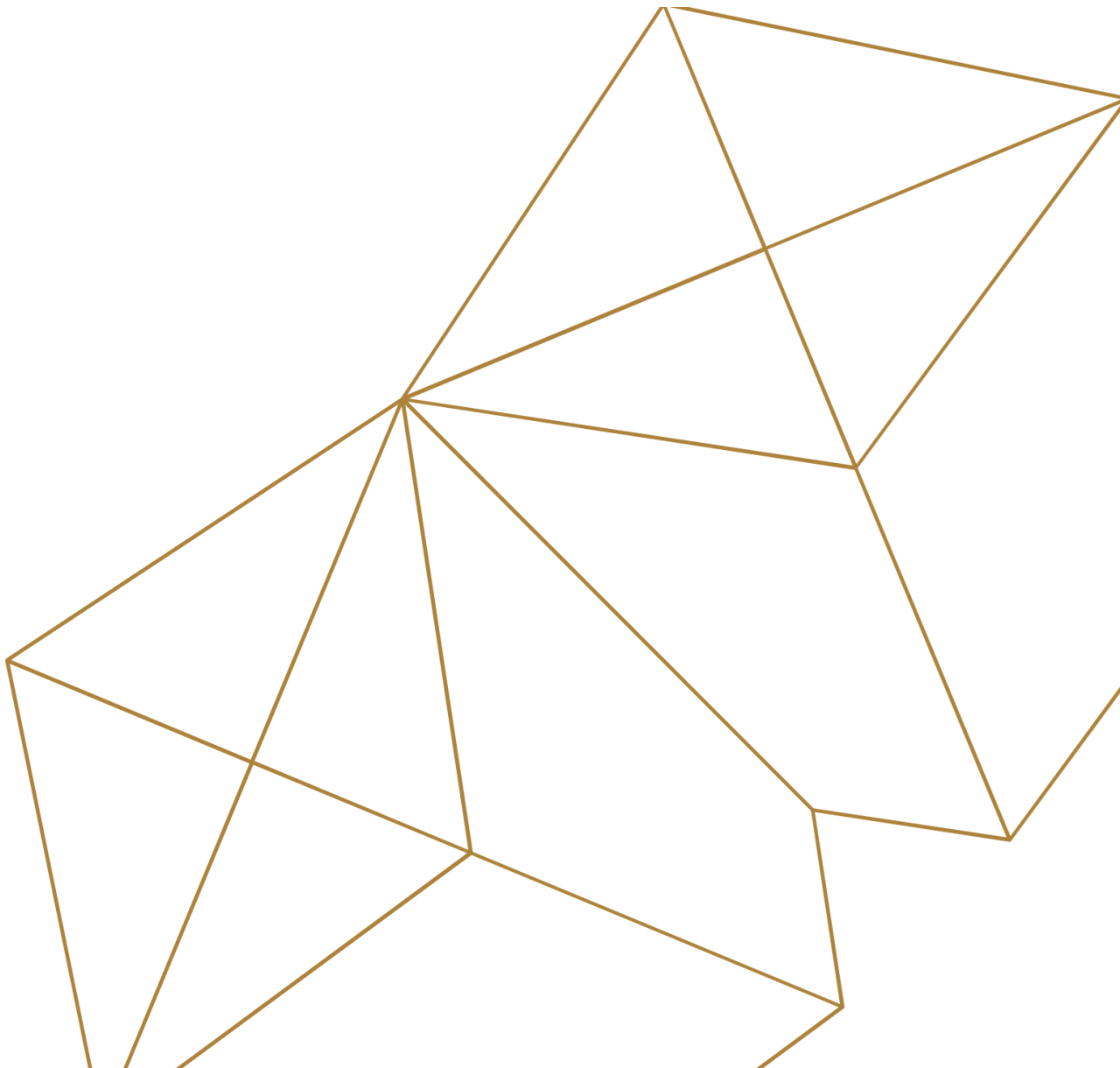
Benchmarking Dispute Settlement Provisions in FTAs with the WTO-GPA

- Dispute settlement
 - Does the agreement provide for domestic review procedures?
 - Are the domestic review procedures consistent with Article XVIII of the WTO-GPA?
 - Does the agreement contain explicit provisions on dispute settlement?
 - Is dispute settlement consistent with Article XX of the WTO GPA?

Benchmarking FTA Provisions with the WTO-GPA

- New issues
 - Does the FTA contain explicit provisions that facilitate:
 - Sustainable procurement
 - Participation of small and medium enterprises
 - Adoption of safety standards
 - Green procurement
 - Cooperation (as in Article 15.22 of the Trans-Pacific Partnership, TPP) in matters of public procurement

Preparing for Procurement Liberalisation through FTAs



Before Joining the FTA

- It is essential to assess the potential gains and losses from joining the FTA
- A thorough impact assessment before the FTA negotiations begin and during the negotiations should be undertaken to clarify the country position
- Liberalisation and procurement commitments are thus preceded by:
 - Cost-Benefit Analysis (CBA)
 - Stakeholder consultation

What is a Cost Benefit Analysis?

- Tool to estimate and compare the total benefits and costs of a particular policy proposal
- Provides policy makers with quantitative and qualitative information about the likely effects of a regulation
- Assesses the impact of proposals, which promotes comparability, assists in the assessment of relative priorities and encourages consistent decision making
- Provides an objective framework for weighing up different impacts and impacts that occur in different periods
- Calculates the value of the gains and losses. If the sum is positive, i.e., benefits exceed costs, then the proposal would increase efficiency
- In principle, the Cost Benefit Analysis measures the efficiency or resource allocation effects of a change

Steps in Preparing a Cost Benefit Analysis

Step	Action
1	Specify the set of options
2	Decide whose costs and benefits count
3	Identify the impacts and select measurement indicators
4	Predict the impacts over the life of the proposed regulation
5	Monetise (attach values to) impacts
6	Discount future costs and benefits to obtain present values
7	Compute the net present value of each option
8	Perform sensitivity analysis
9	Reach a conclusion

Consultations with Domestic Stakeholders

- Consultations with domestic stakeholders (small, medium and large businesses, charities and social enterprises, academics and procurement lawyers) will enable to assess:
 - Difficulties experienced in accessing partner's procurement market
 - Do tendering and procurement practices favour domestic bidders?
 - Information on contract fulfilment- jurisdiction over contracts
 - Legal/IPR requirements?
 - Data protection/localisation rules?
 - Other - Corruption, taxation trap, low profit margins?
 - Dispute settlement – is it fair and transparent?

Preparing for FTA Negotiations

- Data analysis can help in assessing potential gains and losses from liberalizing public procurement
- It can help in:
 - Assessing total public procurement market size in partner country
 - Collecting a full-set of public procurement barriers
 - Estimating the economic value of the collected public procurement barriers
- Main dimensions underpinning such an analysis are data availability and data quality

Using Data for Negotiations

- However, several public procurement-related data challenges exist:
 - Lack of reliable, detailed data and methodology
 - No internationally agreed methodology for standardising and collecting government procurement contract award data
 - Mismatch between the size of public procurement recorded in national accounts and contract award data
 - Information on de jure and de facto procurement barriers

Potential Data Sources for Market Size Estimation

- e-GPA can be used when undertaking public procurement liberalisation commitments under an FTA with an existing GPA party
- The integrated Government Procurement Market Access Information Resource ([e-GPA](#)) ensures transparency of government procurement under GPA 2012
- This portal provides an integrated point of access to the market access information together with related information that the GPA Parties are committed to provide
- It offers improved transparency and user-friendly accessibility to the relevant information
- It allows to:
 - Search the entire GPA 2012 coverage database
 - Browse and search the Parties' coverage commitments
 - Browse and search for each Party's notification on thresholds in national currencies
 - Access information on procurement opportunities, national legislation and more
 - Access information on changes in Parties' market access commitments
 - Insert a query related to coverage and create an output

Potential Data Sources to Prepare for FTA Negotiations

- When public procurement liberalization commitments are under an FTA with a non-GPA party then data for market size can be drawn from:
 - National Accounts
 - E-tendering portals on:
 - National/ Central
 - Sub-central
 - Municipalities
 - Councils
 - Utilities and SOEs, if possible
 - Coverage commitments with other trade partners
 - Information on how procurement opportunities are advertised
 - National legislations and policies

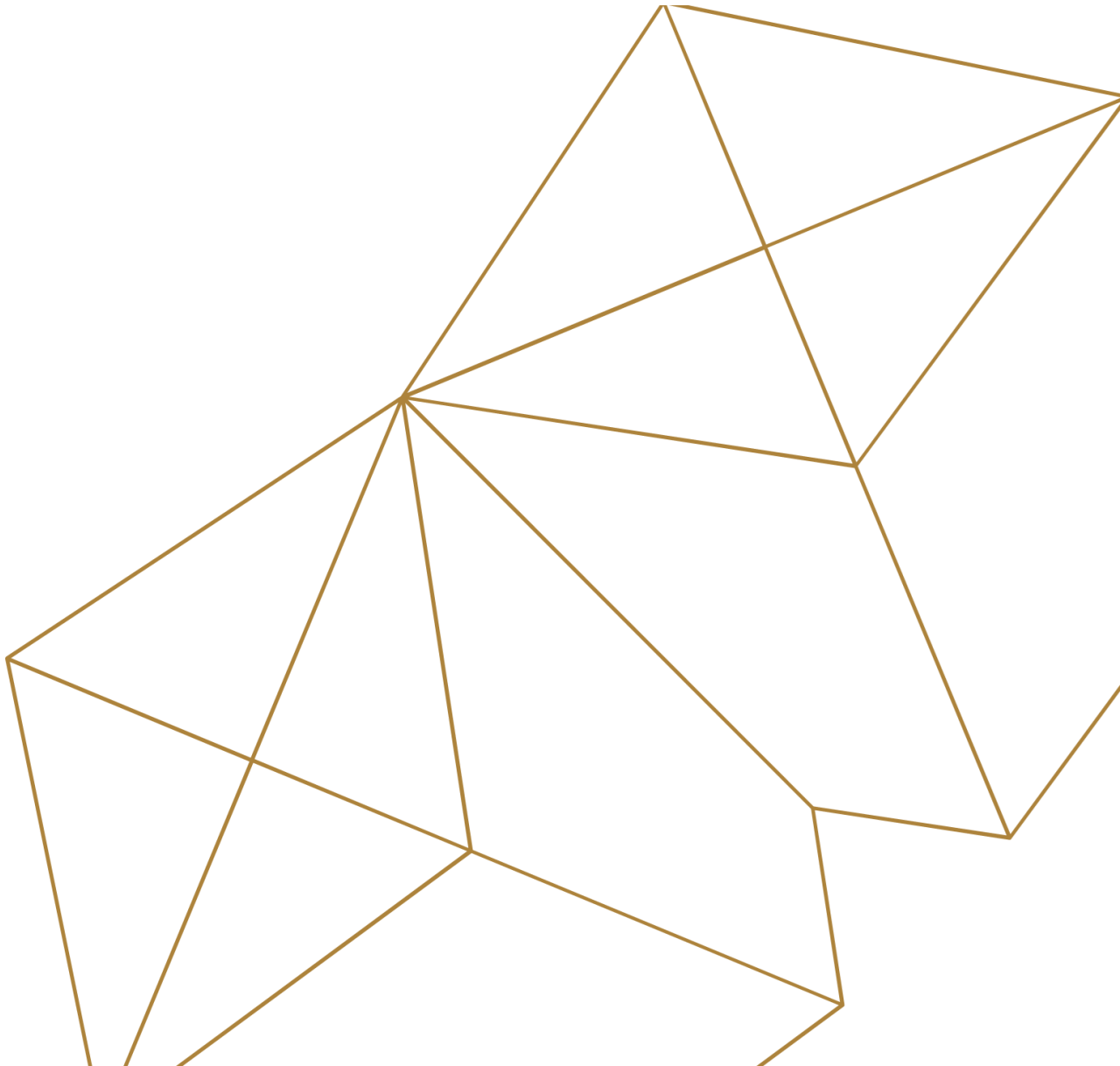
Challenges to Procurement Liberalisation

- Deep commitments for procurement liberalization is often conditioned by a country's capacity, development level and political willingness
- Capacity constraints include:
 - Lack of comprehensive legal frameworks
 - Limited effective monitoring and auditing procedures
 - Limited organizational support to ensure compliance with the regulations
 - Absence of or underdeveloped standard terms and conditions of contracts
 - Limited transparency and public availability of rules governing the public procurement process
 - Limited personnel capacity
- Public procurement is a business process within a political system. Thus, political willingness is key to liberalize public procurement market

Challenges to Procurement Liberalisation by Developing Countries

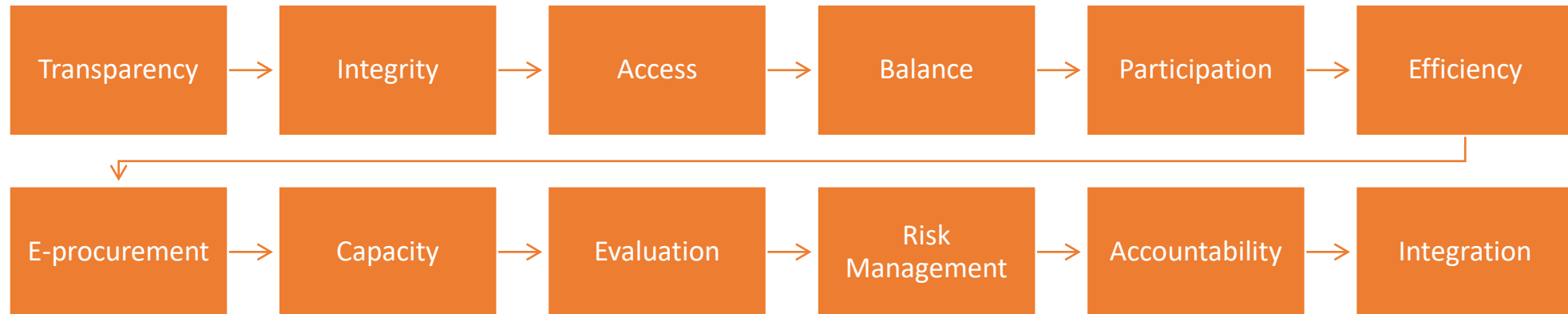


Best Practices Guide – Government Procurement



OECD Recommendations

- In 2015, the Council of the OECD adopted a Recommendation on Public Procurement that ensures the strategic and holistic use of public procurement
- The recommendations hinge upon 12 principles:



OECD Recommendations

- It is a reference for modernizing procurement systems and can be applied across all levels of government and state-owned enterprises
- These recommendation aims to foster a well-governed public procurement which contributes directly to:
 - greater public trust
 - enhanced well-being of citizens
 - more prosperous and inclusive societies
- It addresses the entire procurement cycle while integrating public procurement with other elements of strategic governance such as budgeting, financial management and additional forms of services delivery

Objectives

- The principles of the OECD Recommendation on Public Procurement need to be implemented in complex environments, with a specific focus on:
 - The promotion of a culture of efficiency and integrity
 - The creation of skilled and mature organization and procurement workforce
 - The development of comprehensive project risk maps
 - The promotion of strategic oversight and coordinated governance models.

Navigating OECD's Core Principles

- **Transparency:**

- An adequate and timely degree of transparency has to be provided in the entire procurement cycle
- Transparency in the choice of the procurement method and on exceptions to competitive tendering is also key
- Key steps:
 - Adequate and timely degree of transparency
 - Free access for all stakeholders to public procurement information
 - Visibility of the flow of public funds

- **Integrity:**

- The volume and the regularity of transactions, close interaction between the public and private sectors and – at times - the complexity of the procedures, are the main reasons why public procurement is considered amongst the top "at-risk" activities for corruption in the public sector
- Key steps:
 - High standards of integrity for all stakeholders in the procurement cycle
 - Public sector integrity tools tailored to the specific risks of the procurement cycle
 - Integrity programmes for the procurement workforce
 - Requirements for internal controls, compliance measures and anti-corruption programmes for suppliers

Navigating OECD's Core Principles

- **Access:**

- Ensuring a level playing field for potential suppliers to gain access to government contracts remains a major hurdle
- Key steps:
 - Coherent and stable institutional, legal and regulatory frameworks
 - Clear and integrated tender documentation, standardized where possible and proportionate to the need
 - Competitive tendering and limit the use of exceptions and single source procurement

- **Balance:**

- The "balance" principle highlights that a well-designed system can contribute to achieving pressing policy goals which can be balanced against the primary objective of public procurement, namely to achieve value for money
- Key steps:
 - Evaluation of the use of public procurement as one method of pursuing secondary policy objectives
 - Integration of secondary policy objectives in public procurement systems based on an appropriate strategy
 - Impact assessment methodology for measuring the effectiveness of procurement in achieving secondary policy objectives

Navigating OECD's Core Principles

- **Participation:**

- Participation of all stakeholders is crucial for the success of the procurement process. Participation is critical for enhancing efficiency, transparency, integrity and accountability
- Key steps:
 - Standard processes when formulating changes to the public procurement system
 - Transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets
 - Opportunities for direct involvement of relevant external stakeholders

- **Efficiency:**

- Governments are expected to carry out procurement efficiently to ensure value for money and high quality of service delivery
- Key steps:
 - Streamlined public procurement system and institutional frameworks
 - Sound technical processes to satisfy customer needs efficiently
 - Tools to improve procurement procedures, reduce duplication and achieve greater value for money

Navigating OECD's Core Principles

- **E-Procurement:**

- E-procurement is defined as the use of information and communications technologies in public procurement. It can support the development of performance assessments using procurement information
- Key steps:
 - Use of recent digital technology developments that allow integrated e-procurement solutions covering the public procurement cycle
 - State-of-the-art e-procurement tools that are modular, flexible, scalable and secure

- **Capacity:**

- Effective implementation of procurement reforms and specific procurement practices requires a properly trained public procurement workforce. The public procurement workforce is one of the key pillars of a procurement system
- Key steps:
 - High professional standards for knowledge, practical implementation and integrity
 - Attractive, competitive and merit-based career options for procurement officials
 - Collaborative approaches with knowledge centres

Navigating OECD's Core Principles

- **Evaluation:**

- Evaluation is about seeking to answer the fundamental question of whether the procurement system and operations ultimately deliver in accordance to the main objectives set
- Key steps:
 - Periodic and consistent assessment of the results of the procurement process
 - Indicators to measure performance, effectiveness and savings of the public procurement system

- **Risk Management:**

- Risk management encompasses risk assessment (including an assessment of the nature, causes and potential consequences of risks) and risk mitigation
- Key steps:
 - Risk assessment tools to identify and address threats to the proper function of the public procurement system
 - Promotion of risk management strategies

Navigating OECD's Core Principles

- **Accountability:**

- Oversight and control mechanisms help to support accountability throughout the public procurement process. These mechanisms encompass not only control and audit (regulatory compliance, quality performance, cost reduction, sustainability), but also review systems of procurement decisions.
- Key Steps:
 - Clear lines for oversight of the public procurement cycle
 - System of effective and enforceable sanctions
 - Handling of complaints in a fair, timely and transparent way
 - Coordinated, sufficiently resourced and integrated internal controls, external controls and audits

Navigating OECD's Core Principles

- **Integration:**

- The integration of public procurement into overall public finance management foster transparency and accountability as well as improve value for money
- Key steps:
 - Alignment of procurement processes and information to inform overall public finance management
 - Multi-year budgeting and financing to optimize the design and the planning of the public procurement cycle
 - Harmonized public procurement principles across the spectrum of public services delivery, as appropriate, including public works, public-private partnerships and concession

Thank you for the attention!

