



INTERNATIONAL TRADE UPDATE

Landmark WTO Government Procurement Agreement Opens New Markets for Contractors and Suppliers

On December 15, 2011, negotiators at the World Trade Organization (WTO) Ministerial Conference session in Geneva concluded a landmark trade agreement that will expand international competition in the government procurement sector. This new accord comes in the form of revisions to the WTO Government Procurement Agreement (GPA), which safeguards the access of foreign suppliers to government contracts in 42 countries worldwide.

Coming after more than a decade of negotiations between the United States, the European Union, and other developed economies, the revised agreement will replace the original WTO GPA signed in 1994. It also contains some of the most significant changes in WTO rules on government contracting since the GATT Tokyo Round in 1979. In addition to extending non-discriminatory treatment for foreign suppliers competing for government contracts, the revised GPA also:

- Expands the number of central government agencies subject to GPA disciplines, including an additional 150 central government agencies within the 27 EU Member States, an additional 12 U.S. federal agencies, and agencies in Aruba, Hong Kong, Israel, Liechtenstein, South Korea, and Switzerland;
- Enhances participation by state, regional, and local government agencies, including liberalizing access to the Canadian provincial governments for the first time in the GPA's history — a development that builds upon a bilateral accord with the United States reached in February 2010; and
- Enacts a clearer, more comprehensive legal regime that covers electronic procurement, provides for greater government transparency, and creates the conditions that will allow more countries to join the GPA in the future. China, for example, is currently negotiating its accession to the GPA and Russia has signaled its interest in joining the accord.

The revised GPA covers government procurement for goods, services, and construction projects. GPA safeguards protect foreign suppliers of goods and services generally on contracts over U.S. \$200,000 tendered by the agencies listed in the GPA country schedules. Construction contractors, by comparison, are protected with respect to government tenders over U.S. \$7.7 million. Among other things, the GPA requires signatories to implement laws that give foreign suppliers equal footing in domestic procurement disputes.

In addition to agreeing to revise the GPA, the United States and the European Union have also decided to establish a Bilateral Procurement Forum. This new body will take a lead role in liberalizing government procurement practices on

a Trans-Atlantic basis. For the European Union, the revised GPA is an important part of a larger ongoing effort to modernize public tendering procedures throughout the customs union.

The parties plan to address the remaining formalities as follows:

- Between now and March 2012, negotiators will review and correct the GPA country schedules;
- The revised GPA then will be submitted to the parties in March in the form of a Protocol for signature;
- Once the Protocol is signed, it will be submitted for ratification under each GPA party's domestic approval procedures; and
- The revised GPA will enter into force after two thirds of the parties notify the WTO that they have ratified the Protocol. For that purpose, the EU and its Member States will be counted as one party.

The parties will probably set a target date when they sign the Protocol in March, but based on past WTO experience, the revised GPA is likely to enter into force in early 2013.

During the next several months, suppliers wishing to bid on foreign government contracts should evaluate the impact of the revised GPA on the conditions of competition in the markets covered by the Agreement, including the recourse to bid challenge procedures.

Sidley Austin has a team of lawyers experienced in government procurement and multilateral trade and investment agreements. We would be pleased to assist your organization in pursuing the kinds of international contracting opportunities envisioned under the revised GPA.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

The International Trade and Arbitration Practice of Sidley Austin LLP

From our offices throughout the United States, Europe and Asia, the International Trade and Arbitration group assists companies, governments and trade associations worldwide on transactional, regulatory, dispute settlement and policy matters. Success in the global marketplace requires an understanding of the rules that today govern every aspect of the international economy. Our team of seasoned negotiators, dealmakers, litigators and policy advisers draws on extensive private sector and government experience to help companies and governments shape these rules and resolve disputes arising under them. Combined with our broad-based transactional practice, our practice is a critical component to offering seamless global solutions to our clients.

The Government Contracts Practice of Sidley Austin LLP

Sidley's government contracts lawyers represent clients in all areas of U.S. federal, state and local government contracts, including proposal preparation, cost and pricing structures, contract negotiation, compliance with applicable regulatory structures, post-performance issues and related litigation and export controls. We help clients understand the laws governing agency procurement of products and services and, when necessary, we conduct internal investigations and defend against enforcement and qui tam actions or file claims, appeals or protests related to government decisions or activity. We also have significant experience in international defense contracting, including foreign military financing, foreign military sales and export controls.

To receive future copies of this and other Sidley updates via email, please sign up at www.sidley.com/subscribe

BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.

www.sidley.com

Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, London, Hong Kong, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin, Sidley or the firm.

SIDLEY AUSTIN LLP
SIDLEY