Openness of public procurement markets in key third countries
STUDY

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ABSTRACT

This report assesses the openness of public procurement markets in key third countries of interest to the EU. It provides a comparative overview of the regulatory and market access characteristics of the US, Brazil, India, China, Japan’s procurement markets, with reference to the procurement regulation and enforcement within the EU. The report assesses the available data on both the de jure and de facto levels of openness of these markets to put forward some conclusions of value to policy making both within the EU and in its trading relations with key third countries.

This assessment concludes that the lack of comprehensive comparable data on procurement contract awards, particularly at the sub-central level, is not a trivial challenge for policy makers. Nevertheless, it is evident that the liberalisation of procurement markets continues to take place on a strictly reciprocal basis – linked to the offensive interests of governments. Given the slow-down in negotiating mega-regional agreements with comprehensive procurement chapters, the WTO Government Procurement Agreement remains the most efficient and transparent forum for undertaking further liberalisation in public procurement.
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1 An Overview of Public Procurement Markets

1.1 Outline

This chapter introduces the topic of public procurement, its growing value at a domestic and international level, along with its important dual role in governance and trade. In addressing the governance issues attached to public procurement, the chapter focuses on non-discrimination, transparency and accountability, while the trade dimensions will address the size of procurement markets, the role of competition and value for money in ensuring efficient spending of the public account.

1.2 The Growing Significance of Government Procurement

Government procurement is important for both governance and business. Across the world, public procurement is a major component of a domestic economy, as governments are routinely expected to procure the goods and services necessary for providing citizens services as diverse as education, security, public health, utilities, transportation and public infrastructure. This spending has increased in the context of the recent economic crisis, as governments have sought to stimulate domestic economies through public spending; as well as the growth in emerging economies, such as China and India, which while not as great as expected, still results in greater infrastructure demand. In the EU, the public sector is the largest consumer in the internal market. The total value of high value tenders contracted by the 27 EU Member States and published in the EU-wide OJEU in 2014 was EUR 420 billion – which amounts to around 13 per cent of the EU’s GDP. And of this, nearly three quarters was spent on purchases of public administration services, education, health, and social work services.

Government procurement has also grown more complex, involving new elements, such as the promotion of small and medium-sized enterprises, the use of technological resources, family farming, elements of environmental sustainability, public-private partnership and procurement in disaster situations. In targeting contracts towards particular sectors or objectives in society, governments push forward policies that can redistribute wealth, ensure domestic production or promote economic security. As such, a government, through its purchasing power, has a unique capacity to influence the design of public development policies, promoting the production and marketing of goods and services in social, environmental and economic terms. These so-called ‘horizontal’ policy objectives have promoted new forms of acquisitions, which have been reflected in both legislative reforms and in international and regional initiatives on these subjects.

Alongside these varying policy initiatives, there is also a broad consensus that domestic public procurement laws and policies should aim to protect and promote competition as a means to achieve value for money and to ensure the legitimacy of purchasing decisions. Competition is a good governance tool, preventing discrimination, ad hoc favouritism and other corruption practices that undermine the efficiency as well as the legitimacy of a government procurement system. Public procurement accounts for a substantial portion of the taxpayers’ money, procurement officers need to conduct it efficiently and with high standards of integrity to ensure high quality of service delivery and safeguard the public interest. Ensuring optimal use of scarce resources through competitive and transparent rules and procedures.

effects the perceptions of civil society, foreign investors and governments. Public procurement systems are therefore both an important tool for trade and good governance. Allocating government expenditures efficiently and strategically generates fiscal space, which can turn into financial savings or a more beneficial reallocation of resources. Competition among bidders allows public purchaser the possibility to reap the benefits of competitive pressure, such as greater choice, greater innovation through exposure to more international businesses, and lower prices.

There is, therefore, a link between competitive government procurement markets and greater international trade. In practice, however, public procurement markets are largely closed to free international competition. Governments still protect public procurement markets in an explicit – de jure - and also covert – de facto - manner. Moreover, public procurement policy is oftentimes viewed as a legitimate tool to stimulate domestic employment and production, as well as other domestic policy objectives. De jure preferences in domestic government procurement laws and policies, such as ‘buy national’ provisions may alter international companies’ outsourcing choices and significantly affect production decisions along global value chains. This is supported by at least one study (See Table 1) which further indicated that these barriers to procurement markets have increased since 2009. Additionally, unintentional de facto obstacles to market entry exist such as linguistic, cultural, legal, and administrative barriers. Taken together, the on-going de facto and de jure preferences favouring domestic producers - or so-called ‘home bias’ - raise economic efficiency considerations. They can distort trade flows and international specialisation, particularly in sectors characterised by a large share of public consumption in total demand and in sectors affected by monopolistic competition.

Table 1: Newly introduced public procurement measures by level of restrictiveness at global level, number of measures, 2009-14

![Bar chart showing the number of newly introduced public procurement measures by level of restrictiveness from 2009 to 2014.]

This report examines both types of barriers to entry into the procurement markets in five case study countries: the US, China, India, Japan and Brazil. Chapter Two presents an overview of the available data on the size and value of procurement markets open to international competition, with specific reference

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to the five case study countries. Chapter Three puts forward an overview of the regulatory environment for public procurement in the case study countries. Chapter Four assesses the EU’s current regulatory framework for public procurement. Chapter Five identifies the methodological challenges involved in assessing the levels of openness in these key procurement markets for the EU; Chapter Six concludes.
2 International procurement market analysis

Outline

This chapter focuses first on bringing together a synthesis of the available data and market analyses of the size, value and general trends of the international procurement market. It will then set out the potential size, value and trends of each of the case study countries’ and the EU procurement markets. This analysis will attempt to forecast the near future trends of these markets, absolutely and relative to each other. However, from the outset it must be noted that a major caveat for this assessment is the lack of available, comprehensive comparative data on procurement markets and contract awards from which to base firm conclusions or evidence based policy recommendations.

In 2013, governments across the globe spent 29% of total general government expenditure on public procurement. This is in comparison to a figure of 30% in 2009. It has been estimated that public procurement accounts for around one-fifth of global gross domestic product. Oftentimes, actual public procurement spending is also high because these national accounts do not include procurement spending of public utilities providers. World Bank estimates suggest that developing country governments spend an estimated USD 820 billion a year, or 50% of their budgets on procuring goods and services. In the EU, on the other hand, the total public procurement spending (including state-owned enterprises) accounted for EUR 2.4 trillion, corresponding to nearly 19% of EU GDP in 2011.

Although public procurement patterns such as the size of procurement markets, the composition of procurement spending and actual level of government procurement, can be derived from traditional national accounts statistics, it is widely agreed that these figures fall short of capturing the international dimension of public procurement. Given that data on government procurement is scarce, and that the best available data is that of the OECD’s, it is instructive to look at what data on the procurement of OECD countries has to say. Table 1 displays OECD data from cross-national studies, which suggests that Government Procurement typically constitutes in the range of 10-15 per cent of total economic activity, and in many developing countries it is more. Figures for procurement as a fraction of government expenditure fluctuate for OECD countries in particular, varying from less than 20% in countries like Greece to in excess of 35% in countries such as Korea and Japan. In 2013, OECD countries on average spent 12.1% of their GDP on public procurement. Like before, this figure varies, with Switzerland spending less than 10% of GDP in comparison to France, Japan, Netherlands and Sweden spending more than 15%.

Another way of looking at public procurement is by level of government. Table 2 sets out the available data for the state and local level, in 2013. It indicates that public procurement accounted for (on average) 63% of total procurement spending in OECD countries, in comparison to 55% in 2011. Sub-central governments needs to be included in procurement estimates because government procurement spending at state and local levels accounts for 55% of total general government procurement spending on average across OECD countries. This inclusion is particularly the case in federal states such as the US, Canada, Germany and Switzerland, because sub central government spends on since their state or local level of government spends on average 76% of total government procurement. Unitary states

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8 PwC. 2014. SMEs’ access to public procurement markets and aggregation of demand in the EU. Study commissioned by the European Commission DG Internal market and Services.
11 Ibid.
12 See OECD Ftn 1.
13 See: EC DG Internal Market Government Procurement Indicators. 2008.
procurement spending at sub-central levels of government account for, on average, 48% of procurement spending. In general, federal states report a higher level of spending by sub-central governments as compared to unitary governments - Canada (87%) and Belgium (84%) in comparison to Finland (70%) and Japan (68%). In summary, while total government spending on public procurement has on average decreased across OECD countries, with time, the fraction of such spending by state and local governments has significantly increased\textsuperscript{14}.

### Table 2-1

<table>
<thead>
<tr>
<th>Country</th>
<th>Central government</th>
<th>Sub-central government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Spain</td>
<td>10%</td>
<td>90%</td>
</tr>
<tr>
<td>Belgium</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>Italy</td>
<td>30%</td>
<td>70%</td>
</tr>
<tr>
<td>Germany</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Finland</td>
<td>60%</td>
<td>40%</td>
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<tr>
<td>Austria</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>Sweden</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Denmark</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>Mexico</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>United States</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>France</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>Poland</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>50%</td>
<td>50%</td>
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<tr>
<td>Slovak Republic</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Korea</td>
<td>30%</td>
<td>70%</td>
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<tr>
<td>Norway</td>
<td>20%</td>
<td>80%</td>
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<tr>
<td>Hungary</td>
<td>10%</td>
<td>90%</td>
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<tr>
<td>Iceland</td>
<td>10%</td>
<td>90%</td>
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<tr>
<td>United Kingdom</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>Norway</td>
<td>30%</td>
<td>70%</td>
</tr>
<tr>
<td>Korea</td>
<td>40%</td>
<td>60%</td>
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<tr>
<td>Slovak Republic</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Turkey</td>
<td>60%</td>
<td>40%</td>
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<tr>
<td>Ireland</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>Portugal</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Greece</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>New Zealand</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Israel</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

\textsuperscript{14} Government at a Glance (2015)
2.1 The Case Studies

Having discussed the general trends across countries, we look in greater detail at public procurement in five case studies – the United States, Japan, India, Brazil and China, beginning with a snapshot of each of the case study’s procurement markets.

2.1.1 United States of America

The United States federal government is the largest procurement purchaser in the world. In the fiscal year of 2002, it made purchases worth USD 321 billion, consisting of 33.2 million procurement actions. Additionally, according to the Procurement Executives Council, the government made a purchase card payment every 0.31 seconds, a purchase worth less than USD 25 000 (standard form 281) every 0.77 seconds and a purchase in excess of USD 25 000 (standard form 279) every 13.91 seconds15.

Between 2006 and 2008, general government as well as state-owned procurement as a percentage of GDP remained unchanged at 11 %16. By 2013, it had dropped down to 10 %. In 2011, general government procurement as a percentage of total general government expenditure stood at 27.5 %, dropping to 26 % in 2013 and always remaining below the OECD average. In the same year, sub-central governments were responsible for 64 % of the United States government’s general procurement (excluding social security funds). This figure remained unchanged in 201317. By 2015 fiscal year, the top five departments in terms of dollars allocated were the Department of Defence, Department of Energy, Health and Human Services, General Services Administration and NASA. Based on the Top 100 Contractors Report for the fiscal year 2015, contracts worth USD 45 billion were awarded to the top one hundred companies. The five top companies on this list were comprised of IT, defence and construction organisations18.

2.1.2 Japan

Like USA data, Japan’s public procurement data is for the most part based on studies conducted by the OECD. Between 2006 and 2008, general government as well as state-owned procurement as a percentage of GDP remained unchanged at 13 %19. In 2013, it rose to 16.2 %20. In 2011, general government procurement as a percentage of total general government expenditure stood at 36.7 %, rising to 38.3 % in 2013, always remaining above the OECD average. In the same year, sub-central governments were responsible for 69 % of Japan’s general government procurement (excluding social security funds)21. This fell marginally to 68.5 % in 2013.

As a comparison, based on a report by the Prime Minister of Japan and his Cabinet, the total value of government procurement of goods and services in 2012 was 1 834 billion yen, representing a 30 % increase from the previous year. The total number of contracts was 14 640, an increase of 16.1 % compared to the previous year. In the same year, 87 % of contracts (84 % of the total value of goods purchased) were contracted through an open tendering process. Similarly, 64 % of services bought (54 % of the total value of services procured) were contracted through an open tendering process22.

Interestingly, only 6 % of the total value of goods and services purchases was accounted for by foreign products, amounting to 10.5 % of all contracts. More specifically, foreign goods accounted for 10.3 % of the total procurement value of goods and 14.5 % of the total number of contracts for the purchase of goods. Based on value, 46 % of these foreign goods came from the United States, the country also

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15 Public Procurement: International Cases and Commentary (2007)
16 Government at a Glance (2011)
17 Government at a Glance (2013)
18 Top 100 Contractors Report (2015)
19 Government at a Glance (2011)
responsible for 45% of the total number of contracts received. The EU was a close second, accounting for 37% of the total value of foreign goods purchased by Japan.

2.1.3 India

According to a 2003 World Bank report, public procurement represented 13% of the national budget and over 20% of India's GDP, valued at approximately USD 100 billion. Consistent with this was the Planning Commission of India’s draft of the 2011 Public Procurement Bill which put forth an estimate of ₹12 to 15 lakh crores (which is approximately USD 170 billion to 220 billion- Table 2-2 below is the conversion for the Rupees/Crores to Euros at a conversion of 1 Rupee = 0.0014 Euro). However, Shinghal’s review the different estimates of the size of total public procurement in India suggests that they vary greatly, reflecting the degree of coverage of states, public agencies, municipal authorities. Indeed, the Indian government does not release data that explicitly discloses the magnitude of public procurement. For this reason, the Centre for International Trade, Economics and the Environment published a report in 2012 with detailed forecasts of procurement in India\textsuperscript{23}. All forecasts were based on two estimates of public procurement as a percentage of GPP - the World Bank’s 20% (lower bound) estimate and the Central Vigilance Commission’s 30% (upper bound) estimate. Total public procurement during the early eighties was in the range of ₹29 000 to 43 600 crores\textsuperscript{24}, which is approximately EUR 4.1 billion - 6.2 billion. In 1985-86, this number rose to between ₹56 000 and ₹84 000 crores (EUR 8.1 billion – 12.1 billion) and again to between ₹97 000 and ₹147 000 crore range (EUR 14 billion – 21.2 billion) during 1989-90. This trend of ever-increasing public procurement continued into the 1990s. In all these years, procurement grew at the same CAGR of about 14%. More recently, between 2000-01 to 2010-11, public procurement multiplied by about 3.6 times. Interestingly, this figure is consistent with the earlier mentioned Planning Commission estimate\textsuperscript{25} of public procurement at ₹15 lakh crores, or USD 220 billion\textsuperscript{26}.

Building on this, according to a report by the Competition Commission of India (CCI), out of total public procurement, public sector enterprises constituted 8 lakh crore in 2008-2009, a figure that is increasing at a rate of 10-15% annually. The only available data on public procurement by sector is based on a report submitted to the Indian Council for Social Sciences Research. It details that departments such as Railways, Defence and Telecom devote 50% of their budget to procurement. Furthermore, 26% of the health budget is allocated towards procurement.

The federation of India is comprised of 29 states and seven union territories, subdivided into districts. While the 2005 General Financial Rules (GFR) are the guiding principles for state government procurement – almost all the states follow their own state finance rules, which incorporate provisions of the GFR. There is no single procurement agency collecting data or monitoring procurement at the federal level and for most state governments, the department of finance administers state finance rules along with public procurement policies and laws.

Table 2-2

<table>
<thead>
<tr>
<th>Indian Quotation</th>
<th>Rupees</th>
<th>Euros</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Lakh</td>
<td>100 000</td>
<td>1 400</td>
</tr>
<tr>
<td>10 Lakhs</td>
<td>1 000 000</td>
<td>14 000</td>
</tr>
<tr>
<td>1 Crore</td>
<td>10 000 000</td>
<td>140 000</td>
</tr>
<tr>
<td>10 Crores</td>
<td>100 000 000</td>
<td>1 400 000</td>
</tr>
<tr>
<td>100 Crores</td>
<td>1 000 000 000</td>
<td>14 000 000</td>
</tr>
</tbody>
</table>

\textsuperscript{23} Government Procurement in India: Domestic Regulations and Trade Prospects (2012)
\textsuperscript{24} This is approximately
\textsuperscript{25} Competition and Public Procurement: An Executive Summary (2012)
\textsuperscript{26} 1 Lakh is 100 000 rupees and 1 crore is 10 million rupees and 1 Lakh Crore is 1 trillion rupees. 5 Crores converts to EUR 1 million.
2.1.4 Brazil

Based on IMF Government Finance Statistics, general government procurement in 2011 was estimated to be 26.1% of total government expenditure\(^{27}\). Data from the Ministry of Planning indicates that the volume of federal government purchases rose from R$ 40.6 billion in 2007 to R$ 72.6 billion in 2012, which is represents approximately EUR 12 billion – EUR 21.5 billion, respectively. A majority of this (66%) happened through the process of public bidding. The remaining 34% of goods and services acquired was in cases where the competitive bidding process, which typically entails selecting the bidder delivering the lowest price or terms, was waived\(^{28}\).

Low prices and/or better products are desirable because they result in resources either being saved or freed up for use on other goods and services. Competitive bidding can achieve better value for money – through lower prices or better quality and innovation - but if companies genuinely compete for contracts. A 2015 NBER paper uses a comprehensive data set matching employer-employee data of formal firms in Brazil with government procurement contracts between 2004 and 2010 to determine the impact of winning contracts versus competing but not winning. The authors find that winning a contract in a particular business quarter results in a 2.2% increase in firm growth over the same quarter. Furthermore, 93% of newly hired employees (as a result of the new contract) were either previously unemployed or working in the informal sector. More importantly, these positive effects are found to persist far beyond the length of the actual contract\(^{29}\).

In Brazil, electronic procurement has become an increasingly popular mode of government purchasing. Between 2007 and 2012, the number of purchases made electronically grew 78% in value and 33% in terms of the number of competitive bids made. In 2012, purchases made electronically were valued at R$ 33.6 billion, amounting to 46% of all government purchases and 91% of all competitive bids\(^{30}\).

With regard to sectors – vehicles accounted for 24% of all acquisitions, totalling R$ 5.5 billion, the most out of all goods. With respect to the services sector, ‘general construction services in civil engineering’ accounted for 29% of contracts and was worth a total of R$ 7.3 billion\(^{31}\).

2.1.5 China

In 2016, China’s government procurement leaped 21.8% percent year on year to 2.11 trillion yuan (USD 300 billion). This is equivalent to 12% of its fiscal expenditures and 3.1% of its GDP. This is according to Ministry of Finance statement made online. In comparison, in 2014, it only grew by 5.6%, a considerably lower figure. Of this USD 300 billion worth of procurement, construction accounted for 52.9% while the purchase of goods constituted approximately 31.2%. In a similar vein, services accounted for 15.9% of total purchases. Not surprisingly, services saw the most rapid increase (72.9%), with local governments being encouraged to acquire more services (legal, cleaning)\(^{32}\).

Overall, the broad trend is that public procurement increased in all of the case study countries except the United States. The rise is greater in emerging markets – India, Brazil and China, less in Japan and negative in the United States. Table 2-3 summarizes the values and shares of public procurement in the five case study countries.

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\(^{27}\) Government at a Glance: Latin America and the Caribbean (2014)

\(^{28}\) Government Procurement Strategies in Brazil: FGV Projetos/OECD (2013)


\(^{30}\) Id.

\(^{31}\) Id.

### Table 2-3

**Public Procurement: Shares in GDP, Shares in Government Expenditures and Values**

<table>
<thead>
<tr>
<th></th>
<th>% GDP Pre-2011</th>
<th>% GDP Post-2011</th>
<th>% Expenditure Pre-2011</th>
<th>% Expenditure Post-2011</th>
<th>Value (billion dollars) Pre-2011</th>
<th>Value (billion dollars) Post-2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>USA</strong></td>
<td>11 %</td>
<td>10 %</td>
<td>27.5 %</td>
<td>26 %</td>
<td>27.5 %</td>
<td>26 %</td>
</tr>
<tr>
<td><strong>Japan</strong></td>
<td>13 %</td>
<td>16.2 %</td>
<td>36.7 %</td>
<td>38.3 %</td>
<td>36.7 %</td>
<td>38.3 %</td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>20 %</td>
<td>-</td>
<td>13 %</td>
<td>-</td>
<td>13 %</td>
<td>-</td>
</tr>
<tr>
<td><strong>Brazil</strong></td>
<td>16 %</td>
<td>-</td>
<td>26.1 %</td>
<td>-</td>
<td>26.1 %</td>
<td>-</td>
</tr>
<tr>
<td><strong>China</strong></td>
<td>-</td>
<td>3.1 %</td>
<td>-</td>
<td>12 %</td>
<td>3.1 %</td>
<td>12 %</td>
</tr>
</tbody>
</table>

### 2.2 EU and de facto access to International Procurement Markets

The European Commission has submitted that it has not exercised its power to regulate the access of foreign goods, services and companies into the EU’s public procurement market, except in certain utilities sectors. And as a result, approximately EUR 352 billion in value of EU public procurement is open to bidders from member countries of the WTO agreement on government procurement (GPA), while this market access is not matched by other countries. Indeed, the European Commission estimates that more than half of the world’s procurement market is currently closed due to protectionist measures. Consequently, only EUR 10 billion of EU exports (0.08 % of EU GDP) reach foreign procurement markets, leaving an estimated EUR 12 billion of unrealized EU exports because of such third-country restrictions.

Nevertheless, these figures and methodologies are not uncontested, which has led to a more transparent debate on the need for more formal collection of data on procurement processes and contract awards. Messerlin, for example, argues that the most available data on de facto access suggests that even if de jure market access concessions differ, the US and the EU have achieved a balance in the value of market access concessions in government procurement. Messerlin has indicated that the de facto access and market penetration of the EU and the U.S. towards third countries (non-EU and non-US) in public procurement is around both 4-5 %, depending on the set of data. In fact, as Table 2.4 indicates, the EU was less open than the US until the late 2000s, and did not catch up with the US until the 2008 financial crisis.

### Table 2-4: The EU27 and US Penetration Ratios Selected Years

![Graph showing EU and US penetration ratios](image)

**Note:** Penetration ratios are the shares of (extra EU in the case of EU Member States) public imports in total demand for public goods and services.

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33 OECD Government Procurement: A synthesis report check
36 Reproduced from Patrick Messerlin, ibid.
On the one hand, the European Commission has estimated that the value of US procurement offered to foreign bidders is currently just EUR 178 billion, EUR 27 billion for Japan, and even less for China. Table 2-5 sets out these estimates. Messerlin, on the other hand, in putting forward conclusions on market access among the EU and its major trading partners: Canada, China, Japan and the US — uses a different methodology to that followed by the European Commission, which produces different results.

Messerlin opines that his results are based on more accurate calculations because they rely on comparing only the shares of only extra-EU public imports to the EU public demand of goods and services, using the World Input Output Database (WIOD) and OECD data. As there is no systematic data on intra-EU or extra-EU public imports for the year 2005, the two methods provide an a better sense of the relative openness of the EU public procurement markets compared to the others and indicates for example, that both Japan’s and EU’s level of openness are very similar. See Table 2-5

Table 2-5: Commission’s estimates of the openness of public procurement markets

<table>
<thead>
<tr>
<th>Country</th>
<th>EU</th>
<th>USA</th>
<th>Japan</th>
<th>Canada</th>
<th>Korea</th>
<th>Israel</th>
<th>Mexico</th>
<th>China</th>
<th>Russia</th>
<th>India</th>
<th>Brazil</th>
<th>Turkey</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>PP markets</td>
<td>300</td>
<td>559</td>
<td>96</td>
<td>59</td>
<td>25</td>
<td>2</td>
<td>20</td>
<td>83</td>
<td>18</td>
<td>19</td>
<td>42</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>de jure commitments GPA</td>
<td>47</td>
<td>62</td>
<td>72</td>
<td>40</td>
<td>80</td>
<td>82</td>
<td>75</td>
<td>92</td>
<td>56</td>
<td>70</td>
<td>38</td>
<td>25</td>
<td>68</td>
</tr>
<tr>
<td>de facto commitments GPA</td>
<td>46</td>
<td>70</td>
<td>70</td>
<td>10</td>
<td>81</td>
<td>82</td>
<td>70</td>
<td>na</td>
<td>50</td>
<td>70</td>
<td>40</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>EU’s partners</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>EU status in terms of PTA and the EU</td>
<td>ongoing joint study</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: IAWD Annex 3, Tables 3 and 7. PP: public procurement. GPA: Government Procurement Agreement. [a] in billions of Euros. [b] in percent of total PP markets above the 1995 GPA threshold. [c] taking into account the specific derogations imposed by the EU in order to achieve “balanced” concessions; [d] an estimate of Euros 279 billion is reported in other texts of the Commission (such as Commission 2010), see below Table 2.

39 Ramboll Consulting Management and HTW Chur, 2012
A further estimate from the US Government Accountability Office (GAO), suggests that from 2008 through 2012, government total expenditures of the United States and the other 60 countries that are parties to either the WTO GPA or US FTA negotiations averaged about USD 19 trillion per year. Approximately USD 4.4 trillion annually of those total government expenditures, or about 24 percent, are for government procurement of goods and services, including capital investment. Annual government procurement by the United States, which includes the central, state, and local levels, was on average about USD 1.7 trillion from 2008 through 2012. For the same period, government procurement in the EU was slightly less. The GAO estimated that governments from all other 32 countries that are either parties to the GPA, US FTAs or negotiating parties spent between USD 1.0 trillion and USD 1.3 trillion\(^{41}\) annually on purchasing goods, services, and construction works. See Table 2-7.

\(^{41}\) with a mean of USD 1.1 trillion
Table 2-7: Procurement Is About One-Quarter of Annual Government Total Expenditures and Actual International Procurement Is a Portion of That.

Notes: The figure shows the average annual government total expenditures and procurement in the United States and 60 countries that are parties to the Agreement on Government Procurement, U.S. free trade agreements, Trans-Pacific Partnership negotiations, or Transatlantic Trade and Investment Partnership negotiations, 2008 through 2012. Figure is not drawn to scale. The reported value for government procurement is the mean of a GAO estimate that ranged between USD 4.3 trillion and USD 4.6 trillion.
Table 2-8: Average Annual Government Procurement by Countries Covered by the Agreement on Government Procurement, US Free Trade Agreements, Trans-Pacific Partnership Negotiations, or Transatlantic Trade and Investment Partnership Negotiations, 2008-2012

Sources: GAO analysis of data from the United Nations National Accounts Official Country Data database; and the International Monetary Fund’s International Financial Statistics and its World Economic Outlook, April 2015 database. | GAO-16-771

Note: The reported value for “Remaining 32 countries” is the mean of a GAO estimate of government procurement that ranged from $1.0 trillion and to $1.3 trillion.
2.3 Procurement Market Access Values under the WTO GPA

The WTO GPA requires that parties to the agreement follow rules establishing open, fair, and transparent conditions of competition in government procurement. Nevertheless, the GPA parties do not open all of their procurement market to foreign competition. The agreement has coverage schedules that list the parties’ entities at the central and sub-central government levels whose procurement is covered by the agreement. Coverage of procurements is also delineated by threshold amounts, nature of particular goods and services covered, and exclusions that are established in each party’s annexes. Only procurements over these threshold values are covered by the agreement as long as they are not specifically exempted.

According to GAO estimates, from 2008 through 2012, the annual procurement market of countries covered by the GPA, excluding the United States, was slightly less than USD 2.5 trillion 42. Among the GPA countries, the European Union has large government procurement, which constitutes about 40 percent of the aggregate GPA market. Within the European Union, several countries have large procurement markets. In particular, almost 70 percent of government procurement in the European Union takes place in 5 of the 28 European Union member countries—the United Kingdom, France, Germany, Italy, and Spain. The countries with the smallest markets in the European Union, such as Luxembourg, Latvia, Estonia, Cyprus, and Malta, represent in total less than 1 percent of total European Union government procurement. In addition to the markets of the United States and the European Union, Japan’s government procurement market, on average over USD 390 billion annually, represents about 10 percent of the aggregate government procurement market of all GPA countries. Some countries with sizeable procurement markets, such as Canada and South Korea, are parties to the GPA and also have bilateral FTAs with the United States (see table 2-10).

The total average annual procurement market in US FTA partner countries was about USD 500 billion to USD 660 billion from 2008 through 2012. US partner countries in the North American Free Trade Agreement (Canada and Mexico), with average aggregate annual government procurement market of about USD 250 billion, represent about half of the total market of all FTA partner countries. Australia, Israel, Mexico, and South Korea also have sizable government procurement markets (see table 2-10). Conversely, partner countries in the Dominican Republic–Central America–United States Free Trade Agreement (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic) have an average aggregate government procurement market of approximately USD 6.5 billion to USD 11 billion and represent much smaller market opportunities. Table 2-9 sets out the value of key sectors of Government Procurement markets opened up under the World Trade Organisation’s Government Procurement Agreement (WTO GPA), and highlights how government procurement is also a big and growing business for those firms able to bid for these lucrative contracts.

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42 GAO 2015. Ibid.
Table 2-9: Value of Procurement Markets in Key Countries under the WTO GPA

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Services</td>
<td>$US 125.7 billion</td>
<td>$US 11 billion</td>
<td>$US 287 billion</td>
<td>$US 423.7 billion</td>
</tr>
<tr>
<td>Pharmaceutical Products, Health Services and – Related Entities</td>
<td>$US 15.1 billion</td>
<td>$US 1.46 billion</td>
<td>$US 120 billion</td>
<td>$US 136.56 billion</td>
</tr>
<tr>
<td>Computer and Related Services</td>
<td>$US 46.5 billion</td>
<td>$US 2.1 billion</td>
<td>$US 1.6 billion</td>
<td>$US 54.83 billion</td>
</tr>
<tr>
<td>Telecommunication Services</td>
<td>$US 4.1 billion</td>
<td>$US 531 million</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chemical Products</td>
<td>$US 21 billion</td>
<td>$US 7.2 billion</td>
<td>$US 2.24 billion</td>
<td>$US 23.25 billion</td>
</tr>
<tr>
<td>Fuels and Petroleum Products</td>
<td>$US 4.5 billion</td>
<td>-</td>
<td>$US 12.3 billion</td>
<td>$US 16.8 billion</td>
</tr>
<tr>
<td>Machinery and Associated Products</td>
<td>$US 14 billion</td>
<td>$US 32.9 million</td>
<td>$US 518 million</td>
<td>$US 14.85 billion</td>
</tr>
<tr>
<td>Textile, Clothing and Footwear</td>
<td>$US 4.4 billion</td>
<td>$US 19 million</td>
<td>-</td>
<td>$US 4.42 billion</td>
</tr>
<tr>
<td>Wood Products</td>
<td>$US 195 million</td>
<td>$US 62 million</td>
<td>-</td>
<td>$US 257 million</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$US 236.4 billion</td>
<td>$US 15.51 billion</td>
<td>$US 423.71 billion</td>
<td>$US 675.63 billion</td>
</tr>
</tbody>
</table>

Table 2-10: Top Five Non-U.S. Government Procurement Markets among Agreement on Government Procurement (GPA) Parties and U.S. Free Trade Agreement (FTA) Partner Countries
Table 2-11: Top Five Procurement Markets in Trans-Pacific Partnership (TPP) Countries and Transatlantic Trade and Investment Partnership (T-TIP) Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Market size</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$714 - 863 billions (93-95%)</td>
<td>GAO estimates.</td>
</tr>
<tr>
<td>Canada</td>
<td>$383</td>
<td>GAO estimates.</td>
</tr>
<tr>
<td>Japan</td>
<td>$333</td>
<td>GAO estimates.</td>
</tr>
<tr>
<td>France</td>
<td>$134</td>
<td>GAO estimates.</td>
</tr>
<tr>
<td>Germany</td>
<td>$121</td>
<td>GAO estimates.</td>
</tr>
</tbody>
</table>


*Top 5 countries' share of total TPP procurement market, excluding the United States.

1Top 5 countries' share of total T-TIP procurement market, excluding the United States.
3 The Regulatory Environment in the Case Study Countries

Chapter 3 provides the main analytical content of each of the five case studies before providing an overview of the FTAs signed by the case study countries with procurement provisions, or the commitments under the WTO GPA were applicable. This chapter also undertakes a critical analysis of any procurement policies or instruments within the case study countries that may have an impact on public procurement markets, such as the International Procurement Instrument proposed by the European Commission or the Buy America Act and Buy India Act. This chapter concludes with an assessment of the extant literature to identify any significant de facto barriers to accessing procurement markets by EU contractors that have been observed, including in the five case study countries.

3.1 Regulatory Environment for Procurement in the USA

3.1.1 Domestic Legislation

In the US, the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) has primary responsibility for public procurement policies and regulation. However, the US federal procurement system is fragmented, both geographically and sectorally and subject to several different statutes and international agreements. The principal body of law regulating federal procurements is the Federal Acquisition Regulation (FAR), which applies to all executive departments, military departments, independent establishments and wholly owned government corporations, alongside other more specific applicable procurement rules, see Box 1. In late 2010, the United States passed Public Law 111-347, Title III of which creates a federal excise tax of 2% to be applied to government purchases of goods and services from foreign entities not party to an international procurement agreement, entered on or after 2 January 2011.

Each US State has its own procurement access conditions. While 37 States participate in the GPA, among those that do not, some restrict foreign participation in biddings, others offer preferences to in-state suppliers, or apply domestic purchase requirements. Some states (e.g. New Jersey) do not grant specific state preferences, but may grant them on a reciprocity basis, depending on what the state of origin of the out-of-state bidder grants. Others grant in-state preferences only when there is a tie in the bid, or for some specific products. A couple of states, including New Hampshire and New York do not grant any preferences whatsoever. See Annex V.

The Federal Government has specified annual prime contracting goals for designated small businesses. The Small Business Act (PL 85-536) required, in principle, that each contract with an anticipated value greater than USD 2,500 but less than USD 100,000 be reserved exclusively for small business concerns. These thresholds were later revised, and currently every federal government purchase with an anticipated value above the micro-purchase threshold of US$3,500, and up to the simplified acquisition threshold (SAT) of USD 150,000, is required to be automatically and exclusively set-aside for small businesses. In this case, there must be at least two or more (Rule of Two) responsible small business concerns that are competitive in terms of market prices, quality, and delivery for an automatic set-aside to occur. Contract opportunities above USD 150,000 must also be set aside if the Rule of Two is met. Moreover, contract opportunities over USD 700,000 or USD 1.5 million for construction awarded to Other-than-Small-Businesses (OTSBs), must include small business subcontracting plans to the extent there are subcontracting opportunities. Pursuant to the Small Business Act, the Small Business Administration is responsible for defining the specific size standards for each industry to determine which businesses qualify as small.

Under the Buy American Act of 1933 (BAA), the purchase of supplies and construction materials by

government agencies is limited to those defined as ‘domestic end-products’, in accordance with a two-part test that must establish that the article is manufactured in the United States, and that the cost of domestic components exceeds 50% of the cost of all the components. It is noteworthy that the BAA does not apply to services. The Trade Agreements Act of 1979 waives the application of the BAA to the end-products of designated countries, which include the parties to the GPA, bilateral agreements that cover government procurement, Caribbean Basin Economic Recovery Act (CBERA) beneficiaries, and least developed countries. Exceptions to the BAA can also be granted if it is determined that the domestic preference is inconsistent with the public interest, in case of U.S. non-availability of a supply or material, or for reasonableness of cost. US government procurement policy continues to seek to increase the participation of small businesses, including veteran-owned, women-owned, and disadvantaged small businesses. To this end, it carries out a policy of fixing set-asides when market research concludes that small businesses are available and able to perform the work or provide the products being procured by the government.

Federal government agencies are typically required to publish notices of proposed procurement in FedBizOpps for contracts in excess of USD 25 000 at least 15 days before a request for bids. Prospective suppliers have at least 30 days from that date to submit bids. In the case of procurement of commercial items and for procurement valued at or below USD 100 000, shorter timeframes may be established and simplified procedures applied. When procurement falls within the scope of the GPA or a free trade agreement, a period of not less than 40 days must generally be granted. State governments covered by the GPA are required to publish invitations to tender in their own state publications and must conform to GPA deadlines. In addition to notices of proposed procurement, some states use notices of planned procurement.

**Box 1**

**General Federal Procurement Regulations**

- Federal Property and Administrative Services Act of 1949 (FPAS): This is a Federal law was passed in 1949, and Title III of the Act sets out the procedure for procurement of property and services. The procedure does not however include procurements by the Department of Defence, the Coast Guard, and the National Aeronautics and Space Administration (NASA).
- Federal Acquisition Streamlining Act of 1994 (FASA): This law was passed with the goal of streamlining and simplifying procurement procedures
- Federal Acquisition Reform Act of 1995 (FARA)
- The Federal Acquisition Regulations – this is the most relevant and applicable set of regulations on federal procurement in the USA. It contains uniform policies and procedures for acquisition by all federal agencies.
- Trade Agreements Act of 1979 – This Act allows the President to waive the discriminatory purchasing requirements with respect to purchases covered by the GPA and FTAs. The Act gives the President authority to waive Buy American Act requirements for certain procurements. The waiver authority is delegated to United States Trade Representative (USTR). USTR has waived the Buy American Act for eligible products in acquisitions covered by the WTO Government Procurement Agreement, some relevant free trade agreements (FTA), as well as for least-developed countries.

**Sector Specific Legislation**

- Armed Services Procurement Act of 1949 (ASPA): This law governs the acquisition of all property (except land), construction, and services by military defence agencies.
3.1.2 International Treaties

The United States is a party to the WTO Agreement on Government Procurement (WTO GPA). GPA thresholds in US dollars are revised every two years by the USTR. Annex I of Appendix I of the Agreement contains the list of central government agencies covered by the GPA. Annexes 2 and 3 list the 37 States, and the federal and sub-federal bodies applying the GPA. The Protocol amending the Agreement on Government Procurement entered into force for the United States on 6 April 2014; US threshold values as expressed in SDR are the same under the revised and the 1994 Agreements.

According to the Federal Procurement Data System's "Federal Contract Actions and Dollars" report, which looks at dollars obligated against contracts awarded by US Federal Government agencies, the value of federal government procurement in the United States for FY2015 was USD 439.3 billion. Procurement by the Department of Defense during the same time period was USD 274.5 billion; procurement by other agencies and entities was USD 164.8 billion.

There are no collected state or locality figures that are available that would allow for comparison to these data. Efforts to increase transparency in US federal procurement includes introduction of changes to ensure that the unique identifier used in federal procurement (the Procurement Instrument Identifier (PIID)) is both unique and uniform across the Federal Government, capturing information on parents or predecessors of bidders, and requirements to make public expenditures under federal contracts in addition to existing obligations. These requirements are being implemented through regulatory, process, and information technology changes and will be completed by 2018.

The US is also subject to the regulatory framework set out under the World Trade Organisation (WTO) Government Procurement Agreement (GPA). With respect to the scope and coverage of the GPA, the US excluded preferences or restrictions associated with programmes promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women. Also excluded are set asides on behalf of small and minority businesses. Further, the GPA does not apply to restrictions attached to Federal funds for mass transit and highway projects. Additionally, the procurement of services, transportation services, dredging, services purchased in support of military forces located overseas management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centres (FFRDCs), public utilities services, including telecommunications and ADP-related telecommunications services except enhanced (i.e., value-added) telecommunications services and Research and Development are all excluded from the operation of the GPA.

It is however significant the operation of the WTO GPA does not prevent any signatory party from applying restrictions that promote the general environmental quality in that state, or other domestic policy objectives. The legal and economic necessity test seeks merely to identify whether the restrictions are disguised barriers to international trade. In addition to this, the US is a party to RTAs with 20 countries see Table 3-1 which indicates that four RTA trading partners are also parties to the GPA - Canada, Israel, Singapore, and South Korea. Moreover, the FTAs that the United States has in force also include provisions covering government procurement. Most of these US FTAs have a government procurement chapter that includes the scope and terms of the agreement and the procurement information that is to be published. A new reciprocity approach to sub-federal procurement was adopted by the United States in three FTAs (Colombia, Panama, and Peru). Based on this policy, government procurements of eight U.S. states and Puerto Rico was covered in the FTAs signed with Colombia, Panama, and Peru.

45 These 20 US RTA trade partners are: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Singapore, and South Korea.
Table 3-1: Central government thresholds for the application of US trade agreements 20-16-17

<table>
<thead>
<tr>
<th>Trade agreement</th>
<th>Supply contract equal or exceeding</th>
<th>Service contracts</th>
<th>Construction contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>WTO GPA</td>
<td>191,000</td>
<td>191,000</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Australia FTA</td>
<td>77,533</td>
<td>77,533</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Bahrain FTA</td>
<td>191,000</td>
<td>191,000</td>
<td>10,079,305</td>
</tr>
<tr>
<td>CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)</td>
<td>77,533</td>
<td>77,533</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Chile FTA</td>
<td>77,533</td>
<td>77,533</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Colombia FTA</td>
<td>77,533</td>
<td>77,533</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Korea, Rep. of FTA</td>
<td>100,000</td>
<td>100,000</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Morocco FTA</td>
<td>191,000</td>
<td>191,000</td>
<td>7,358,000</td>
</tr>
<tr>
<td>NAFTA Canada</td>
<td>25,000</td>
<td>77,533</td>
<td>10,079,305</td>
</tr>
<tr>
<td>Mexico</td>
<td>77,533</td>
<td>77,533</td>
<td>10,079,305</td>
</tr>
<tr>
<td>Oman FTA</td>
<td>191,000</td>
<td>191,000</td>
<td>10,079,305</td>
</tr>
<tr>
<td>Panama FTA</td>
<td>191,000</td>
<td>191,000</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Peru FTA</td>
<td>191,000</td>
<td>191,000</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Singapore FTA</td>
<td>77,533</td>
<td>77,533</td>
<td>7,358,000</td>
</tr>
<tr>
<td>Israel FTA</td>
<td>50,000</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>


U.S.-Canada Agreement on Government Procurement: This Agreement entered into force in February 2010. The Agreement provides permanent and reciprocal commitments under the WTO Agreement on Government Procurement (GPA) with respect to provincial, territorial and state procurement. Also, Canada guaranteed American companies access to a broad range of construction projects undertaken by provincial entities (not included in Canada's GPA commitments) and municipal entities, while the US allowed Canadian iron, steel, and manufactured goods to be considered in the certain listed projects. The US - Canada Agreement has three major components:

- Provincial and territorial procurement commitments under the WTO GPA for all provinces and territories, except Nunavut in exchange for US sub-federal GPA commitments;
- US exemptions for Canada from the Buy American provisions of the Recovery Act for seven (7) programs of interest in exchange for temporary Canadian procurement commitments for construction projects for some provincial/territorial agencies not included in the WTO GPA and a number of municipalities; and
- A commitment by both governments to explore the scope for a long term government procurement agreement between Canada and the US, to deepen on a reciprocal basis, procurement commitments beyond those in the WTO GPA and NAFTA.

The deal also includes a process for expedited consultation on future concerns related to procurement issues, such as new legislation. The Agreement does not change pre-existing rights of Canadian companies to participate in US federal government procurement, established under the NAFTA and WTO GPA.

3.1.3 De facto and de jure limits to market access

Even though the US is a signatory to the WTO GPA, there currently exists certain restrictions to market access for government procurement. For instance, there are requirements in certain legislations that only US produced material can be used in certain projects. Under the American Recovery and Reinvestment Act 2009 (ARRA), all ARRA funded projects require the use of US-produced iron, steel and manufactured goods.
Openness of public procurement markets in key third countries

The most notable of these restrictions is the Buy American Act 1933. This law applies to all US federal government agency purchases of goods valued over a specified threshold, but does not apply to services. Essentially, what the Act does is that it creates a price preference that favours unmanufactured products mined or produce in the US, or manufactured products in which the cost of its US components exceed 50%. However, by virtue of the GPA, goods and supplies from signatories are to be treated on equal footing with respect to US domestic products for procurement opportunities within the sectors covered by the Agreement. Other relevant laws include:

- The Berry Amendment (USC, Title 10, Section 2533a), requires the Department of Defence to give preference in procurement to domestically produced, manufactured, or home grown products.
- The Surface Transportation Act 1982, also contains a de jure limit to market access. Section 165 of the Act (commonly referred to as ‘Buy America’) deals with purchases related to rail or road transportation and requires use of US produced iron, steel and manufactured products (with 100% domestic content) in highway, transit, railway and airport projects funded by the Department of Transport.
- The Small Business Act of 1953 requires the US federal government to award a portion of federal procurement to US small and minority businesses. Therefore, the US has excluded procurement that it sets aside for its small and minority businesses from the GPA and FTAs. The US congress has explicitly prohibited the waiver of the small business set asides. All contracts over USD 650 000 (USD 1.5 million for construction) must include a small business subcontracting plan so that small businesses can obtain work under these large contracts.

3.1.4 Sub-Federal Market Access

In the US, roughly 65% of procurement is conducted at the state/municipality level, as compared to around 35% in the EU46. Most US states have bespoke ‘Buy American’ legislation that governs state level procurements. Annex V sets out the various preferences in place at the State level. It highlights how with the notable exception of New Hampshire, US states typically implement preferences that favour certain vendors, products or services over others in a bidding situation. For example, when it seeks suppliers for highways and buildings, Rhode Island is willing to pay 15% more for steel manufactured or produced in the United States (as opposed to steel from Canada). Not all states apply preferences, and preferences vary from state to state.

Annex IV sets out the values of procurement at the sub federal level. The States with the highest spending are California, Texas, Pennsylvania, Ohio, New York and Florida. With a combined spend of over half of the other States combined. When, you review the preferences which exist in those States it clear that California has by far the most preferences for its residents – over 20 different provisions. By contrast, New York and Pennsylvania have only 1 legal provision on preferences (food contracts and heating systems respectively), and in fact Texas does not have any resident preferences.

Many of the preferences across the States mandate that when purchasing goods and services, there should be preferential awards to individuals or businesses ‘resident’ in the State, or manufactured in the State.

3.1.5 Market Access commitments specific to the EU

Apart from the commitments under the GPA (both the EU and the US are parties to the GPA), both parties entered into a 1995 US-European Communities Exchange of Letters. Under the Agreement, EU suppliers are provided with access to certain states not covered by the GPA. The obligation in the Exchange of Letters is limited to best of out-of-state treatment for EU suppliers, but only if the state considers non-state suppliers in a procurement. It also commits to best of out-of-city treatment by seven cities (Boston,

Chicago, Dallas, Detroit, Indianapolis, Nashville and San Antonio), if they consider bids from suppliers outside of their cities.

The US and the EU negotiations for a Transatlantic Trade and Investment Partnership (TTIP) stalled once President Trump took office. However, even before the change at the White House, the public procurement chapter was proving to be a major sticking point in the negotiations. The EU position was to further open up procurement markets across the Atlantic at both the central and sub-central level based on reciprocity. However, US negotiators continued to defend their domestic preferences for SMEs and disadvantaged communities, along with some specific Buy American requirements, which resulted in an impasse before US President Trump withdrew from the negotiations.

3.1.6 Conclusion

In the US, the regulatory environment for government procurement appears to be discriminatory in favour of its domestic businesses. Although the country is a signatory to the GPA a number of restrictions still exist which either provide preferential treatment to goods manufactured in the US e.g. the Buy American Act 1933, the Berry Amendment, and the Surface Transportation Act 1982; or creates set asides for the small and minority businesses e.g. the Small Business Act.

The US has several Free Trade Agreements (FTAs) in place, which touch on government procurement (none as extensive as the GPA), and a major feature of these FTAs is that it extends national treatment and non-discrimination to goods and services of the other party. Of all the FTAs, the US-Israel FTA appears to be the most potent as regards government procurement. This FTA waives all ‘buy-national’ restrictions with respect to certain purchases at given thresholds.

In sum, the US therefore operates a government procurement system which is superficially open and allows market access, but enough de jure limits exist to make it difficult for international operators to compete in those markets when compared to domestic operators.

3.2 Regulatory Environment for Procurement in India

India’s public procurement system is decentralised and comprises of a multiplicity of entities at different levels of Government. India does not have a general procurement law applicable around the country, the procurement system is based on various rules which will be discussed below. There is however a new bill pending before the Indian Legislature – Public Procurement Bill 2012, which seeks to harmonise India’s public procurement laws and regulations. There is no central agency responsible for regulating public procurement at a national level and no common legislation governing procurement at different levels of government and by CPSEs. Consolidated data are not available on the economic significance of government procurement, including a breakdown of the value of contracts by the tendering method.

3.2.1 Domestic Legislation

The General Financial Rules 2005 (GFR) developed by the Ministry of Finance largely govern the procedures for public procurement in India. The GFRs comprise of a compendium of general provisions laid out to be followed by all offices of Government of India when dealing with matters of a financial nature. The important principles are efficiency, economy, transparency, fair and equitable treatment of suppliers, and promotion of competition in public procurement. In principle, the GFR merely lays out the framework and principles of procurement to be adhered to, the procurement process is decentralised, and so the respective Ministries and Agencies are expected to lay out the specifics of their individual processes while adhering to the general principles of the GFR. The GFR specify preferential measures for hand spun and hand-woven textiles for exclusive purchase from Khadi Village Industries Commission (KVIC), handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of Association of Corporations and Apex Societies of Handlooms and goods produced by
Openness of public procurement markets in key third countries

Micro, Small and Medium Enterprises for central government procurement (Rules 153 (i) and 153 (ii)). Rule 153 (iii) of GFRs provides for future ‘mandatory procurement of goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services’. Box 2 sets out the various regulatory frameworks applicable to procurement.

The various ministries or departments have full powers to make their own arrangements for the procurement of goods. However, if they do not have the required expertise to procure goods, procurement may be carried out through the Directorate General of Supplies and Disposal (DGS&D), the central purchase organization, with the approval of the competent authority. The DGS&D keeps a registry of manufacturers/suppliers and Indian agents of foreign manufacturers, and arranges the clearance of imported goods purchased by central Government departments. The applicable procurement method depends on the value of the contract to be awarded and other factors (e.g. emergency situations) as stipulated in the GFRs 2005. The splitting of purchases into contracts of smaller value is explicitly forbidden. The procurement methods are: invitation to tender; limited-tender enquiry; single-tender enquiry; purchase of goods by purchase committee; purchase of goods without quotation; and purchase of goods directly under rate contract.

Box 2

- Constitution of India - Article 298 stipulates that executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. This Article therefore gives the government the power to enter contracts.
- Delegation of Financial Powers Rules 1978 (DFPR) - issued by the Department of Expenditure in the Ministry of Finance, wherein financial powers of the Government have been delegated to various subordinate authorities.
- Guidelines issued by the Directorate General of Supplies and Disposal (DGS&D) - Where a ministry or department does not have the required expertise to procure goods, the DGS&D may carry out the procurement function.
- The terms of any procurement contract are governed by the provisions of the Indian Contract Act 1872.
- The Sale of Goods Act 1930 will be applicable where the contract relates to the sale of goods.
- The Transfer of Property Act 1882 will be applicable where the object of the contract relates to the transfer of any property.
- It is also noteworthy to mention that the Central Vigilance Commission (CVC), which is generally concerned with transparency and anti-corruption, prescribes guidelines to be followed by all central entities.
- Some States, such as Karnataka, Rajasthan, and Tamil Nadu, have passed laws to regulate public procurement.

Sector Specific Legislation

- Defence Procurement is governed by the Manual on the Defence Procurement Procedure (DPP).
- The Electricity Act 2003 regulates procurement process for distribution licences, as provided for Section 86 of the Electricity Act.

Source: http://www.finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2017.pdf
3.2.2 International Treaties

India is a member of the World Trade Organisation (WTO), however it is not covered under the plurilateral Agreement on Government Procurement (GPA) as the GPA is not binding on WTO members. India has obtained ‘observer’ status in the GPA. It has been an observer to the WTO GPA since 10 February 2010.

India has signed various regional trade agreements, however their coverage of public procurement is not comprehensive, excluding the procurement of services from the schedules in the India – S. Korea and India Japan RTAs. The India Singapore CECA excludes government procurement from the agreement in its entirety.

Box 2.2 India’s RTAs

India - Singapore Comprehensive Economic Cooperation Agreement (CECA): this Agreement extends market access and national treatment to the parties, but in Article 7.20 it states that this shall not apply to Government Procurement. However, ‘government procurement’ is not defined in the Agreement.

India - South Korea Comprehensive Economic Partnership Agreement (CEPA): India and South Korea signed the Free Trade Agreement in 2009. The CEPA defines ‘government procurement’, however it keeps the entire chapter of Trade in Services out of the ambit of the Agreement as far as Government Procurement is concerned. The ‘National Treatment’ and the appointment of ‘senior management (Articles 10.3 and 10.6) have also been kept out of the purview of the Agreement. Article 13.12 deals with Government Procurement specifically, and focuses on the need to promote cooperative activities including but not limited to information exchange, knowledge and experience on government procurement policies, regulatory framework, and e-procurement.

India – Japan Comprehensive Economic Partnership Agreement (CEPA): India and Japan signed the Free Trade Agreement in 2011. The Agreement provides in Article 57 that market access (Article 59) and national treatment (Article 60) as regards trade in services shall not apply to Government procurement. The Agreement further excludes national treatment (Article 85), most favoured nation principle (Article 86) and the prohibition of performance requirements (Article 89) in investments from Government procurement. Chapter 10 deals with Government procurement specifically and it inter alia provides for exchange of knowledge and information, and in Article 111 grants treatment no less favourable to a non-party in its Government Procurement.

3.2.3 De facto and de jure limits to market access

- Reserved items (Rule 144 of the GFR): The Central Government has reserved all items of hand spun and handwoven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms). The Central Government has also reserved some items for purchase from registered Small Scale Industrial Units.

- Registered Suppliers (Rule 142 GFR): New firms are dependent on the approving authority within the department concerned for being nominated on the approved vendors list. This is ostensibly with a view to establishing reliable sources for procurement of goods commonly required for Government use. However, research shows that these firms are required to go through lengthy administrative and procedural requirements, with instances of reported corruption in the approval process.

- Preferential treatment for Micro and Small Enterprises - Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012: by this Order, Central Government Ministries, Departments and Public Sector Undertakings are to procure a minimum of 20 per cent of their annual value of goods or services from Micro and Small Enterprises. To reduce transaction cost of doing business, MSEs are to be facilitated by providing them tender sets free of cost, and they are exempt from
payment of earnest money. Included is also a list of 358 items which must be procured from MSEs. However, Defence procurement contracts are not included under this order.

### 3.2.4 Market Access commitments specific to the EU

Currently India and the European Union were in negotiations for a comprehensive Free Trade Agreement, however these talks came to a de facto standstill, in 2013. The negotiation process which commenced in 2007, covered talks on several key outstanding issues including:

- access to each other’s markets, for goods, services and to public procurement contracts
- the framework for investment, including investment protection
- the rules that frame trade, such as intellectual property and competition
- sustainable development, to ensure growth in trade is in tandem with the environment, social and labour rights.

The Indian Government Procurement Manual, 2005 allows for what is referred to as a *Global Tender Enquiry* – this is where the Ministry/Department concerned feels that the goods to be procured of the required quality, specifications etc., may not be available in the country and/or it is also necessary to look for suitable competitive offers from abroad. The Ministry/Department can send copies of the tender notice to Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries.

### 3.2.5 Conclusion

India has a Federal system that allows for Federal and State procurement legislation. The overall size of the government procurement market in India at both the central and state level, is estimated to be more than USD 300 billion. There is no single compiling or reporting agency for data on public procurement in India, however Shingal has estimated the total value of the general government procurement market at 7.1 percent of GDP and the value of contestable general government purchases to be in the range of EUR 6.1-18.4 billion 2007 or between 0.7-2.1 % of India’s 2007 GDP. A CUTS report includes estimates of the disaggregated value of Government Procurement in India thus:

- **Union Government** - ₹2.5 - ₹3.0 lakh crores
- **Central Public Sector** - ₹10.0 - ₹10.6 lakh crores
- **Others (state governments, ULBs, state PSUs)** - ₹2.5 - ₹3.0 crores

India is not a party to the GPA. Under its national regulations there are certain key restrictions which operate as de jure limits to market access, specifically the process whereby there are reserved items and the country provides set asides for micro and small enterprises (MSEs). With respect to the set asides, Government ministries are to procure a minimum of 20% of their annual value of goods and services from MSEs.

India has a number of FTAs in operation (Singapore CECA, South Korea CEPA, and Japan CEPA). The key thread among these FTAs is that market access and national treatment are not included in the FTAs. India in negotiating these FTAs appears to be keen on protecting its domestic suppliers and not extending any benefits which it offers to its MSEs to other Treaty countries.

India therefore operates a government procurement system which is somewhat closed and protectionist towards domestic suppliers of goods and services. Nevertheless, as an observer to the WTO GPA, India is indicating that it is interested in bringing its procurement regulation in line with the framework set out under the WTO GPA, including its transparency and non-discrimination principles, in line with international best practice.
3.3 Regulatory Environment for Procurement in Japan

3.3.1 Domestic Legislation

In March 2014, Japan accepted the revised Agreement on Government Procurement (GPA), which entered into force in the country on 6 April 2014.

Box 3

- Accounts Law (Law No. 35 of 1947), which regulates procurement at the central level.
- The Local Autonomy Law (Law No. 67 of 1947) regulates procurement by the local governments.
- Other rules are applicable under the Cabinet Order Concerning the Budget, Auditing and Accounting of 1947;
- the Special Provisions for the Cabinet Order concerning the Budget, Auditing and Accounting of 1946,
- and the Regulations on the Management of Contract Administration (Ministry of Finance Ordinance No. 52 of 1962). An amendment in May 2016 to the ‘operational procedures for government procurement’. The amendment introduced a ‘multiple bidding system’, where two or more companies can bid on a project if one company cannot supply the full amount of the order alone.

Some Sector Specific Legislation

The Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services exempts certain procurements by the Ministry of Defence, including the procurement of military equipment from the application of the rules of the GPA. Military equipment is procured by the Equipment Procurement and Construction Office (EPCO).

3.3.2 International Treaties

Japan is a party to the World Trade Organisation (WTO) Government Procurement Agreement (GPA), and therefore the corresponding legislation in the country reflects that. The Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services (Government Ordinance No. 300 of 1980), and the Cabinet Order Stipulating Special Procedures for Government Procurement of Products and Specified Services in Local Government Entities (Government Ordinance No. 372 of 1995) are the orders which ensure the compliance with the procedures of the GPA. Since early 1990s, Japan has established various ‘voluntary measures’ implying commitments going beyond GPA in terms of thresholds, entities and sectors covered and procedural obligations. The thresholds for voluntary measures are lower than the GPA in only two instances, due to the fact that the revised GPA has ‘caught up’ with voluntary measures as compared to the GPA 1994. The remaining value added of voluntary measures is essentially of a procedural nature: the period for receiving tenders is extended to no less than 50 days from the date of issuance of the Notice of Procurement, unless special circumstances exist, while in the revised GPA, this period is 40 days\(^{48}\).

With respect to its obligations under the GPA, Japan has excluded contracts to be awarded to co-operatives or associations by central and sub-central government entities from the operation of the GPA. Further, procurement related to operational safety of transportation and related to the production, transport or distribution of electricity by sub-central government entities is not under the coverage of the GPA. For all

\(^{48}\) Prime Minister’s Office online information. Viewed at: http://japan.kantei.go.jp/procurement/2014/ch/4-1FY2014attach1-1.pdf
other entities, procurement of advertising services, construction services and real estate services is not included in the GPA.

Japan has entered several RTAs and Economic Partnership Agreements that contain provisions on Government Procurement. See Table 3-2. According to data provided by the authorities, foreign participation in Japan’s government procurement remained around 3% in value in 2014 (the latest year for which data were available) – see Table 3-3. Foreign bidders from the US accounted for the largest value of procurement awarded to foreign bidders, although firms from the EU were awarded the most in number than other foreign bidders. See Table 3-4.

Table 3-2: Japan’s RTAs with Procurement Commitments

<table>
<thead>
<tr>
<th>Agreements concerned</th>
<th>Japan’s commitments and obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan-Singapore</td>
<td>Both parties refer to or incorporate their GPA commitments (1994 version)</td>
</tr>
<tr>
<td>Japan-Switzerland</td>
<td>The agreements set out liberalization as the general objective and do not contain any procedural rules or commitments</td>
</tr>
<tr>
<td>Japan-Brunel Darussalam</td>
<td>Japan refers to its GPA commitments</td>
</tr>
<tr>
<td>Japan-India</td>
<td>The scope of Japan’s commitments in the FTA is inferior to that of Japan in the GPA</td>
</tr>
<tr>
<td>Japan-Indonesia</td>
<td>Japan’s commitments are roughly the same as in GPA</td>
</tr>
<tr>
<td>Japan-Philippines</td>
<td></td>
</tr>
<tr>
<td>Japan-Thailand</td>
<td></td>
</tr>
<tr>
<td>Japan-Viet Nam</td>
<td></td>
</tr>
<tr>
<td>Japan-Mongolia</td>
<td></td>
</tr>
<tr>
<td>Japan-Chile</td>
<td></td>
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<tr>
<td>Japan-Mexico</td>
<td></td>
</tr>
<tr>
<td>Japan-Peru</td>
<td></td>
</tr>
<tr>
<td>Japan-Australia</td>
<td></td>
</tr>
</tbody>
</table>

Source: “The Relationship between Services Trade and Government Procurement Commitments: Insights from Relevant WTO Agreements and Recent RTAs” by Robert D. Anderson, Claudia Locatelli, Anna Caroline Müller and Philippe Pelletier, WTO working paper124, October 2013, p. 41, and information provided by the authorities of Japan.

Table 3-3: Foreign Participation in Japan’s Government Procurement

<table>
<thead>
<tr>
<th>Year</th>
<th>Relative foreign share of procurement value</th>
<th>Relative foreign share of number of contracts awarded</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>3.0</td>
<td>2.9</td>
</tr>
<tr>
<td>2014</td>
<td>3.1</td>
<td>5.1</td>
</tr>
</tbody>
</table>


Table 3-4: Awards to Foreign Suppliers by Origin, 2014

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Value (¥ billion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>219</td>
<td>30.8</td>
</tr>
<tr>
<td>European Union</td>
<td>228</td>
<td>23.6</td>
</tr>
<tr>
<td>Others</td>
<td>342</td>
<td>9.4</td>
</tr>
<tr>
<td>Total</td>
<td>789</td>
<td>63.8</td>
</tr>
</tbody>
</table>


Annex III sets out a summary of Japan’s RTAs with procurement provisions. Most significant, in terms of market access, is the so-called WTO GPA+ procurement chapter included in the Japan – Singapore Economic Agreement which lowers the application thresholds for procurement contracts to be covered by the provisions relative to the WTO GPA.
3.3.3 De facto and de jure limits to market access

Language is considered a major de facto barrier to market access, as there is limited access to official information in international languages. Research undertaken suggests that the SMEs that are currently active and successful in government procurement, have invested in hiring the expertise necessary to deal with the administrative hurdles, access to market information and the development of a relevant network.

Another market issue was that the development of standards and licenses tend to favour insiders. The Japanese Industrial Standards (JIS) are used in tender requirements and have been usually developed by domestic industrial associations. Therefore, foreign suppliers are forced to verify separately whether their products meet these standards, thus adding to extra time and costs when preparing a bid. This issue has been solved in some instances for EU companies by the EU Japan Mutual Recognition Agreement.

3.3.4 Market Access commitments specific to the EU

There are no specific market access commitments between the EU and Japan, however there are accelerated negotiations on a Japan-EU Economic Partnership Agreement (EPA)/Free Trade Agreement (FTA). However, there are three important agreements which have been concluded between the EU and Japan which promote both de facto market access between the EU and Japan through cooperation frameworks, mutual assistance and addressing anti-competitive practices:

- The EU-Japan Mutual Recognition Agreement, which entered into force on 1 January 2002.establishes a framework enabling certain procedures required in the importing country to be undertaken in the exporting country in the sectors of telecommunications equipment, electrical products, good laboratory practice (GLP) for chemicals and good manufacturing practice (GMP) for medicinal products, and in this way aims to promote trade between Japan and the EU by reducing the cost for companies that are engaged in trade in the four areas

- The Agreement on Co-operation on Anti-competitive Activities - adopted by the EU Council on 16 June 2003, to strengthen international cooperation on competition problems and to elaborate the principles of positive comity in international law and implementation of those principles in the enforcement of the competition laws of the EC and Japan

- The Agreement on Co-operation and Mutual Administrative Assistance (CCMAA) between the EU and Japan entered into force on 1 February 2008. It provides a legal framework to promote security of the supply chain and facilitate trade for reliable traders. It also aims to improve the fight against fraud and to enhance cooperation on the protection of intellectual property rights (IPR).

3.3.5 Conclusion

Japan’s regulatory system for procurement does not include any set asides for MSEs or domestic preferences for procurement at the central level, therefore the barriers to market that exist in Japan from a de jure perspective are very limited.

Japan, by virtue of being a party to the GPA has opened up its government procurement market. Its coverage schedules for the revised GPA covers 25 central government entities, including ministries, agencies, the legislature, the cabinet, and the Supreme Court. At the sub-central level, Japan has included all 47 prefectures and 19 designated cities. There are a few de jure market access barriers in the GPA it has excluded it from the operation of contracts for procurement related to operational safety of transportation and related to the production, transport or distribution of electricity by sub-central government entities. Moreover, the country has in place a number of EPAs where most favoured nation, national treatment and non-discrimination of goods and services of party countries is provided for.

Nevertheless, there are significant de facto barriers operating against foreign bidders entering the procurement market in Japan.
3.4 Regulatory Environment for Procurement in Brazil

Brazil's procurement system is decentralized and tendering procedures are generally used. Brazil's Tendering Law allows for preferences for goods and services produced in Brazil, or produced or supplied by Brazilian companies or by companies that invest in technology development in Brazil, in the case of equivalent offers. Brazil is not a party to the Agreement on Government Procurement.

3.4.1 Domestic Legislation

Box 4 sets out the main laws applicable to public procurement contracting. It indicates that the regulation is fragmented as well as decentralised.

**Box 4**

- **Federal Constitution - Section XXI, Article 37**: this section of the Constitution provides that unless otherwise specified by law, public works, purchases, services and disposals must be contracted by public bidding procedures. This provides the general framework for public procurement in Brazil.
- **Law 8 666/93**: this is the Public Procurement Law and it regulates public procurement procedures and contracts entered by the government.
- **Law 8 987/95**: the Concession Law. This Law governs the process for the award of concession contracts. The law was enacted essentially to reduce government investment in certain sectors where private companies could come in and provide the services with government regulating and performing oversight functions, thereby allowing government to focus on other important sectors. The law introduced flexibility to the concession process which would otherwise not have been the case under the Procurement Law.
- **Law No. 10 520/02**: this law provides for the Reverse auction system (Pregão)
- **Law 11 079/04**: this law specifically deals with Public Private Partnerships (PPPs)- It modifies and complements the Concessions Law. The PPP Law established general rules for the bidding and contracting of PPPs while creating two new types of concessions – the sponsored concession, and the administrative concession. The law also introduced the possibility of government subsidies in order to allow implementation of concessions. Using the vehicle of PPPs the government was also able to ensure that there was no increase in the public debt.

**Some Sector Specific Legislation**

- **Law 9 472/97**: This law establishes the the organisation of the National Communications Agency (Agência Nacional de Telecomunicações) (ANATEL) and authorises the agency to create its own public procurement process and system.
- **Law 9 478/97**: this law created the National Oil Agency (ANP) and authorises the agency to create its own public procurement system and processes.
- **Decree 2 745/98**: this Decree authorises Petrobras (the Brazilian state-owned oil and gas company) to comply with a simplified tender procedure. It provides for special public procurement rules for Petrobras, which are more flexible than the bidding procedures provided by the Public Procurement Law
- **Law 9 961/00**: this law created the National Supplementary Health Agency (ANS) and authorises the agency to create its own public procurement norms
- **Decree 7 174/10**: Under Brazilian legislation, laws can also be made by Presidential decree. In this case, this decree was made in order to regulate the purchase of IT goods and services.
- **Law 12 462/11**: this law provides for the ‘RDC’ system (‘RDC Law’) (a Portuguese acronym for ‘Special Procurement System’). This provides for a different public procurement procedure for procurements related to the sports events held in 2016 (Olympic and Paralympic games) and the related infrastructure; and the National Development Program (Programa de Aceleração do Crescimento) (PAC), which is a governmental program created to stimulate national development through infrastructure works;
- **Law 12 598/12**: this law specifies the process and system that needs to be followed in order to deal with procurement for the purchase and development of defence systems.
3.4.2 International Treaties

Brazil is neither a party nor an observer to the World Trade Organisation Agreement on Government Procurement (GPA).

Brazil is a member of the common market Mercosur, a sub-regional bloc made up of the following members - Argentina, Brazil, Paraguay, Uruguay and Venezuela (Venezuela was suspended on 1 December 2016). It was launched in 1991 when the founding members signed the Treaty of Asunción, aiming to create the Common Market of the South, and it has as its objectives, the free movement of goods, services, and factors of production through the elimination of customs duties and non-tariff restrictions; the establishment of a common external tariff (‘CET’) and the adoption of a common trade policy; and the co-ordination of macroeconomic and sectoral policies in order to ensure proper competition between the Member States in the areas of, foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport, and communications. Under the umbrella of Mercosur, Brazil also has free trade agreements with Israel, Egypt, the State of Palestine, and Lebanon.

3.4.3 De facto and de jure limits to market access

In theory, under the provisions of the Procurement Law, there is equality of suppliers and equal treatment of companies. However, as we will see below, there are a number of de facto and de jure limits to market access which exist and in some instance lead to discrimination.

Under Brazilian law, companies headquartered overseas are allowed to participate in any bidding process, however in order to be eligible the company must establish a branch in Brazil. Foreign firms who do not have a presence in Brazil may only participate in ‘international tenders’

The Basic Productive Process (PPB) is the minimum set of operations, in a manufacturing establishment, which characterizes the effective industrialization of a given product. In other words, it is the set of criteria which determines whether a product is classed as ‘Brazilian’. This is important because Law No. 8 248/1991 and Decree No. 7 174/2010, provides, among other requirements, for a preference of products and services developed with local technology and manufactured according to the PPB, govern the acquisition of IT products and services. Therefore, companies who meet the PPB threshold are effectively at a market advantage to others. Further, small enterprises controlled by a foreign holding company are ineligible for the preferential procurement rules provided by the General Law on Micro and Small Businesses (Supplementary Law No. 123 of 14 December 2006).

Another thing to consider is the fact that bid commissioners are at liberty to factor in preference margins for Brazilian products and services, (not to exceed 25 % of the price of the equivalent good or service). In the award of contracts, public tendering must promote national sustainable development. This is done by the grant of preferential margins for goods and services produced nationally and in accordance with Brazilian technical standards. National products are defined as those produced in accordance with a Basic Productive Process (PPB) or with rules of origin established by the Federal Government, which must follow MERCOSUR minimum standards.

There is therefore inequality towards foreign providers. Further, the benefits provided to local companies in public procurement procedures are extended to members of Mercosur as well.

- Law No. 12 349/10 allows for procurement contracts in the technology and communication sector to be restricted to goods and services developed in Brazil and produced in accordance with the PPB

- Law No. 123/2006, which grants preferential treatment for micro-enterprises (‘ME’) and small enterprises (‘EPP’) in many circumstances, including public bidding procedures; therefore, an ME or an EPP will have priority rights over an ordinary company in certain situations. Law No. 123/2006
was amended by Law No. 147/2014, and this new amendment went a few steps further by introducing two important changes, that public procurements up to BRL 80,000 must be carried out by means of bidding procedures exclusive for MEs and EPPs, and that upon a successful bid, a public administration may require bidders to subcontract MEs and EPPs for the provision of certain services or the supply of certain products.

3.4.4 Market Access commitments specific to the EU
The European Union and Brazil do not have an FTA, however under the umbrella of Mercosur there are discussions to relaunch negotiations in order to create a Bi-regional FTA. A future EU-Mercosur Association Agreement will cover, among other issues, government procurement. Mercosur and the European Free Trade Association (EFTA) have also successfully completed an exploratory dialogue and preliminary negotiations for a Free Trade Agreement (FTA).

3.4.5 Conclusion
Brazil is not a signatory to the GPA. The Government procurement sector allows for certain limits to market access by providing domestic preferences for products and services developed locally. Also, micro and small businesses enjoy preferential procurement. Bid commissioners are at liberty to factor in preference margins for Brazilian products and services, (not to exceed 25 % of the price of the equivalent good or service). In the award of contracts, public tendering must promote national sustainable development.

It is crucial to note however that although there are market access barriers towards foreign providers. These barriers do not appear to exist with regards to companies from countries which are members of Mercosur as well.

3.5 Regulatory Environment for Procurement in China
China’s Government Procurement Law was amended in 2014 and the implementing regulations came into effect in early 2015. New regulations were also introduced in 2014 for both competitive and non-competitive bidding. Under the Government Procurement Law, the authorities are required to procure goods, construction projects and services domestically, subject to certain exceptions including unavailability in China or lack of availability on reasonable commercial terms.

3.5.1 Domestic Legislation
Box 5 sets out the main regulation applicable to procurement contracts.

<table>
<thead>
<tr>
<th>Box 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Bidding and Tendering Law (BTL) was passed in 1999 and came into force in 2000. It provides a set of rules on open and selective tendering procedures which mainly concern procurement of construction works. The law provides in Article 2, that it applies to all tendering activities conducted in China. The framework created by the TL is not all encompassing however, as it is only applicable where tendering procedure is mandated or has been voluntarily chosen. Further to this Law, the Implementation Regulations for the Bidding and Tendering Law was passed in November, 2011.</td>
</tr>
<tr>
<td>• The Government Procurement Law (GPL) – this Law was passed in 2002, and came into force in 2003. The GPL provides for the rules on government procurement principles, contract award, supervision, and legal liabilities. As stated in Article 2 of the GPL, it applies to ‘all government procurement done within China’. However, to avoid a conflict with the BL, it stipulates in Article 4 that government procurement of works done through tendering shall be covered by the BL.</td>
</tr>
</tbody>
</table>

Some Sector Specific Legislation
• Military and Defence Procurement – The GPL does not apply to military procurement. The regulations for this is formulated by the Central Military Commission.
Emergency and National Security Procurement - Also excluded from the provisions of the GPL is procurement carried out due to serious natural disaster or other matters of force majeure, or procurement involving national security or state secrets.

Table 3-5: Value of government procurement in China by type of purchase 2011-14

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL</strong></td>
<td>1,133.3</td>
<td>1,307.8</td>
<td>1,630.1</td>
<td>1,730.5</td>
</tr>
<tr>
<td>Goods</td>
<td>383.0</td>
<td>439.0</td>
<td>492.1</td>
<td>523.0</td>
</tr>
<tr>
<td>Central government entities</td>
<td>35.8</td>
<td>40.1</td>
<td>39.6</td>
<td>35.8</td>
</tr>
<tr>
<td>Local government entities</td>
<td>347.2</td>
<td>398.9</td>
<td>452.5</td>
<td>487.2</td>
</tr>
<tr>
<td>Construction and engineering services</td>
<td>601.4</td>
<td>837.4</td>
<td>992.6</td>
<td>1,014.1</td>
</tr>
<tr>
<td>Central government entities</td>
<td>23.0</td>
<td>25.5</td>
<td>33</td>
<td>37.9</td>
</tr>
<tr>
<td>Local government entities</td>
<td>638.4</td>
<td>811.9</td>
<td>959.6</td>
<td>976.2</td>
</tr>
<tr>
<td>Other services</td>
<td>88.9</td>
<td>121.4</td>
<td>133.4</td>
<td>193.4</td>
</tr>
<tr>
<td>Central government entities</td>
<td>9.7</td>
<td>13.0</td>
<td>14.3</td>
<td>9.7</td>
</tr>
<tr>
<td>Local government entities</td>
<td>79.2</td>
<td>108.4</td>
<td>139.1</td>
<td>183.7</td>
</tr>
<tr>
<td>Total procurement by the Central Government</td>
<td>66.5</td>
<td>78.6</td>
<td>86.9</td>
<td>83.4</td>
</tr>
<tr>
<td>Total procurement by local government entities</td>
<td>1,054.8</td>
<td>1,319.2</td>
<td>1,551.2</td>
<td>1,647.1</td>
</tr>
</tbody>
</table>

Source: Information provided by the Chinese authorities.

Procurement at the various levels of government can be centralized or decentralized, although the vast majority of procurement is centralized. Purchases of items listed in the Centralized Procurement Catalogue must be carried out by centralized procurement agencies. The Procurement Law mandates that centralized procurement agencies procure quality goods and services, at a lower-than-average-for-the-market price. Decentralized procurement of items not listed in the Catalogue, but with a value above a certain threshold, which is specified by governments at various levels, may be carried out by the procuring agency itself, or by entrusting it to agent procurement bodies. In this case, the procurement standards are stipulated by the people's governments at above provincial levels. Centralized procurement accounted for 84.8% of government procurement in 2014 (RMB 1.47 trillion), down from 86% in 2013 (RMB 1.4 trillion).

The WTO 2016 TPR for China noted that the Chinese authorities have stated that government procurement has become increasingly more transparent and the procurement process has become more open: in 2014, 84.5% of all government procurement adopted the approach of public tendering. An information disclosure mechanism covering the whole process of government procurement has also been established, leading to the publishing of over 930,000 announcements related to government procurement information in 2014, among which 480,000 were for procurement demands, and 440,000 were for bidding results and successful deal-making. Additionally, information and records on material offences and dishonesty of procurement agencies, suppliers and review experts has been made public.

### 3.5.2 International Treaties

China became a WTO Member on 11 December 2001. China’s trade policies have reviewed five times. The last Review took place in July 2014. China is an observer to the Committee on Government Procurement and is in the process of negotiating its accession to the Plurilateral Agreement on Government Procurement. China presented its fifth offer to the Committee in December 2014.

A review of China’s FTAs shows that there is none in which any form of preferential terms are agreed regarding public procurement. The furthest any of the FTAs has gone is to mandate that the parties agree to promote cooperative activities in the field of government procurement, including publication of their...
laws, exchange of information, and to enter negotiations when upon China’s accession to the GPA. This is the case with the China-Switzerland FTA and the China-Iceland FTA.

In some FTAs, there is even no mention of co-operation or knowledge exchange for government procurement at all. This is the case with the China-Costa Rica FTA, China-Singapore FTA, China-New Zealand FTA, China-ASEAN FTA. The China-Peru FTA also does not have any separate section discussing government procurement, this FTA mandates that both parties will work for their general economic co-operation. The China-Chile FTA, China-Pakistan FTAs deal primarily with trade in goods and do not include trade services or investment, there is also no mention of government procurement in the FTAs.

Finally, the Mainland and Hong Kong Closer Economic and Partnership Arrangement states that most favoured nation and national treatment as regards government procurement shall not apply to the FTA, and the Mainland and Macau Closer Economic and Partnership Arrangement also makes no mention of government procurement. This is the situation with the Asia Pacific Agreement, there is no mention of government procurement in the Agreement.

3.5.3 De facto and de jure limits to market access

Buy National policy

Article 10 of the GPL provides that domestic goods, construction and services shall be procured for government procurement except (i) when the needed goods, construction or services are not available within the territory of People's Republic of China; or though available, cannot be acquired on reasonable commercial terms and conditions; (ii) when the items to be procured are for use abroad; or (iii) in other circumstances provided for by laws and administrative regulations. The implication of this is that procurement in China has a domestic preference, and therefore foreign companies are at a distinct advantage when bidding for procurement contracts.

‘Domestic Goods’ definition

As discussed above, the GPL creates a preference for domestic goods. However, what constitutes domestic goods is not clearly defined. This uncertainty makes it easy for the Chinese procurement process to exclude foreign companies, as the mere fact that the company is registered in China does not automatically qualify it as a provider of ‘domestic goods’.

Indigenous innovation

In 2006, China introduced the Medium and Long Term National Plan for Science and Technology Development, which is a national policy directing government agencies to buy products listed in certain procurement catalogues, these catalogues include only qualified indigenous innovation products with some exceptions. The Government though the Ministry of Finance created measures to implement this. It created the MOF Measure on the Administration of Contract on Government Procurement of Indigenous Innovation Products. These measures provide inter alia that once approval is granted to purchase foreign products, the contract should preferably be awarded to the foreign enterprise which undertakes to transfer the core technology (Article 11), and that indigenously innovated products are to be given preference at a margin of 5-10 % in cases where price is the sole determining factor or otherwise 4-8 % (Article 13-17).

Small and Medium Enterprises

The Promotion of Small and Medium Enterprises Law (entered into force on 1 January 2003) provides in Article 34 that ‘government procurement shall give preference to products or services supplied by SMEs’. This ostensibly gives priority to SMEs when bidding for government procurement contracts. It is however instructive to note that the Law does not set out any minimum or maximum thresholds.
3.5.4 Market Access commitments specific to the EU

The EU and China are currently in talks for a Bilateral Investment Agreement, however at the moment there are no EU access market access commitments which are currently in operation between the EU and China. The negotiations commenced in 2013, and the most recent round of negotiations (12th) took place in September 2016.

3.5.5 Conclusions

China is currently negotiating its accession to the WTO GPA. As it does so, it is reforming its Government Procurement Law, which was amended in 2014 and the implementing regulations came into effect in early 2015. New regulations were also introduced in 2014 for both competitive and non-competitive bidding. Under the Government Procurement Law, the authorities are required to procure goods, construction projects and services domestically, subject to certain exceptions including unavailability in China or lack of availability on reasonable commercial terms. Government procurement can be centralized or decentralized. Purchases of items listed in the Centralized Procurement Catalogue must be carried out by centralized procurement agencies; centralized procurement accounted for 86% of total procurement in 2014.

A review of the FTAs which China is a party to, shows that there is none in which any form of preferential terms are agreed regarding public procurement. The furthest any of the FTAs has gone is to mandate that the parties agree to promote cooperative activities in the field of government procurement, including publication of their laws, exchange of information, and to enter negotiations when upon China’s accession to the GPA.

China has a number of de jure market access barriers, including the ‘buy national policy’ and ‘indigenous innovation’. These policies give preferential treatment to goods and services developed locally. Also, the Promotion of Small and Medium Enterprises Law mandates preferential treatment to SMEs. On balance, the evidence suggests that China’s procurement system is somewhat closed and protectionist towards domestic suppliers of goods and services.
4 A Comparison with the EU

Having set out the main provisions and non-tariff barriers to procurement markets in the five case study countries, Chapter 4 undertakes a similar assessment of the EU legal framework regulating market access under the WTO GPA and its regional trade agreements, as well as any non-procurement policies and de facto measures which result in barriers to EU procurement markets. This will allow for benchmarking EU procurement market access commitments against key trading partners. The chapter will conclude with an assessment of the levels of reciprocity operating between the EU and the five case study countries, as well as the legal compatibility of any horizontal policy objectives, most notably SME promotion and the exclusion of sensitive sectors.

4.1 Overview of EU Procurement Framework

Public procurement policy in the EU aims to achieve the best value for money through open, transparent and non-discriminatory procedures, consistent with the underlying objectives of the internal market. The applicable rules also mention other aspects such as social, innovation, and environmental considerations that can be incorporated into technical specifications, selection and award criteria, as well as contract-performance clauses. In the EU, all procurement carried out above specified thresholds must comply with the requirements of the EU Directives on procurement, which are transposed into the relevant legislation and regulations of each EU Member State. The legal framework is a set of directives, which must be transposed into national law by the member States: namely Directives 2014/23/EU on the award of concession contracts; 2014/24/EU on public procurement; and 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. These Directives stipulate that above-threshold public procurement must be advertised EU-wide and must follow uniform procedures.

Nevertheless, the EU legislative framework contains a series of provisions regarding the incorporation of other public policy objectives. First, to favour social inclusion, the current contracts’ reservation in favour of sheltered workshops has been extended to economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers; and the minimum required percentage of disabled or disadvantaged employees is reduced from 50% to 30%. Second, regarding innovation, all procedures may now take account of the total life-cycle cost of purchases when tenders are being evaluated. Thus, innovative bids may be awarded more points in the light of their long-term financial benefits. Innovation in social and health services will be encouraged by the simplified system, which is more flexible. Third, regarding the environmental aspects of procurement, the concept of ‘life-cycle costing’ introduced in the Directives is aimed at encouraging public authorities to consider the full life-cycle of products in their purchasing decisions. The life-cycle cost concept includes internal costs and costs imputed to environmental externalities linked to the product, service or works during its/their life cycle, provided their monetary value can be determined and verified. In their award decisions, contracting authorities may take into account criteria linked to the production process of the works, supplies or services to be purchased such as the inclusion of vulnerable and disadvantaged people or the use of non-toxic substances. In addition, contracting authorities may require that works, supplies, or services bear specific labels certifying environmental, social or other characteristics, as long as the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services and that equivalent labels are accepted.

The new Directives also contain a series of provisions designed to fight corruption and to ensure more transparency. In particular member States now have an obligation to take steps to prevent, identify, and address conflicts of interest which are precisely defined. The prior consultation phases, which could lead to situations that favour the companies involved, are now more stringently regulated; the public purchaser must take the necessary steps to ensure that the participation of a previously-consulted company does not affect competition within the tender procedure concerned; and, in particular, any information to which the
company may be party as a result of its prior involvement must be sent to the other participating companies. However, this company may be excluded only as a last resort and if it is impossible to guarantee equal treatment for participating companies by any other means. The grounds for excluding enterprises from public procurement have been enlarged and reinforced. In addition to conviction for fraud and corruption, they now include situations where a company has unduly influenced the decision-making process, false statements in connection with the procedure for the award of a public contract, and agreements to distort competition. Exclusion may also be imposed by a member State. Since modifying contracts during their term without calling a new tender procedure may breach the rules on public procurement, the applicable rules in that regard have been clarified and simplified to try to remove any doubt in this regard. Instead of creating a single oversight body in each member State, the Directives provide for increased monitoring at the national level and for an obligation on member States to transmit to the Commission every three years a monitoring report covering information on the sources of wrong application, legal uncertainties, level of SME participation, prevention, detection and adequate reporting of procurement fraud, corruption and conflicts of interest, and other serious irregularities.

4.1.1 SME Promotion in the EU

According to one study, approximately 20.8 million SMEs are registered in the EU, representing 99.8% of all enterprises, and they produce more than a half of European GDP. Due to this, SMEs are the prime focus of European public policy with one of the objectives being the facilitation of their access to public procurement. Between 2009 and 2011, an estimated 56% of all public procurement contracts above the EU-thresholds were awarded to SMEs (or groupings of companies led by an SME). In terms of the aggregate value of contracts awarded, this corresponded to a 29% market share. This figure is slightly below the estimates of the previous three-year period (2006-2008). Between 2009 and 2011, 1.3% of all contracts above thresholds were awarded to economic operators located in a foreign country. In terms of the aggregate value of these contracts, this corresponds to 3.1% of all above-threshold procurement. Interestingly, the analysis does not reveal a significant difference between the proportions of SMEs among the companies winning domestic or direct cross-border contracts. SMEs won 56% of domestic public contracts and 54% of cross-border contracts. In terms of value, SMEs' share was lower in cross-border procurement (22%) than domestic procurement (29%).

The EU’s public procurement reform in 2014 introduced specific legislative measures to improve SMEs’ access to public procurement markets. These measures include in particular an encouragement to divide contracts into lots and the limitation of the turnover required to participate in a tender procedure. The subdivision of public purchases into lots facilitates access by SMEs both quantitatively (the size of the lots may better correspond to the productive capacity of the SME) and qualitatively (the content of the lots may correspond more closely to the specialised sector of the SME). The division of contracts into lots is encouraged through the ‘apply or explain’ principle, i.e. when contracting authorities deem that the division would not be appropriate, an individual report or the procurement documents should contain an indication of the main reasons for the contracting authority’s choice. Such reasons could be that the contracting authority finds that the division could risk restricting competition, or rendering the execution of the contract excessively technically difficult or expensive, or that the need to coordinate the different contractors for the lots could seriously undermine the proper execution of the contract.

As far as proof of financial capacity of the economic operator is concerned, the turnover requirements are limited to a maximum of twice the estimated value of the contract, except in duly-justified cases. For its part, the new Directive on concessions is also for the benefit of SMEs, inter alia through improving access

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53 PwC, ICT, GHK, Ecorys (2014), SMEs' access to public procurement markets and aggregation of demand in the EU, a study commissioned by the European Commission, DG Internal Market and Services, February. Viewed at:
to information and favouring their participation in consortia and as subcontractors. However, despite the SME focus of the EU, and the numerous references to SMEs in the 2014 Directive recitals, the directive only contains a few substantive rules actually promoting the participation of SMEs in EU level competition for public contracts. The WTO provides *ex ante* options for the parties to promote their SMEs and, moreover, various parties to the WTO GPA have employed these possibilities to encourage SME participation in procurement markets in their Annexes included in Appendix 1, which is integral to the Agreement; however, not the EU.

### 4.2 The EU and international procurement

The EU has historically been active in seeking to expand the level playing field in world procurement markets. It has perceived these efforts to be in the face of an entrenched reluctance from many countries to allow for the participation of EU operators and products in their procurement tenders. The EU was a major advocate of public procurement liberalization under the GATT Procurement Codes, while the 1994 WTO Government Procurement Agreement was itself based on key EU concepts surrounding the appropriate design and execution of procurement contracts. This was in part because at the time the EU had one of the most developed public procurement regulatory frameworks internationally. The Revised GPA further displays the influence of the EU in the design of the right to appeal clauses, the judicial review mechanism, and e-procurement, for these were all part of previous EU legislation. The WTO Revised GPA’s newly adopted Works Programmes were also included at the request of the EU after it had successfully negotiated this with other parties’ delegations. The Works Programme reflects the EU’s policy priorities, such as sustainable procurement and SMEs in procurement54. As such, the EU has been very successful in promoting its public procurement agenda to the WTO through the GPA, as well as in its attempt to transfer EU practices in the globally lucrative market of public procurement.

As a result of the Council Decision to approve the 2014 WTO GPA55, Article 25 of the 2014 Directive – covering conditions relating to the GPA and other international agreements – states:

> In so far as they are covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union’s Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting authorities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.

The coverage of the GPA is somewhat different from that of the Directives. The GPA covers entities, goods, and services, including construction services, as specified in EU’s Appendix I. In 2011, out of the total EUR 335.4 billion above-threshold procurement in the EU, some EUR 237.2 billion was open to GPA Parties. The conclusion of the revised WTO GPA enhanced EU commitments for further market access opportunities for suppliers offering goods and services originating in GPA Parties’ economies. New sectors and contracting authorities/entities are now included in the EU schedules, for instance, the European External Action Service at EU level and a number of central government contracting authorities and sub-central entities of member States. For nearly EUR 2.5 billion worth of procurement contracts covered by the WTO GPA, EU contracting authorities must apply the 2014 Directive to both EU and third-country operators that are signatories of the 2014 WTO GPA.

Pursuant to Article IV in the 2014 WTO GPA on general principles, non-discriminatory treatment is unequivocally required of the signatory parties:

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55 On 2 December 2013, and following the consent given by Parliament on 19 November 2011, the Council adopted Decision 2014/115/EU approving the Protocol Amending the revised WTO Agreement on Government Procurement.
With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:

(a) domestic goods, services and suppliers; and
(b) goods, services and suppliers of any other Party.

With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

In the liberalization of government procurement markets under the WTO GPA, the MFN principle is based on strict reciprocity and a conditional MFN requirement. Under the WTO GPA, the MFN requirement is frequently set aside with respect to the parties’ market access commitments in goods, services and works. These exceptions are formally set out in the Annexes and General Notes included in the Appendix to the WTO GPA, and which form an integral part of the WTO GPA. This reflects the sensitivity of these negotiations. That is, the MFN obligation only pertains to ‘covered’ procurement, as negotiated in Appendix 1.

4.2.1 SME Promotion under the WTO GPA

From the outset of the negotiation of the Government Procurement Code in 1979, the EU did not seek to negotiate carve out protections from the GPA’s obligations for SMEs. It did not aim to negotiate agreements that matched the SME objectives of other parties. This is because the EU (then, the European Community) procurement directives were promulgated to liberalize the internal market among its Member States. The rationale underlying the directives, and therefore the principles embodied in the directives, are based on trade liberalization. The EU chose not to exercise its right to regulate the access of foreign goods, services and companies to the EU’s public procurement market – except in certain utilities sectors. On the contrary, EU negotiators sought instead to penalise the United States (US), Korea and Japan for their promotion of SMEs under their respective GPA Appendix 1 Annexes.

The EU’s Notes to Annex 1 stipulate that:

The provisions of Article XVIII requiring Domestic Review Procedures shall not apply to suppliers and service providers of Japan, Korea and the US in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EU law, until such time as the EU accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses.

4.2.2 The EU’s Regional Procurement Commitments

Box 4.2 indicates the parties that the EU has signed a bilateral agreements with chapters on government procurement.

- Albania (2006),
- Bosnia and Herzegovina (2008),
- Chile (2003 for goods, 2005 for services),
The plurilateral European Economic Area (EEA) (1994) and EU CARIFORUM (2008) agreements, as well as the bilateral agreements with Iraq (2012), Georgia (2014) and Moldova (2014) also have substantial provisions on government procurement. FTAs including substantial procurement chapters have been negotiated with Central America and the Andean countries and were first concluded with Colombia and Peru. In 2014 the CETA agreement with Canada was finalized. EU also finalised its agreement with Singapore. This latter is a WTO plus example of a comprehensive procurement framework within an EU FTA. It aims at extending the coverage of procurement entities and at improving the commitments. The EU, for example, commits itself to more central government entities and entities of the utilities sectors. Moreover, it includes more categories of services contracts in comparison to the commitments in the GPA. Singapore also covers more procuring entities under the FTA as well as expands the categories of services contracts.

The EU already had substantive mutual commitments with South Korea on government procurement in the framework of the WTO Agreement on Government Procurement (GPA). The EU-Korea FTA expands these mutual commitments to an additional area, not covered in the GPA, which has significant business opportunities in both regions: in EU public works concessions and in Korean ‘build-operate-transfer’ (BOT) contracts. Such contracts, for example key infrastructure projects such as the construction of highways, are of significant commercial interest to European suppliers, who are recognised global leaders in this area. Guaranteeing the practical and legal accessibility of such tenders to European suppliers will secure substantial new opportunities. More specifically, the FTA secures the possibility for EU companies to participate in the most commercially meaningful tendering opportunities in Korea: the FTA ensures access to BOT contracts beyond a value threshold of 15 000 000 SDRs (approx. EUR 17 000 000) from all central and sub-central public procuring entities committed by Korea under the GPA. It also covers BOT procurement contracts of all the public procuring entities (including cities, districts and counties) of Seoul Metropolitan City, Incheon Metropolitan City, Gyonggi-do Province and the largest harbour city, Busan Metropolitan City. This additional coverage represents over 50% of Korea’s GDP and population. The FTA also ensures that European SMEs are treated as Korean SMEs when competing for these contracts.\(^{56}\)

\(^{56}\) See: [http://www.wto.org/english/tratop_e/gproc_e/appendices_e.htm#kor](http://www.wto.org/english/tratop_e/gproc_e/appendices_e.htm#kor)
4.3 Other Policy Initiatives

4.3.1 International Procurement Instrument

‘Proposal for a Regulation of The European Parliament and Of the Council on The Access of Third-Country Goods And Services To The Union’s Internal Market In Public Procurement And Procedures Supporting Negotiations On Access Of Union Goods And Services To The Public Procurement Markets Of Third Countries’\(^5\).

In March 2012 the Commission tabled a proposal aimed at improving the conditions under which EU businesses can compete for public contracts in third countries, confirming the legal status of bidders, goods and services from countries that have an international agreement with the EU in the area of public procurement, and clarifying the rules applicable to bidders, goods and services not covered by these agreements. The proposal also foresees that, if an EU investigation were to show ‘recurring and serious discrimination’ against EU companies, the Commission should invite the third party to negotiations aiming at finding a solution. As a last resort, and only if the Partner shows no willingness to engage, the EU would be able to temporarily close its market to goods and services from that third-country partner regarding public procurement contracts worth EUR 5 million or more excluding VAT.

In January 2016, the European Parliament put forward several amendments to these proposals, in the International Procurement Instrument (IPI). The amended proposal aims at encouraging partners to engage in negotiations and opening participation for EU bidders and goods in third countries’ tenders. This is seen as imperative because the EU public procurement market is open to foreign bidders, unlike the procurement markets for foreign goods and services in third countries which remain to ‘a large extent closed de iure or de facto’. As a result, only EUR 10 billion of EU exports (0.08 per cent of EU GDP) reach foreign procurement markets, leaving an estimated EUR 12 billion of EU exports unrealized because of third-country restrictions.

The IPI Proposal lays down procedures for contracting authorities to reject tenders which are not subject to the EU’s international procurement commitments in the 2014 WTO GPA or its RTAs, under certain circumstances. The proposed measures include the exclusion of tenders originating in a non-EU country from a particular sector or to imposing a price penalty on the non-EU bids. The IPI Proposal clearly aims to provide the EU with a tool to increase leverage when negotiating access to public procurement markets of other trading partners, not currently party to the WTO GPA or its RTAs, and in so doing to improve the opportunities for EU businesses to compete for public procurement contracts outside the EU. Nevertheless, it remains unclear why this unilateral method would be more effective than bringing a subsidy case in the WTO Agreement on Subsidies and Countervailing Measures.

The literature indicates that there are four main measures for promoting the participation of SMEs in public procurements that are of relevance here. First, it is possible to change procurement procedures to facilitate competition by SMEs. This avenue suggests increased transparency, and improved economic and administrative methods to facilitate smaller businesses. The second option involves supporting SMEs by the government. European SMEs benefit from EU funding through grants, loans or guarantees. Subsidy support is available both directly (EU grants) and through programmes managed at national level. SMEs can also benefit from a series of non-financial assistance. Of further interest here is that the IPI Proposal includes an explicit exemption for tenders submitted by SMEs established in the EU that have a direct and effective link with the economy of at least one Member State.

\(^{5}\) 2012/060 (COD) Adopted on March 21st 2012.
The 2016 IPI Proposal applies\textsuperscript{58} to the procurement covered under the revised EU procurement directives covering: concessions contracts\textsuperscript{59}, goods contracts\textsuperscript{60}, and contracts for utilities\textsuperscript{61}. It reiterates the text of the WTO GPA and the GATT Article III.8(a) derogation in stipulated that the regulation:

\begin{quote}
\ldots shall only apply where the goods or services are procured for governmental purposes. It shall not apply where the goods are purchased with a view to commercial resale or with a view to use in the production of goods for commercial sale. It shall not apply where the services are purchased with a view to commercial resale or with a view to use in the supply of services for commercial sale\textsuperscript{62}.
\end{quote}

Moreover, the 2016 IPI Proposal Article 1 provision specifically provides that the regulation shall apply only with regard to restrictive and/or discriminatory procurement measures or practices implemented by a third country in respect of purchases of non-covered goods and services, and its application shall be without prejudice to any international obligations of the Union. That is, the procurement covered by any trade agreement signed with the EU will be exempt from the application of the regulation. An additional safeguard is offered pursuant to the exceptions set out under Article 12. Here, EU contracting authorities and contracting entities have the discretion to decide not to apply the price adjustment measure with respect to a procurement or a concession procedure if there are no EU Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity, or if the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

While the 2016 IPI instrument maintains the EU objective of encouraging greater reciprocity on the part of trading partners’ vis-à-vis access to the public procurement contracts, the overall proposal has been both refined and ring-fenced. The 2016 IPI Amended Proposal proposes to limit any possible restrictive measures to ‘price adjustment measures’ and exclude the possibility of completely disqualifying the tender. Moreover, the proposed regulation centralizes decision-making, removing the ability for the Member State procurement agencies or interested parties to trigger the regulation directly. The 2016 IPI Amended Proposal also addresses the concerns raised by the Member States about undue administrative costs, for by centralizing decision-making to the Commission it swiftly minimizes any potential administrative burden on both Member States and contracting agencies.

Member States are required to indicate the procuring entities that will be implementing the price adjustment measure. The proposed price adjustment measure can be applied to bidders or products or services from that country following a Commission investigation determining that a third party country is applying barriers to EU participation in its procurement market. However, there is now to be a presumption that a negative price preference will be imposed to level out the playing field of that particular procurement market. This presumption will be upheld unless the bidder can prove that less than 50% of the total value of their tender is made up of ‘non-covered’ goods and services originating in this third country. The proposal also permits targeting territories at both the regional or local level, like states, regions or even municipalities.

Other exceptions are provided under the 2016 IPI Proposal Article 4, where more than 50% of the total value of the tender is made up of goods and/or services originating in least-developed countries\textsuperscript{63}, and in

\textsuperscript{58} Article 1.2 The 2016 IPI Amended Proposal.
\textsuperscript{62} Article 1.3 The 2016 IPI Amended Proposal.
\textsuperscript{63} Listed in Annex IV to Regulation (EU) No 978/2012
certain developing countries\textsuperscript{64}. Article 5 sets out an exemption for tenders submitted by EU SMEs established with a direct and effect link with the economy of at least one Member State, as well as for developing countries bidders or products, as long as they are subject to GSP+ treatment\textsuperscript{65}. The IPI proposal also includes various other transparency, monitoring and reporting requirement both for the successful tender and for the contracting agencies. This brings the proposal in line with wider EU policies.

In sum, the 2016 IPI Proposal sends out warning signals to its bilateral trading partners, fellow GPA parties and acceding- and observer-status GPA parties alike, to incentivize them to expand on their EU government procurement market access commitments. This proposed regulation suggests that if the EU does not like the terms of a third party’s market coverage of procurement, it could seek to remedy this situation outside of the GPA Agreement. The 2016 IPI Proposal provides some punitive economic incentives and thus legislative push to third parties who have not opened up their procurement under either an RTA with the EU or under the WTO GPA, as well as those GPA parties who have not opened up a particular procurement market to the EU under their Annexes to Appendix 1. Indeed, the IPI wishes to be implemented widely, for if a contracting authority or contracting entity intends not to apply a price adjustment measures, it must indicate this in the contract notice that it publishes\textsuperscript{66} and notify the Commission within ten calendar days of publication.

Under the 2016 IPI Proposal, if after an investigation determining that bidders or products or services from a third party country is applying barriers to EU participation in its procurement market the Commission and the third party country must undergo consultations for up to 15 months. Article 7 states that if after the initiation of consultations, it appears that the most appropriate means to end a restrictive and/or discriminatory procurement measure or practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with Articles 207 and 218 of the Treaty on the Functioning of the European Union (TFEU). The Commission can terminate such consultations if the country concerned undertakes international commitments agreed with the Union either through accession to the WTO GPA or expanding its market access commitments to the EU under the WTO GPA, or otherwise through the conclusion of a bilateral agreement with the Union which includes market access commitments in the field of public procurement and/or concessions.

If this soft leverage does not result in the reciprocity the EU is seeking, Article 11.1 provides for the possibility to apply price adjustment measures to those contested tenders submitted by economic operators originating in the third country concerned or tenders offering goods and services originating in the third country concerned - if the value of those goods and services accounts for more than 50 per cent of the total value of the tender. However, this price adjustment measure shall apply only for the purpose of the evaluation and ranking of the price component of the tenders. It does not affect the price due to be paid under the contract, for this will subsequently be concluded with the successful tenderer. This suggests that a transparent price negotiation takes place with the winning tenderer that may conceivably result in the final cost of the tender being set at more than a losing bid from a disappointed competitor.

\textsuperscript{64} Considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system as defined in Annex VII to Regulation (EU) No 978/2012

\textsuperscript{65} Article VI IPI

De Jure Access to International Procurement Markets

Box 6 illustrates how the EU specifies in its General Notes that the GPA applies only to the services listed in their commitments, in respect of a given party, and only to the extent that this Party has given reciprocal access to the service concerned. Similar Scheduled Notes accompany their other Annexes.

Box 6: EU Schedules Notes to Annex 3

6 The following shall not be considered as covered procurement:

a. procurement by procuring entities operating in the fields of:
   i production, transport or distribution of drinking water covered under this Annex;
   ii production, transport or distribution of electricity covered under this Annex;
   iii airport facilities covered under this Annex;
   iv maritime or inland port or other terminal facilities covered under this Annex; and
   v urban railway, tramway, trolley bus or bus services covered under this Annex in regard of supplies, services, suppliers and service providers from Canada;

b. procurement by procuring entities operating in the field of production, transport or distribution of drinking water covered under this Annex in regard of suppliers and service providers from the United States;

c. procurement by procuring entities operating in the field of maritime or inland port or other terminal facilities covered under this Annex of dredging services or related to shipbuilding in regard of suppliers and service providers from the United States;

d. procurement by procuring entities covered under this Annex of air traffic control equipment in regard of suppliers and service providers from the United States;

e. procurement by procuring entities operating in the field of airport facilities covered under this Annex in regard of suppliers and service providers from the United States and Korea;

f. procurement by procuring entities operating in the field of urban railway, tramway, trolleybus or bus services covered under this Annex in regard of suppliers and service providers from the United States;

g. procurement by procuring entities operating in the field of urban railway covered under this Annex in regard of suppliers and service providers from Japan;

h. procurement by procuring entities operating in the field of railways covered under this Annex in regard of goods, suppliers, services and service providers from Armenia; Canada; Japan; the United States; Hong Kong, China; Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu;

i. procurement by procuring entities operating in the field of high-speed railways and high-speed railways infrastructure in regard of goods, suppliers, services and service providers from Korea;

j. procurement by procuring entities covered under this Annex of good or service components of procurement which are not themselves covered procurement in regard of suppliers and service providers from the United States;

k. procurement by procuring entities operating in the field of production, transport or distribution of electricity covered under this Annex in regard of suppliers and services providers from Japan;

l. procurement by procuring entities operating in the field of production, transport and distribution of electricity covered under this Annex ... (electrical transformers, plugs, switches and insulated cables) in regard of suppliers from Korea;

m. procurement by procuring entities operating in the field of production, transport and distribution of electricity covered under this Annex ... in regard of suppliers from Israel;

n. procurement by procuring entities operating in the field of bus services covered under this Annex in regard of suppliers and service providers from Israel;

until such time, the EU has accepted that the Parties concerned provide satisfactory reciprocal access to EU goods, suppliers, services and service providers to their own procurement markets.

[emphasis added]

67 https://e-gpa.wto.org/report/coverage
Chapter 5 sets out the main difficulties met in undertaking this study, including paucity of data and transparency of procedures.

Measuring the size of government spending on procurement is complicated because there is no ready data source that compiles these statistics for a broad set of countries consistently over time. This is unlike many other government expenditure data, such as categories of government spending (health, schooling, infrastructure etc), which are tracked by ministries and readily accessible through national or international statistical agencies like the World Bank.

The paucity of data is acute, as even broad country-level trends of public procurement expenditures is not readily available. Disaggregate procurement data is more sparse, which makes it difficult to understand the nature of the public procurement process. For instance, it is important to understand which levels of government (central and sub-central government levels) engage in public procurement, or which types of expenditure use public procurement (consumption versus investment), or what share of procurement is open to foreign providers which would help determine the role of foreign competition in making procurement contestable.

Gathering national data on government procurement directly from the national and sub-national organisations responsible for these decisions is the first step towards measuring procurement. The dependability of results obtained depends a great deal on homogeneity and uniformity of gathering and reporting processes across countries. Establishing these processes requires considerable resources, at least in the initial stage. As a consequence, often times it doesn't happen. In their review of the evidence on procurement, Evenett and Hoekman (2005) noted that the limited data means that many decisions regarding the government procurement agreement of the WTO are based on incomplete information. As a result, policymakers, especially in developing countries, have received little guidance from evidence-based research on how to meet their procurement challenges68.

The OECD has taken on the responsibility for this quantitative work with specific regard to member countries. Fourteen countries have also made procurement information available in statistical reports to the Committee on Government Procurement of the WTO. Among the five case studies we conducted, the two developed countries – the United States and Japan – have submitted these reports, and the rest of the information had to be gleaned from piecemeal reports. Given this lack of systematic data gathering, researchers at the WTO have observed that the state of data collection on public procurement is still ‘patchy’69. One reason for the lack of data on public procurement is the lack of centralised data collection and monitoring of the different contracts that are awarded. Yet more perniciously, the award of procurement contracts is a rent-seeking activity in several countries, so there has been a lack of transparency70.

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Many governments are starting to see the strategic economic value of public procurement in promoting domestic firms or reducing costs, and this is changing the state of data collection\textsuperscript{74}. But we are still far from a systematic source for data on tender awards and bid challenges in public procurement, the de jure and de facto barriers faced by providers, the process and outcomes of procurement at sub-national levels, and the extent to which public procurement is opened up to foreign providers. This lack of data and transparency are the biggest challenges faced in conducting this study.

A first answer is provided by the absence of reliable information in the WTO-GPA forum. All the signatories of the WTO Government Procurement Agreement (GPA) have recognized that a huge effort should be made to collect much better data on the openness of public procurement markets, and to make their notifications much more comparable\textsuperscript{75}. The current methodologies used for estimating the GPA-covered public procurements are so different among the signatories that it is impossible to reconcile them\textsuperscript{76}.

\begin{table}
\centering
\begin{tabular}{|l|c|c|}
\hline
Country & Rank\textsuperscript{72} & Score\textsuperscript{73} \\
\hline
United States & 18/176 & 74/100 \\
Japan & 20/176 & 72/100 \\
India & 79/176 & 40/100 \\
Brazil & 79/176 & 40/100 \\
China & 79/100 & 40/100 \\
\hline
\end{tabular}
\caption{Transparency International Corruption Perceptions index 2016\textsuperscript{71}}
\end{table}

\textsuperscript{71} Generated on May 1 www.transparency.org/news/feature/corruption_perceptions_index_2016
\textsuperscript{72} Relative to other countries in the index.
\textsuperscript{73} Perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).
\textsuperscript{75} Anderson et al. 2012
\textsuperscript{76} Anderson et al. 2011, footnotes 21 to 23
6 Conclusions

In 2013, governments across the globe spent 29% of total general government expenditure on public procurement, and it has been estimated that public procurement accounts for around one-fifth of global gross domestic product. Oftentimes, actual public procurement spending is higher because these national accounts do not include procurement spending of public utilities providers.

This report has examined the openness of public procurement markets in five of the EU’s key trading partners. It has noted that the positive link between competitive government procurement markets and greater international trade is oftentimes undermined by both de jure and de facto barriers to domestic public procurement markets. All of the five case study countries (US, China, Brazil, India, Japan) examined in this report indicated that their governments still protect public procurement markets in an explicit – de jure - and also covert – de facto - manner. In some cases procurement markets are closed to international bidders either through the use of public procurement contracts as a tool to promote horizontal domestic policy objectives such as stimulating domestic production or employment through local content requirements. Other de facto obstacles to market entry also exist - including corruption, nepotism, linguistic, cultural, legal, and administrative barriers.

The report found that:

- In the US, the regulatory environment for government procurement discriminates in favour of its domestic businesses. This is despite, the US is a signatory to the GPA, and has signed several FTAs with government procurement provisions, a number of restrictions still exist which either provide preferential treatment to goods manufactured in the US, most notably, the Buy American Act 1933. The US therefore operates a government procurement system which is to some extent open and allows market access, but maintains enough de jure limits to make it difficult for international operators to compete in those markets when compared to domestic operators.

- India is not a party to the WTO GPA, but has been an observer to this agreement since 2012. Under its national regulations there are certain key restrictions, particularly the reserved items and set asides for micro and small enterprises. India does have a number of FTAs in operation but does not extend market access and national treatment to public procurement processes. India’s government procurement system is therefore relatively closed and protectionist towards domestic suppliers of goods and services. Nevertheless, India has been undertaking reforms to its procurement system, in addition to becoming an observer to the WTO GPA. This indicates an interest in bringing its vast procurement system in line with international best practice frameworks.

- Japan is a party to the WTO GPA, and its domestic regulatory system for procurement does not include any set asides for MSEs or domestic preferences for procurement at the central level, therefore the barriers to market that exist in Japan from a de jure perspective are relatively limited. However, extensive de facto barriers to market penetration exist in Japan, most notably linguistic and cultural.

- Brazil is not a signatory to the WTO GPA and its government procurement policies provides for certain limits to market access by providing domestic preferences for products and services developed locally. Also, micro and small businesses enjoy preferential procurement along with the promotion of national sustainable development.

- Finally, China is currently negotiating its accession to the WTO GPA, and simultaneously reforming its Government Procurement Law to introduce some competitive. None of China’s FTAs include public procurement provisions beyond cooperation, information exchange and transparency.

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77 PwC. 2014. SMEs’ access to public procurement markets and aggregation of demand in the EU. Study commissioned by the European Commission DG Internal market and Services.
China has a number of de jure market access barriers, including the ‘buy national policy’ and ‘indigenous innovation’. These policies give preferential treatment to goods and services developed locally. Also, the Promotion of Small and Medium Enterprises Law mandates preferential treatment to SMEs. On balance, the data indicates that China’s procurement system remains somewhat closed and protectionist towards domestic suppliers of goods and services, although it is proceeding with its market access negotiations for procurement at the WTO GPA.

Taken together, the case studies indicate that on-going de jure and de facto obstacles – or so called ‘home bias’ - take place in public procurement markets, which raise both governance and economic efficiency considerations. These market access obstacles can distort trade flows and international specialisation, particularly in sectors characterised by a large share of public consumption in total demand and in sectors affected by monopolistic competition.

Yet alongside this home bias, there nevertheless remains a broad consensus – at least at a theoretical level - that domestic public procurement laws and policies should aim to protect and promote competition as a means to achieve value for money and to ensure the legitimacy of purchasing decisions. Competition is a good governance tool, preventing discrimination, both de facto and de jure and promoting the efficiency as well as the legitimacy of a government procurement system. Moreover, the vast sums of public resources spent on procuring goods and services should be directed towards value for money – however broadly defined. Public procurement systems are therefore both an important tool for trade and good governance. Allocating government expenditures efficiently and strategically generates fiscal space, which can turn into financial savings or a more beneficial reallocation of resources.

Competition among bidders allows public purchaser the possibility to reap the benefits of competitive pressure, such as greater choice, greater innovation through exposure to more international businesses, and lower prices.

The WTO GPA still offers the broadest framework for opening markets to public procurement contracts internationally. With the accession of China and Australia, for example, the market access attractions of membership will increase, along with its reputational value for promoting international best practice in government procurement practices, supported by a dispute settlement mechanism. If China were to join, the rough estimate made by the WTO Secretariat is that it would add a further EUR 80bn to the coverage of the GPA.

In times of populist politics, the WTO GPA provides something of an insurance policy against ad hoc discriminatory procurement measures among its parties, such as Buy National policies. The leverage that membership to the WTO GPA provides can then be built upon in bilateral agreements such as the EU – Canada CETA. The Revised WTO GPA also sets out binding corruption control and conflict of interests provisions. These could potentially be invoked to address cases of domestic corruption that prevent access to agreed upon procurement markets. This would go some way to address de facto as well as de jure obstacles to openness in international procurement markets. Moreover, the WTO GPA and the original Procurement Code were developed along the lines of the EU procurement regime because it was and remains the most developed legal framework for regulating procurement. The current WTO GPA work programme also reflects the EU’s agenda, focusing on offsets, sustainable procurement, labelling and most topically, SMEs.

Lastly, this report has re-confirmed the acute paucity of reliable data, at both the aggregate and disaggregate level. This prevents verifiable research and data collection on public procurement trends and expenditures. Or, most pertinent for this research, up to date cross comparative assessments of the share

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of procurement that is open to foreign providers. This would help to determine the role of foreign competition in making procurement contestable. Policy makers also need guidance on crafting procurement policies that are based on economic cost-benefit analyses indicating the true implications of using public procurement to promote horizontal policy objectives such as domestic production.
Annexes

### Annex I

**Legend:**
An "X" or a number indicates the application of preferences.

- **T** = Tie bid preference: When two bidders propose the same price for the same contract, the in-state bidder will be favoured. This is not always codified. Kentucky, for example, has an informal tie bid preference.
- **R** = Reciprocity in preferences
- **%** = Amount of preference applied
- **L** = Preference for labour
- **P** = Preference for products
- **A** = Preference for agricultural products (incl. fisheries)
- **S** = Preference for U.S. or State made steel

<table>
<thead>
<tr>
<th>States</th>
<th>T</th>
<th>R</th>
<th>%</th>
<th>L</th>
<th>P</th>
<th>A</th>
<th>S</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>X</td>
<td>S</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Award to non-resident bidders if bid is 5% cheaper.</td>
</tr>
<tr>
<td>Alaska</td>
<td></td>
<td></td>
<td></td>
<td>S</td>
<td>7</td>
<td></td>
<td></td>
<td>5% in-state bidder preference, 15% preference on services, 5% on insurance, 5% on recycled products.</td>
</tr>
<tr>
<td>Arizona</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled products (5%).</td>
</tr>
<tr>
<td>Arkansas</td>
<td></td>
<td>S</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>X</td>
<td>S</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Small and disadvantaged business preference; preference for economic 'target areas' and work to be performed in &quot;enterprise zones&quot; (5%); preference for recycled products.</td>
</tr>
<tr>
<td>Colorado</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled products; in-state firms given preference for services and supply contracts.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>Preference for recycled products.</td>
</tr>
<tr>
<td>Delaware</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bids may be rejected if disadvantageous to the state.</td>
</tr>
<tr>
<td>Florida</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for minority-owned companies.</td>
</tr>
<tr>
<td>Georgia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Tie bid or reciprocal preference depending. Compost and mulch. No purchasing of non-US beef.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for printing (15%) and software; 3%, 5%, or 10% in-state product preference (by ‘class’); preference for recycled products and biofuels.</td>
</tr>
</tbody>
</table>

### Summary table of state procurement preferences

<table>
<thead>
<tr>
<th>States</th>
<th>T</th>
<th>R</th>
<th>%</th>
<th>L</th>
<th>P</th>
<th>A</th>
<th>S</th>
<th>Other</th>
</tr>
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<tr>
<td>Idaho</td>
<td>X</td>
<td>5</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled paper (5 %).</td>
</tr>
<tr>
<td>Illinois</td>
<td>X</td>
<td>10</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Small business set-asides; preference for recycled products (10 %).</td>
</tr>
<tr>
<td>Indiana</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>15 % preference for US steel (may be increased to 25 %); small business set-asides; in-state small business preference (15 %).</td>
</tr>
<tr>
<td>Iowa</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled paper.</td>
</tr>
<tr>
<td>Kansas</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled paper.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>List of preferred items published yearly by the state. Preference for recycled products (10 %).</td>
</tr>
<tr>
<td>Maine</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Preference for recycled products (5 %). Preference for mercury-free products.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for buying from ‘depressed areas’.</td>
</tr>
<tr>
<td>Michigan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for printing.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>Preference for small business, ‘targeted groups’ (women, minorities), and disadvantaged areas. Preference for recycled materials (10 %).</td>
</tr>
<tr>
<td>Mississippi</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Reciprocal preference for labour. Preference for recovered materials.</td>
</tr>
<tr>
<td>Montana</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Hiring preference for Native Americans when projects are within reservations. Printing preference.</td>
</tr>
<tr>
<td>Nebraska</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled or biodegradable materials.</td>
</tr>
<tr>
<td>Nevada</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled products.</td>
</tr>
<tr>
<td>New Hampshire</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>X</td>
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</tr>
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</table>
### Summary table of state procurement preferences

<table>
<thead>
<tr>
<th>States</th>
<th>T</th>
<th>R</th>
<th>%</th>
<th>L</th>
<th>P</th>
<th>A</th>
<th>S</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Special treatment for New York businesses.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>NB: Reciprocal preference can be waived. General preference for US products.</td>
</tr>
<tr>
<td>North Dakota</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>Preference for recycled paper (newsprint).</td>
</tr>
<tr>
<td>Ohio</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for US and Ohio contractors and products. 5 % domestic bid preference (with discretion). Preference for recycled products.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for minority and disadvantaged businesses. Preference for US products (2.5 %). Preference for recycled products.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>15% Preference for recycled products and low- or non-mercury products. Preference for in-state professionals and products produced by the disabled.</td>
</tr>
<tr>
<td>South Carolina</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for resident design services.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for handicapped. Preference for recycled or starch-based materials (10 %).</td>
</tr>
<tr>
<td>Tennessee</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Domestic meat, coal and natural gas preferences.</td>
</tr>
<tr>
<td>Texas</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preference for minority businesses, the disabled, and in-state service providers. Preference for recycled and energy efficient products. Preference for US over foreign commodities.</td>
</tr>
<tr>
<td>Utah</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Preference for recycled paper.</td>
</tr>
<tr>
<td>Vermont</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Insurance preference.</td>
</tr>
<tr>
<td>Virginia</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td>4 % on coal. Preference for recycled products.</td>
</tr>
<tr>
<td>Washington</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Preferences are from 2.5 to 5 %.</td>
</tr>
<tr>
<td>States</td>
<td>T</td>
<td>R</td>
<td>%</td>
<td>L</td>
<td>P</td>
<td>A</td>
<td>S</td>
<td>Other</td>
</tr>
<tr>
<td>-------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Wyoming</td>
<td>S</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Added preference on printing contracts of 10 %</td>
</tr>
</tbody>
</table>

Openness of public procurement markets in key third countries

Annex II

3.165. Table 3.23 compares the entities covered, the thresholds and the disciplines/procedures applicable under the GPA and the general voluntary measures. While Table 3.24 describes the specific, sectoral voluntary measures in terms of thresholds, entities and disciplines.

Table 3.23 Entities covered, thresholds and disciplines/procedures applicable under the GPA and the general voluntary measures

(SDR 10,000/$10,000)

<table>
<thead>
<tr>
<th>Number of entities</th>
<th>GPA SDR</th>
<th>GPA Yen</th>
<th>General voluntary measure (GVM) SDR</th>
<th>General voluntary measure (GVM) Yen</th>
<th>Procedures introduced by GVM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central government entities</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Goods</td>
<td>10</td>
<td>1,600</td>
<td>10</td>
<td>1,600</td>
<td></td>
</tr>
<tr>
<td>2. Construction services</td>
<td>450</td>
<td>74,000</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>3. Architectural, engineering and other technical services</td>
<td>45</td>
<td>7,400</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>4. Other services</td>
<td>10</td>
<td>1,600</td>
<td>10</td>
<td>1,600</td>
<td></td>
</tr>
<tr>
<td>Sub-central government entities</td>
<td>66</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Goods</td>
<td>20</td>
<td>3,300</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>2. Construction Services</td>
<td>1,500</td>
<td>247,000</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
</tbody>
</table>

(1) Disclosure of procurement schedules of large-scale (over 100 SDR) goods and services in official gazette early in a fiscal year;
(2) Bidding period extended to 90 days;
(3) Supply to submit materials (b) to comment on proposed specifications in a bidding;
(4) Disclosure of designated suppliers

Table 3.24 Entities covered, thresholds and disciplines/procedures applicable under the GPA and the general voluntary measures

(SDR 10,000/$10,000)

<table>
<thead>
<tr>
<th>Number of entities</th>
<th>GPA SDR</th>
<th>GPA Yen</th>
<th>General voluntary measure (GVM) SDR</th>
<th>General voluntary measure (GVM) Yen</th>
<th>Procedures introduced by GVM</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Architectural, engineering and other technical services</td>
<td>150</td>
<td>24,000</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>4. Other services</td>
<td>20</td>
<td>3,300</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>All other entities</td>
<td>125</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Goods</td>
<td>13</td>
<td>2,100</td>
<td>10</td>
<td>1,600</td>
<td></td>
</tr>
<tr>
<td>2. Construction services for Japan Post in Group A</td>
<td>1,500</td>
<td>247,000</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>3. Construction services for Japan Post and entities in Group B</td>
<td>450</td>
<td>74,000</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>4. Architectural, engineering and other technical services</td>
<td>45</td>
<td>7,400</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
<tr>
<td>5. Other services</td>
<td>13</td>
<td>2,100</td>
<td>10</td>
<td>1,600</td>
<td></td>
</tr>
</tbody>
</table>

* Indicates the goods or services to which the Japanese voluntary measures are not applied (the Agreement on Government Procurement applies).

### Table 3.27 Procurement by product and by origin, 2013 and 2014

<table>
<thead>
<tr>
<th>No.</th>
<th>Products</th>
<th>2013 Total value ($100 million)</th>
<th>Foreign share (%)</th>
<th>2014 Total value ($100 million)</th>
<th>Foreign share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Products from agriculture, and from agricultural and food processing</td>
<td>21.7</td>
<td>46.6</td>
<td>17.5</td>
<td>45.1</td>
</tr>
<tr>
<td>2</td>
<td>Mineral products</td>
<td>382.6</td>
<td>21.3</td>
<td>673.5</td>
<td>11.5</td>
</tr>
<tr>
<td>3</td>
<td>Products of the chemical and allied industries</td>
<td>10.3</td>
<td>10.3</td>
<td>40.8</td>
<td>7.0</td>
</tr>
<tr>
<td>4</td>
<td>Medicinal and pharmaceutical products</td>
<td>249.5</td>
<td>31.3</td>
<td>482.0</td>
<td>21.2</td>
</tr>
<tr>
<td>5</td>
<td>Artificial resins; rubber, raw hides and skins; leathers and articles thereof</td>
<td>13.2</td>
<td>0.2</td>
<td>45.4</td>
<td>0.0</td>
</tr>
<tr>
<td>6</td>
<td>Wood and articles of wood; paper making material; paper and paperboard and articles thereof</td>
<td>190.2</td>
<td>0.1</td>
<td>102.9</td>
<td>0.1</td>
</tr>
<tr>
<td>7</td>
<td>Textiles and textile articles; thread for spinning and weaving; and articles thereof</td>
<td>76.3</td>
<td>3.1</td>
<td>84.9</td>
<td>2.5</td>
</tr>
<tr>
<td>8</td>
<td>Articles of stones of cement and similar materials; ceramic products; glass and glassware; and articles thereof</td>
<td>6.1</td>
<td>0.0</td>
<td>1.9</td>
<td>0.0</td>
</tr>
<tr>
<td>9</td>
<td>Iron and steel and articles thereof</td>
<td>207.8</td>
<td>0.1</td>
<td>128.8</td>
<td>1.2</td>
</tr>
<tr>
<td>10</td>
<td>Non-ferrous metals and articles thereof</td>
<td>35.4</td>
<td>8.2</td>
<td>48.7</td>
<td>4.6</td>
</tr>
<tr>
<td>11</td>
<td>Power generating machinery and equipment</td>
<td>157.9</td>
<td>1.2</td>
<td>83.3</td>
<td>0.0</td>
</tr>
<tr>
<td>12</td>
<td>Machinery specialized for particular industries</td>
<td>169.6</td>
<td>21.3</td>
<td>23.0</td>
<td>0.0</td>
</tr>
<tr>
<td>13</td>
<td>General industrial machinery and equipment</td>
<td>161.6</td>
<td>4.1</td>
<td>151.5</td>
<td>0.0</td>
</tr>
<tr>
<td>14</td>
<td>Office machines and automatic data processing equipment</td>
<td>2,257.9</td>
<td>4.2</td>
<td>2,292.1</td>
<td>2.0</td>
</tr>
<tr>
<td>15</td>
<td>Telecommunications and sound recording and reproducing apparatus and equipment</td>
<td>854.6</td>
<td>4.5</td>
<td>458.7</td>
<td>2.8</td>
</tr>
<tr>
<td>16</td>
<td>Electrical machinery, apparatus and ancillaries, and electrical parts thereof</td>
<td>291.5</td>
<td>4.2</td>
<td>214.1</td>
<td>4.4</td>
</tr>
<tr>
<td>17</td>
<td>Road vehicles</td>
<td>418.1</td>
<td>1.9</td>
<td>464.6</td>
<td>1.0</td>
</tr>
<tr>
<td>18</td>
<td>Railway vehicles and associated equipment</td>
<td>37.3</td>
<td>31.6</td>
<td>136.4</td>
<td>45.9</td>
</tr>
<tr>
<td>19</td>
<td>Aircraft and associated equipment</td>
<td>142.5</td>
<td>53.9</td>
<td>40.5</td>
<td>50.6</td>
</tr>
<tr>
<td>20</td>
<td>Ships; boats and floating structures</td>
<td>74.2</td>
<td>3.1</td>
<td>116.6</td>
<td>14.4</td>
</tr>
<tr>
<td>21</td>
<td>Sanitary, plumbing and heating equipment</td>
<td>7.9</td>
<td>0.0</td>
<td>1.9</td>
<td>0.0</td>
</tr>
<tr>
<td>22</td>
<td>Medical, dental, surgical and veterinary equipment</td>
<td>543.1</td>
<td>42.9</td>
<td>655.7</td>
<td>43.1</td>
</tr>
<tr>
<td>23</td>
<td>Furniture and parts thereof</td>
<td>72.1</td>
<td>0.5</td>
<td>104.4</td>
<td>0.0</td>
</tr>
</tbody>
</table>


### Table 3.28 Procurement by type of service, 2013 and 2014

<table>
<thead>
<tr>
<th>Type of service</th>
<th>2013 Total value ($100 million)</th>
<th>Foreign share (%)</th>
<th>2014 Total value ($100 million)</th>
<th>Foreign share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>9,625.3</td>
<td>1.4</td>
<td>9,540.2</td>
<td>1.4</td>
</tr>
<tr>
<td>Maintenance and repair of motor vehicles</td>
<td>4.2</td>
<td>12.9</td>
<td>19.9</td>
<td>0.0</td>
</tr>
<tr>
<td>Maintenance and repair of motorcycles and snowmobiles</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>n.e.</td>
</tr>
<tr>
<td>Other land transport services (except mail transportation)</td>
<td>94.8</td>
<td>0.0</td>
<td>111.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Rental services of seagoing vessels with operator</td>
<td>6.0</td>
<td>0.0</td>
<td>1.1</td>
<td>33.0</td>
</tr>
<tr>
<td>Rental services of non-sea-going vessels with operator</td>
<td>0.7</td>
<td>0.0</td>
<td>0.0</td>
<td>n.e.</td>
</tr>
<tr>
<td>Air transport (except mail transportation)</td>
<td>15.5</td>
<td>14.3</td>
<td>36.3</td>
<td>7.6</td>
</tr>
<tr>
<td>Freight transport agencies</td>
<td>14.5</td>
<td>0.0</td>
<td>20.2</td>
<td>0.0</td>
</tr>
<tr>
<td>Courier services</td>
<td>3.3</td>
<td>11.4</td>
<td>1.7</td>
<td>11.4</td>
</tr>
<tr>
<td>Telecommunication services</td>
<td>1,173.3</td>
<td>18.5</td>
<td>638.4</td>
<td>0.0</td>
</tr>
<tr>
<td>Computer and related services</td>
<td>7,176.4</td>
<td>1.3</td>
<td>7,107.7</td>
<td>4.4</td>
</tr>
<tr>
<td>Market research and public opinion polling</td>
<td>156.9</td>
<td>0.1</td>
<td>43.2</td>
<td>1.7</td>
</tr>
<tr>
<td>Advertising services</td>
<td>361.0</td>
<td>0.0</td>
<td>402.5</td>
<td>0.0</td>
</tr>
<tr>
<td>Armoured car services</td>
<td>3.0</td>
<td>0.0</td>
<td>194.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Building cleaning services</td>
<td>428.9</td>
<td>0.0</td>
<td>671.7</td>
<td>0.0</td>
</tr>
<tr>
<td>Publishing and printing services</td>
<td>166.9</td>
<td>0.1</td>
<td>166.0</td>
<td>0.1</td>
</tr>
<tr>
<td>Repair services (accidental to local products, machinery and equipment)</td>
<td>146.7</td>
<td>0.0</td>
<td>167.7</td>
<td>0.0</td>
</tr>
<tr>
<td>Sewage and refuse disposal, sanitation and other environmental protection</td>
<td>32.2</td>
<td>0.0</td>
<td>285.6</td>
<td>0.0</td>
</tr>
<tr>
<td>Other</td>
<td>671.0</td>
<td>0.2</td>
<td>165.5</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Annex III

Japan’s RTAs

- Japan-Singapore Economic Agreement: This agreement entered into force in November 2002. Both Singapore and Japan are parties to the GPA, and so there is already an existing structure for partnership as regards Government Procurement. What this Agreement does however is that it includes more obligations for partnership between both countries e.g. for lowering the application threshold applied under the GPA.

- Japan-Mexico Economic Partnership Agreement: This Agreement entered into force in April 2005. Both countries agreed to ‘national treatment’ of goods and services of the respective partner countries. In other words, goods and services of the partner country as well as their providers are subject to such treatment no less favourable than that accorded to domestic goods, services and suppliers. The Agreement does not have a section which specifically covers government procurement.

- Japan-Chile Economic Partnership Agreement: This Agreement entered into force in September 2007. Chile, which is not a signatory of the GPA, agreed with Japan on specific procurement procedures including the national treatment and non-discrimination. The Agreement also contains provisions concerning the establishment of a Committee on Government Procurement.

- Japan-Philippines Economic Partnership Agreement: This Agreement entered into force in December 2008. Philippines, which is not a signatory of the GPA, agreed with Japan on establishing a Sub-committee on Government Procurement, and also that when either country gives a favourable treatment to a third party country regarding government procurement, it will provide opportunities for negotiations with the other party to obtain the same treatment.

- Japan-Peru Economic Partnership Agreement: This Agreement entered into force in March 2012. Peru, which is not a signatory of the GPA, signed this Agreement with Japan agreeing to promote the participation in the government procurement markets of both Parties. The Agreement includes stipulations concerning national treatment and non-discrimination etc.

- Japan-Thailand Economic Partnership Agreement: This Agreement entered into force in November 2007, and it contains a chapter on government procurement, stipulating information exchange and an establishment of a sub-committee on government procurement. The Agreement makes no promises on the procedures for government procurement.

- Japan-Indonesia Economic Partnership Agreement: This Agreement entered into force in July 2008, it contains a chapter on government procurement, stipulating information exchange and an establishment of a sub-committee on government procurement. The Agreement makes no promises on the procedures for government procurement.

- Japan-Switzerland Economic Partnership Agreement: This Agreement entered into force in September 2009, and confirms the rights and obligations of both parties under the GPA of the WTO, it provides a framework for exchange of information through contact points and a mechanism for further dialogue with a view to maximising access to the government procurement market of the two countries.

- Japan - India Economic Partnership Agreement: This Agreement entered into force in August 2011, and contains a chapter on government procurement, which makes stipulations concerning measures to ensure transparency and the exchange of information, as well as to ensure that treatment is provided to the Parties to the Agreement that does not put them at a disadvantage in comparison to third parties.

- Japan – Australia Economic Partnership Agreement: This Agreement entered into force in January 2015. The Agreement contains a chapter on government procurement, and among other things it guarantees national treatment and non-discrimination with respect to goods, services and suppliers of both Parties. It also exempts both Parties from the application of rules of origin to
goods or services that are different from the rules of origin the Party applies in the normal course of trade to those goods or services. The Agreement also sets out the tendering procedures and principles which each Party agrees to.

- **Japan-Mongolia Economic Partnership Agreement**: This Agreement entered into force in June 2016. The Agreement contains a chapter on Government procurement, among other things both Parties agree to exchange information on regulations, policies and practices on government procurement, and that the parties shall enter into negotiations to review the Chapter on Government Procurement when Mongolia expresses its intention to become a party to the GPA. The Agreement further that if either party offers a non-party any advantages of access to its government procurement, the former Party shall, upon request of the other party, afford adequate opportunity to enter into negotiations with the other Party with a view to extending these advantages or advantageous treatment to the other Party on a reciprocal basis. The Agreement also establishes a sub-committee of Government procurement to review and monitor the implementation of the chapter on government procurement and other related functions.

- **Japan-Brunei Economic Partnership Agreement**: This Agreement entered into force in January 2009. Article 98 of the Agreement provides that regarding government procurement each party shall endeavour to accord most-favoured nation treatment to goods, services and suppliers of the other party, and enhance transparency measures regarding government procurement, and implement in a fair and effective manner the measures regarding government procurement.

- **Japan-Vietnam Economic Partnership Agreement**: This Agreement entered into force in October 2009. Article 106 provides that the parties shall endeavour to enhance transparency of measures regarding government procurement and implement in a fair and effective manner the measures regarding government procurement.
## Annex IV

### Comparison of State Spending in the United States Fiscal Year 2017 (amounts in $ billion)

<table>
<thead>
<tr>
<th>State</th>
<th>State Spending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>22.7</td>
</tr>
<tr>
<td>Alaska</td>
<td>11.5</td>
</tr>
<tr>
<td>Arizona</td>
<td>29.2</td>
</tr>
<tr>
<td>Arkansas</td>
<td>17.1</td>
</tr>
<tr>
<td>California</td>
<td>225.5</td>
</tr>
<tr>
<td>Colorado</td>
<td>28.9</td>
</tr>
<tr>
<td>Connecticut</td>
<td>27.3</td>
</tr>
<tr>
<td>Delaware</td>
<td>8.1</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1.9</td>
</tr>
<tr>
<td>Florida</td>
<td>76.1</td>
</tr>
<tr>
<td>Georgia</td>
<td>39</td>
</tr>
<tr>
<td>Hawaii</td>
<td>14.3</td>
</tr>
<tr>
<td>Idaho</td>
<td>6.8</td>
</tr>
<tr>
<td>Illinois</td>
<td>67.3</td>
</tr>
<tr>
<td>Indiana</td>
<td>27.3</td>
</tr>
<tr>
<td>Iowa</td>
<td>18.7</td>
</tr>
<tr>
<td>Kansas</td>
<td>14.1</td>
</tr>
<tr>
<td>Kentucky</td>
<td>28.3</td>
</tr>
<tr>
<td>Louisiana</td>
<td>27</td>
</tr>
<tr>
<td>Maine</td>
<td>8.8</td>
</tr>
<tr>
<td>Maryland</td>
<td>37.7</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>53.8</td>
</tr>
<tr>
<td>Michigan</td>
<td>49.5</td>
</tr>
<tr>
<td>Minnesota</td>
<td>35.1</td>
</tr>
<tr>
<td>Mississippi</td>
<td>16.5</td>
</tr>
<tr>
<td>Missouri</td>
<td>26.5</td>
</tr>
<tr>
<td>Montana</td>
<td>6.5</td>
</tr>
<tr>
<td>Nebraska</td>
<td>8.6</td>
</tr>
<tr>
<td>Nevada</td>
<td>10.8</td>
</tr>
<tr>
<td>State</td>
<td>Spending</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>6.5</td>
</tr>
<tr>
<td>New Jersey</td>
<td>64.6</td>
</tr>
<tr>
<td>New Mexico</td>
<td>14.4</td>
</tr>
<tr>
<td>New York</td>
<td>120.2</td>
</tr>
<tr>
<td>North Carolina</td>
<td>39.7</td>
</tr>
<tr>
<td>North Dakota</td>
<td>5.9</td>
</tr>
<tr>
<td>Ohio</td>
<td>72.4</td>
</tr>
<tr>
<td>Oklahoma</td>
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Source: [http://www.usgovernmentspending.com/compare_state_spending_2017bF0an](http://www.usgovernmentspending.com/compare_state_spending_2017bF0an)
USA State Preferences

Source - https://comptroller.texas.gov/purchasing/bidder-preference/

ALABAMA RESIDENT BIDDER PREFERENCE - Public Works contracts are governed by Title 39 of the Code of Alabama.

Alabama Code, §41-16-57. In the purchase of or contract for personal property or contractual services, preference is given to commodities produced in Alabama or sold by Alabama persons, firms, or corporations provided there is no sacrifice or loss in price or quality.

Alabama Code, §41-16-27. In the purchase of or contract for personal property or contractual services, preference is given to commodities produced in Alabama or sold by Alabama persons, firms, or corporations provided there is no sacrifice or loss in price or quality. Preference is given to an Alabama business entity (defined as any sole proprietorship, partnership, or corporation organized in the State of Alabama) in contractual services and purchases of personal property regarding the athletic department, food services, and transit services negotiated on behalf of two-year and four-year colleges and universities awarded without competitive bidding, unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity.

Alabama Code, §23-1-51. All motor fuels, oils, greases and lubricants bought by or for the State Department of Transportation for use in the construction, maintenance and repair of the county roads and bridges in counties in which the construction, maintenance and repair of the county roads and bridges have been transferred to the State Department of Transportation shall be purchased from vendors and suppliers residing in the county where such motor fuels, oils, greases, and lubricants are to be used.

Alabama Code, §41-16-50. If a bid is received for personal property to be purchased or contracted for from a person, firm, or corporation deemed to be a responsible bidder, having a place of business within a "local preference zone" where a county, a municipality, or an instrumentality thereof is the awarding authority, and the bid is no more than 3.0% greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the resident responsible bidder.

Alabama Code, §41-16-20. If a bid is received for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional services involving $15,000 or more from a person, firm, or corporation deemed to be a responsible bidder and a preferred vendor where any state higher education institution, department, board, bureau, commission, committee, institution, corporation, authority, or office is the awarding authority and the bid is no more than 5.0% greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the preferred vendor. Preferred vendors are prioritized, as to the product, by producing or manufacturing within Alabama, having an assembly or distribution facility in Alabama, and having a certain organizational structure organized under Alabama law and maintaining a retail outlet or service center in Alabama for at least a year.
ALASKA RESIDENT BIDDER PREFERENCE-

Alaska Statutes, §35.27.020. Use of state cultural resources and selection of Alaska resident artists for commission of art works for public buildings and facilities is encouraged.

Alaska Statutes, §36.30.321. "Alaska bidder" is defined (in A.S. 36.30.990(25)) as a person who holds a current Alaska business license; submits a bid for goods, services, or construction under the name on the Alaska business license; has maintained a place of business in the state for at least six months prior to the bid; and is incorporated or qualified to do business in Alaska, is an Alaska resident if a sole proprietor, is organized under specific Alaska law and all members are Alaska residents if a LLC, is a partnership under specific Alaska law and all partners are Alaska residents; and, if a joint venture, is composed entirely of ventures that otherwise qualify. A 5.0 % preference is applied to the price in the bid of an Alaska bidder. Except as to preferences provided in this section regarding persons with disabilities, a 15 % preference is applied to the price in the bid of an Alaska bidder offering services through an employment program. A 5.0% preference is applied to the price in the bid of an Alaska bidder that is also an Alaska domestic insurer if the procurement is for an insurance-related contract. A 10 % preference is applied to a price in the bid of an Alaska bidder that is owned by persons with disabilities (the sole proprietor, each partner of an partnership under Alaska law, each member of an LLC organized under Alaska law, each individual owner of corporation wholly owned by individuals, or a joint venture composed of ventures that otherwise qualify). A 5.0% preference not to exceed $5,000 is applied to the price in the bid of an Alaska bidder that is also a "qualifying entity," which is defined as a sole proprietorship owned by an Alaska veteran, a partnership or LLC under Alaska law if a majority of partners or members, respectively, are Alaska veterans, or a corporation wholly owned by individuals of whom a majority of Alaska veterans. This section does not apply to solicitations or contracts for lease space under Alaska Statute, §36.30.080, to procurements under Alaska Statute, §§36.30.305 -- 36.30.310 (limited competition procurements, innovative procurements, and emergency procurements) or, except as provided otherwise by regulation under Alaska Statute, §36.30.320, to small procurements under Alaska Statute, §36.30.320 (supplies or services of $100,000 or less, construction of $200,000 or less, and lease of space of 7,000 square feet or less).

Alaska Statutes, §36.15.010. Whenever practicable, only timber, lumber, and manufactured lumber products originating in Alaska from local forests shall be used when such products are required in a project financed by state money.

Alaska Statutes, §36.15.050. Agricultural products harvested in the state receive a 7.0% price preference when purchased by the state or by a school district that receives state money. Fisheries products harvested or processed within the jurisdiction of the state receive a 7.0% price preference when purchased by the state or by a school district that receives state money.

Alaska Statutes, §36.30.322. Only timber, lumber, and manufactured lumber products originating in Alaska from Alaska forests may be procured by an agency or used in construction projects of an agency unless the manufacturers and suppliers who have notified the commissioner of commerce, community, and economic development of their willingness to manufacture or supply Alaska forest products have been given reasonable notice of the forest product procurement needs and no such manufacturer or supplier is the low bidder after all applicable preferences have been applied to the price of the forest product.

Alaska Statutes, §36.30.324. Alaska products shall be used whenever practicable in procurements for an agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

Alaska Statutes, §36.30.328. In bid evaluation, a bid designating use of Alaska products identified in specifications and designated as Class I, Class II, or Class III state products under Alaska Statutes, §36.30.322 is decreased by the corresponding percentage of value under Alaska Statutes, §36.30.322.
Alaska Statutes, §36.30.332. Materials and supplies with value added in Alaska that are more than 25% and less than 50% produced or manufactured in Alaska are Class I products, which are given a 3.0% preference in bid evaluation. Those that are 50% or more and less than 75% produced and manufactured in Alaska are Class II products, which are given a 5.0% preference in bid evaluation. Those that are 75% or more produced and manufactured in Alaska are Class III products, which are given a 7.0% preference in bid evaluation.


Alaska Administrative Code, Title 2, §12.260. Except for solicitations or contracts for lease space under Alaska Statutes, §36.30.080, in evaluating price, the proposed price of an Alaska bidder is reduced by 5.0% and all other applicable preferences are applied. Except for solicitations or contracts for lease space under Alaska Statutes, §36.30.080, if a numerical rating system is used, an Alaska offeror’s preference of at least 10% of the total possible rating system value must be assigned to an Alaska bidder’s proposal.

ARKANSAS RESIDENT BIDDER PREFERENCE

Arkansas Code, §13-8-206. If all factors are equivalent, preference is given to purchase or commission of works of art by Arkansas artists for state building sites.

Arkansas Code, §19-11-259. For projects designed to provide utility needs of a county or municipality, counties, municipalities and political subdivisions of Arkansas must accept the lowest qualified bid from a “firm resident in Arkansas,” which is an individual, partnership, association, or corporation, domestic or foreign, who maintains at least one staffed office in Arkansas and has paid certain Arkansas taxes for not fewer than the two preceding years. The preference applies only if the bid does not exceed the lowest qualified nonresident firm bid by more than 5.0% and one or more “firms resident in Arkansas” made a written claim for preference. The preference is calculated by deducting 5.0% from the total of each bid of the Arkansas dealers who claimed the preference. If the resulting bid of any Arkansas bidder is lower than the nonresident firm, the award must be made to the Arkansas firm with the lowers bid, regardless of whether that firm claimed the preference.

Arkansas Code, §19-11-260 A preference is mandated for recycled paper products under certain conditions. A bidder receiving the preference is not entitled to an additional preference under Arkansas Code, §19-11-259.

Arkansas Code, §19-11-304. In bidding for the sale of products for use by the state, preference is given to private industries located within Arkansas and employing Arkansas taxpayers over out-of-state penal institutions employing convict labor.

Arkansas Code, §19-11-305. In all bidding procedures involving a bid by at least one out-of-state penal institution and a bid by at least one private industry located within Arkansas, a preference is given to the sole or lowest Arkansas bidder if not underbid by more than 5.0%, as provided in Arkansas Code, §19-11-259, by a nonresident private industry bidder or not by more than 15% by an out-of-state correctional institution.

Arkansas Code, §19-11-803. In evaluating qualifications of firms for professional services, each firm’s proximity to, and familiarity with, the area in which the project is located shall be considered.
ARIZONA RESIDENT BIDDER PREFERENCE

Arizona Revised Statutes, §34-242. Preference is given to bidders on contracts paid for from public funds who furnish materials produced or manufactured in Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures, to any political subdivision of Arizona, as long as the bid of a competing bidder is less than 5.0% lower. Bidders cannot claim a preference pursuant to both §34-242 and §34-243 and may not receive more than 5.0% total preference.

Arizona Revised Statutes, §34-243. Preference is given to bidders on contracts paid for from public funds who furnish materials supplied by a dealer who is a resident of Arizona and who paid property taxes for no fewer than the preceding two years to construct a building or structure, or additions to or alterations of existing buildings or structures, for any political subdivision of Arizona, whenever the bid of a competing bidder is less than 5.0% lower than that of the resident dealer.

CALIFORNIA RESIDENT BIDDER PREFERENCE

California Government Code, §4361. Preference is given in contracts and purchases for any public use to agricultural aircraft operators who are California residents if their bids do not exceed by more than 5.0% the lowest bids of nonresident agricultural aircraft operators.

California Government Code, §15813.3. In making contracts for the purchase, lease, or creation of works of art for California state buildings, preference may be given to artists who are California residents.

California Government Code, §§14835-14843. In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness is 5.0% to the lowest responsible bidder meeting specifications. Definition of "small business" includes requirement that the principal office of the business is located in California, and that the businesses' officers are domiciled in California. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is subject to rules and regulations of the Department of General Services and limited to a maximum of 5.0% to the lowest responsible bidder meeting specifications. In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness is 5.0% of the highest responsible bidder's total score. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is subject to rules and regulations of the Department of General Services and limited to a maximum 5.0% of the highest responsible bidder's total score. The maximum small business preference shall not exceed $50,000 for any bid and the combined cost for preferences granted by law shall not exceed $100,000.

California Government Code, §4530-4535.3. Preferences are provided for California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of $100,000. Sections are discussed in more detail below.

California Government Code, §4533. When the state prepares a solicitation for contracts for goods in excess of $100,000, except a contract in which the worksite is fixed by the provisions of the contract, a preference of 5.0% is awarded to California-based companies for which at least 50% of the labor hours required to manufacture the goods and perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

California Government Code, §4533.1. Where a bidder complies with §4533 or the worksite(s) where at least 50% of the labor required for contract performance is within commuting distance of a distressed area, percentage preferences are awarded for bidders that agree to hire persons with high risk of unemployment. The preference percentage is based on the percentage of such persons the bidder agrees
to hire as a percentage of its work force during the period of contract performance: 1.0% preference for hiring of 5.0% to 9.0% of the bidder's workforce, 2.0% preference for hiring of 10% to 14% of the bidder's workforce, 3.0% for hiring of 15% to 19% of the bidder's workforce, and 4.0% preference for hiring of 20% or more of the bidder's workforce.

California Government Code, §4534. In evaluating proposals for contracts for services in excess of $100,000, except if the worksite is fixed by the provisions of the contract, a preference of 5.0% is awarded to California based companies for which no less than 90% of the total labor hours required for the contract is performed at a worksite or worksites located in a distressed area.

California Government Code, §4534.1. Bidders complying with §4534 are awarded additional preferences as set forth in §4533.1.

California Government Code, §4535.2. The maximum preference a bidder may be awarded is 15%, not to exceed $50,000 or, if combined with other preferences and provisions of law, not to exceed $100,000. Small business bidders qualified in accordance with §14838 shall have precedence over non-small business bidders such that application of bidder preferences for non-small business bidders shall not result in denial of award to a small business bidder when the small business bidder is the lowest responsible bidder or when the small business bidder is eligible for the award due to the 5.0% small business bidder preference.

California Code of Regulations, Title 2, §1896.101. When a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods exceeding $100,000, except a contract where the worksite will be fixed by the terms of the contract, the IFB must provide for a preference of 5.0% for California-based companies for which no less than 50% of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

California Code of Regulations, Title 2, §1896.102. Additional preferences awarded to bidder complying with §1896.71 (Commercially Useful Function) from 1.0% to 4.0% in accordance with California Government Code, §7095(b) if bidder to hire the specified percentage of persons living in a high intensity unemployment area or enterprise zone qualified employees during term of contract performance.

California Code of Regulations, Title 2, §1896.104. When a state agency prepares an IFB or RFP for a contract for services exceeding $100,000, except an IFB or RFP where the worksite will be fixed by the terms of the contract, the IFB or RFP must provide for a 5.0% preference for California-based companies that shall perform the contract at a worksite or worksites located in a program area.

California Code of Regulations, Title 2, §1896.105. Additional preferences awarded to bidder complying with §1896.74 (Disabled Veteran Business Enterprise Participation) from 1.0% to 4.0% in accordance with California Government Code, §7095(b) if bidder to hire the specified percentage of persons living in a high intensity unemployment area or enterprise zone qualified employees during term of contract performance.

California Code of Regulations, Title 2, §1896.6. Small businesses granted the 5.0% small business preference when non-small business has submitted lowest-priced, highest scored bid ranked pursuant to §1896.8. Non-small businesses granted a 5.0% preference when non-small business has submitted lowest-priced, highest scored bid ranked pursuant to §1896.8 and the non-small business has included in its bid a commitment to subcontract at least 25% of its net bid price with one or more small business(es).

California Code of Regulations, Title 2, §1896.8. When awarding to lowest responsible bidder, the 5.0% small business or non-small business subcontractor preference is computed from the lowest responsive and responsible non-small or non-small subcontractor business bidders bid and subtracted from the bid amount of the small business or non-small business subcontractor, as applicable. When awarding based on highest scored proposal with evaluation weighing factors other than price, the 5.0% small business or non-small subcontractor business preference is limited to bids deemed responsive and of acceptable
quality and is computed as a number that represents preference point as specified in the solicitation. The amount of small business or non-small business subcontractor preferences awarded on a single bid shall not exceed $50,000 and the combined cost of the small business or non-small business subcontractor preference and preferences awarded pursuant to other law shall not exceed $100,000.

California Code Register, Title 2, §1896.12. Eligibility for certification as small business includes requirements that the principal office be located in California and that owners be domiciled in California.

California Code Register, Title 2, §1896.31. When a state agency prepares an IFB for a contract for purchase of goods in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract, the IFB shall provide for a 5.0% preference for California based companies for which no less than 50% of labor shall be accomplished at a worksite or worksites located in a distressed area.

California Code Register, Title 2, §1896.32. Additional preferences from 1.0% to 4.0% in accordance with California Government Code, §4533.1 shall be awarded where a bidder complies with rule 1896.31 if the bidder will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

California Code Register, Title 2, §1896.34. When a state agency prepares an IFB or RFP for a contract for services in excess of $100,000, except an IFB or RFP where the worksite will be fixed by the terms of the contract, the IFB or RFP shall provide for a 5.0% price preference for California based companies that will perform the contract at a worksite or worksites located in a distressed area.

COLORADO RESIDENT BIDDER PREFERENCE

Colorado Revised Statutes, §8-18-103. When purchasing agricultural products, contract shall be awarded to resident bidder as defined in §8-19-102 (person, partnership, corporation, or joint venture authorized to transact business in Colorado and maintains its principal place of business in Colorado or person, partnership, corporation, or joint venture authorized to transact business in Colorado, maintains place of business in Colorado, and has paid Colorado unemployment compensation for at least six of eight quarters prior to bidding on construction contract for public project) who produces products in Colorado if of equal quality, suitable for required use, sufficient in quantity, and bid or quoted price either does not exceed or reasonably exceeds lowest bid or price quoted for products produced outside Colorado. Whether a bid or quoted price "reasonably exceeds" a lowest bid or price quoted is determined based on the existing budget without further supplemental or additional appropriation.

Colorado Revised Statutes, §8-18-101. When an IFB for a commodities contract results in a low tie bid, a resident bidder is given preference over a nonresident bidder.

Colorado Revised Statutes, §43-1-1406. In awarding a transportation project adjusted score design-build contract, greater value is assigned to a proposal in proportion to the extent the proposal commits to using Colorado residents to perform work on the transportation project. However, the preference is suspended to the extent necessary to prevent denial of federal moneys or to eliminate inconsistency with federal law resulting from application of the preference.

Colorado Revised Statutes, §24-30-1403. In the selection process for professionals required on projects to furnish professional services for which fees equal to or exceed $25,000, Colorado firms are given preference when qualifications appear to be equal. This preference does not apply to the state board of land
commissioners in connection with contract expenditures from the board's investment and development fund or the commercial real property operating fund.

Colorado Revised Statutes, §24-103-202.5. When low tie bids are received in response to an IFB for a supply contract from a resident bidder and a nonresident bidder, the resident bidder is given preference. The preference is suspended to the extent necessary to prevent denial of federal moneys or to eliminate inconsistency with federal law resulting from application of the preference.

Code of Colorado Regulations, Article 111, R-24-111-102-02. In event of tie bids for commodities, preference is given to resident bidder.

CONNECTICUT RESIDENT BIDDER PREFERENCE

Connecticut General Statutes, §4a-59. All other factors being equal, preference is given to supplies, materials and equipment produced, assembled or manufactured in the state, and services originating and provided in the state.

Connecticut General Statutes, §4a-51. When purchasing dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits, or vegetables, the Commissioner of Administrative Services shall give preference to those items grown or produced in Connecticut when comparable in cost to those that have not been grown or produced in Connecticut.

DELWARE RESIDENT BIDDER PREFERENCE

Delaware Code, Title 29, §6962. Preference in employment is given for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision thereof, or by firms contracting with the State or any political subdivision thereof. Each public works contract for the construction of public works for the State of Delaware or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty equal to the amount of compensation paid to any person in violation of this section.

FLORIDA RESIDENT BIDDER PREFERENCE

Florida Statutes, §287.082. Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within Florida, and whenever all things stated in such received bids are equal with respect to price, quality, and service, such commodities are given preference.

Florida Statutes, §287.092. Any foreign manufacturing company with a factory in Florida employing over 200 employees working in Florida shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.

Florida Statutes, §255.04. Every official board in Florida charged with erecting or constructing any public administrative or institutional building shall give preference in purchase of material and in letting of contracts for construction to material men, contractors, builders, architects, and laborers who reside in Florida when such material can be purchased or services employed at no greater expense than purchasing from, letting contract to, or employing a person residing outside of Florida.

Florida Statutes, §283.35. In awarding a contract to have materials printed, preference is given to the lowest responsible and responsive vendor with a principal place of business in Florida. The preference is 5.0% if the lowest bid is submitted by a vendor with a principal place of business outside of Florida and the
printing can be performed in Florida at a quality level comparable to that from the vendor submitting the lowest bid located outside Florida.

Florida Administrative Code, §60A-1.011. When confronted with identical pricing or scoring from multiple vendors, agencies shall determine the order of award in the following order of preference: response from a Florida-domiciled entity, response relating to manufactured commodities provides for manufacturing in Florida, response relating to manufactured commodities provides for a foreign manufacturer that has at least 200 employees working in Florida. If these three criteria fail to resolve identical evaluations, determination of award is by random selection.

Florida Statutes, §295.187. When considering two or more bids for commodities or services which are equal with respect to all relevant considerations, a state agency shall award such procurement or contract to a certified veteran business enterprise, status which requires domicile in Florida. If a veteran business enterprise entitled to a preference under this section and one or more businesses entitled to this or another vendor preference submit bids, proposals, or replies for procurement of commodities or contractual services which are equal with respect to all relevant considerations, a state agency shall award to the business with the smallest net worth.

Florida Administrative Code, §25-25.009. Preference is given to bidders located within Florida if when awarding contracts, whenever commodities bid can be purchased at no greater expense and of comparable quality level to those by a bidder located outside of Florida. This is only applicable to the Florida Public Service Commission.

**GEORGIA RESIDENT BIDDER PREFERENCE**

Georgia Code, §8-5-5. In purchases, leases, or commissioning of works of art in state buildings, preference may be given to artists who are Georgia residents.

Georgia Code, §50-5-60. When contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, preference is given as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in Georgia, but the preference shall not sacrifice quality. In determining the reasonableness of such preference where the value of such a contract exceeds $100,000, consideration shall be given to information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods.

Georgia Code, §50-5-60.4. Entities responsible for public land maintenance must give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference is given to compost and mulch made in the State of Georgia from organics which are source separated from the state’s nonhazardous solid waste stream.

Georgia Code, §50-5-61. State and local authorities shall give preference in purchasing and contracting, as far as may be reasonable and practicable, to supplies, materials, equipment, and agricultural products, excluding beverages for immediate consumption, manufactured or produced in Georgia, but the preference shall not sacrifice quality. In determining the reasonableness of such preference where the value of such a contract exceeds $100,000, consideration shall be given to information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods.
Georgia Code, §50-5-63. Contracts for the publicly funded construction of, addition to, or repair of any facility shall not be let unless the contract contains a stipulation providing that the contractor or any subcontractor shall use exclusively Georgia forest products when forest products are to be used if Georgia forest products are available.

HAWAI'I RESIDENT BIDDER PREFERENCE

Hawaii Revised Statutes, §201-4. The department of business, economic development and tourism may contract with qualified private and public agencies, associations, firms, or individuals within or without Hawaii provided that preference is given to contractors within Hawaii and that preference is given to qualified parties who agree to match funds as provided by statute and rules.

Hawaii Revised Statutes, §103D-1002. Where a bid or proposal contains both Hawaii and non-Hawaii products, for the purpose of selecting the lowest bid or purchase price only, the price or bid offered for a Hawaii product item shall be decreased by subtracting 10% for Class I Hawaii product items bid or offered, or 15% for Class II Hawaii product items bid or offered. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences. "Hawaii products" is defined in §103D-1001 as products that are mined, excavated, produced, manufactured, raised, or grown in Hawaii and where the cost of the Hawaii input towards the product exceeds 50% of the total cost of the product, provided that where the value of the Hawaii materials input exceeds 50% of the total cost, the product is classified as Class I and where any agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product is raised, grown, or harvested in Hawaii, the product is classified as Class II.

Hawaii Revised Statutes, §103D-1003. All bids submitted for printing, binding, or stationery in which all work will be performed in-state shall receive a 15% preference for purposes of bid evaluation. Where bids are for work performed in-state and out-of-state, for the purpose of selecting the lowest bid submitted only, the bid amount for work performed out-of-state shall be increased by 15%.

Hawaii Revised Statutes, §103D-1006. In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. For the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software development business shall be increased by a preference percentage pursuant to rules adopted by the policy board.

Code of Hawaii Rules, §3-124-5. With regard to the preference for Hawaii products, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005, HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

Code of Hawaii Rules, §3-124-12. With regard to application of the preference for printing, binding, and stationery work, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005,
HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

Code of Hawaii Rules, §3-124-18. With regard to the application of the reciprocal preference, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005, HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

Code of Hawaii Rules, §3-124-34. With regard to the application of the software development business preference, a price preference will be given to Hawaii software development businesses in the amount of 10% of the price, and will be used for evaluation. When a solicitation specifies that because of federal requirements, the Hawaii software development business preference will not be considered, the price preference shall not apply.

Code of Hawaii Rules, §3-124-35. With regard to the application of the software development business preference, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005, HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

Code of Hawaii Rules, §3-124-55. With regard to the application of the tax exempt bidder preference, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005, HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

Code of Hawaii Rules, §3-124-64. With regard to the application of the qualified community rehabilitation program preference, should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified with preferences applied to the original prices: (1) Hawaii products list, pursuant to section 103D-1002, HRS; (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS; (3) Preferred use of Hawaii software development
businesses, pursuant to section 103D-1006, HRS; (4) Recycled products, pursuant to section 103D-1005, HRS; (5) Reciprocal preference, pursuant to section 103D-1004, HRS; (6) Printing, binding, and stationery work within the state, pursuant to section 103D-1003, HRS; (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

IDAHO RESIDENT BIDDER PREFERENCE

Idaho Code, §67-5718. With regard to bids for acquisition of property, preference is given to bidders having a significant Idaho economic presence when both bids and quality of property offered are the same.

Idaho Code Ann., §60-103. All printing, binding (excluding binding for state supported libraries), engraving and stationery for which the state contracts shall be executed within Idaho except as to compilations, publications or codifications of Idaho laws. However, work may be executed outside of Idaho under certain circumstances, including those in which the lowest bid proposing to execute the work within Idaho is more than 10% more than the lowest bid proposing to execute the work outside of Idaho.

Idaho Administrative Code, §38.05.01.082. To discourage tie bid, may award to an Idaho resident or an Idaho domiciled bidder.

ILLINOIS RESIDENT BIDDER PREFERENCE

30 Illinois Compiled Statutes, §520/2. In purchasing commodities from vendors in another state, preference is given to vendors in states whose preference laws do not prohibit the purchase of commodities grown or produced in Illinois.

30 Illinois Compiled Statutes, §500/45 50. In awarding contracts requiring procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois.

30 Illinois Compiled Statutes, §555/1. Institutions authorized and required to purchase coal for fuel purposes that are state-funded or owned by a municipal corporation or political subdivision of Illinois must purchase and use coal mined in Illinois if the cost, including the cost of transportation, is not more than 10% greater than the cost of coal mined in any other state or states.

44 Illinois Administrative Code, §1.4510. In breaking a tie bid or proposal, the award is given to an Illinois resident vendor, which means a person authorized to transact business in Illinois (including a foreign corporation authorized to transact business in Illinois) that has a bona fide establishment for transacting business in Illinois at which it was transacting business on the date the competitive solicitation was first advertised. An Illinois resident vendor is allowed a preference over a non-resident equal to any in-state vendor preference given or required by the state of the non-resident.

INDIANA RESIDENT BIDDER PREFERENCE

Indiana Code, §5-22-15-20. A governmental body, except the Indiana state lottery commission, may adopt rules to give preference to Indiana businesses submitting offers for purchase if an out-of-state business submits and offer and the out-of-state business is from a state that gives purchase preferences unfavorable to Indiana businesses. The rules may not give preference that is more favorable to Indiana business than the other state’s preference to that same state’s businesses. The rules must also provide that a contract must be awarded to lowest responsive and responsible offeror, regardless of these preferences, if the
offeror is Indiana business or is a business from a state bordering Indiana that does not provide a preference to its own businesses that is more favorable than is provided by Indiana law to Indiana businesses.

Indiana Code, §5-22-15-20.5. Price preferences are provided by state agencies for supplies purchased from Indiana businesses as follows: 5.0% for a purchase expected to be less than $500,000, 3.0% for a purchase expected to be at least $500,000 but less than $1,000,000, and 1.0% for a purchase expected to be at least 1,000,000. In addition to this price preference, if an Indiana business offers to provide supplies manufactured, assembled, or produced in Indiana and two or more bids are the same, the following price preference is available to the Indiana business: 3.0% for a purchase expected to be less than $500,000, 2.0% for a purchase expected to be at least $500,000 but less than $1,000,000, and 1.0% for a purchase expected to be at least 1,000,000. For these preferences, an "Indiana business" is one whose principal place of business is in Indiana, one that pays a majority of its payroll to Indiana residents, one that employs a majority of Indiana residents, one that makes significant capital investments in Indiana, or one that has a "substantial positive economic impact on Indiana" as defined by criteria established by the Indiana department of administration. Businesses must take certain specified actions to claim these preferences.

Indiana Code, §5-22-15-22. Whenever a purchasing agent purchases coal for use as fuel, the purchasing agent shall give an absolute preference to coal mined in Indiana except under circumstances in which federal law requires the use of low sulphur coal.

Indiana Code, §5-22-15-23. Governmental body must give a 15% preference for supplies to Indiana small businesses (defined as independently owned and operated, not dominant in the field, and satisfying other criteria relating to size or veteran ownership).

State Policy: Establishment of the "Buy Indiana" presumption, Indiana Executive Order No. 05-05 (January 10, 2005). State procurement is subject to a "Buy Indiana" presumption requiring state agencies to buy their supplies and services from "Indiana businesses." The Department of Administration is required to undertake efforts to increase the percentage of state procurement from Indiana businesses to 90% of state's total procurement volume. The Department of Administration utilizes five guidelines for a company to qualify as an Indiana business: one whose principal place of business is in Indiana, one that pays a majority of its payroll to Indiana residents, one that employs a majority of Indiana residents, one that makes significant capital investments in Indiana, or one that has a "substantial positive economic impact on Indiana" (is in the top 500 companies for number of employees, unemployment taxes, payroll withholding taxes, corporate income taxes, or other impact as determined by the Department of Administration). Bids are subject to Indiana Code 5-22-15-20.5. Requests for proposals and professional services use a revised scoring system for determining the award as follows: 40 points for management assessment/quality, 35 points for price, 5 points for "Buy Indiana Indiana Company," 5 points for Indiana economic impact, 5 points for veteran's business enterprise, and 10 points for minority and/or women-owned business enterprise (MWBE) (five points each for women and minority participation).

Indiana Executive Order No. 13-04 (January 14, 2013). The Department of Administration is required to undertake efforts to increase contracting opportunities for Indiana veteran-owned businesses by setting a goal to procure 3.0% of state contracts with Indiana veteran-owned businesses. Program eligibility requires, among other things, that a business be an Indiana firm with its principal place of business located in Indiana.

IOWA RESIDENT BIDDER PREFERENCE

Iowa Code, §304A.13. Preference is given to selection of fine arts works of living or deceased Iowa artists for fine arts projects in state buildings.
Iowa Code, §8A.311(1). In procuring by competitive bidding equipment, supplies, or services, the Department of Administrative Services must give a preference to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids are comparable in price to bids submitted by out-of-state businesses and otherwise meet specifications. If another state mandates a percentage preference for businesses or products from that state resulting in low and responsive Iowa bids not being selected in that state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from the other state are bid to supply Iowa requirements.

Iowa Code, §8A.311(12). The state and political subdivisions are required to give preference to purchasing Iowa products and purchasing from Iowa-based businesses if the bids meet specifications and are comparable in price to bids submitted by other bidders.

Iowa Code, §8A.311(22). Preference is given through the Department of Administrative Services to purchasing equipment, supplies, and services from and awarding public improvement contracts to an Iowa-based business if the bid is comparable in price to bids submitted by other bidders and meets specifications. This preference is subject to the Iowa-based business having adopted certain policies to support employees in the national guard and organized reserves of the United States armed forces.

Iowa Code, §73.1. Governmental bodies, other than school districts purchasing food while participating in the federal school lunch or breakfast program, must use products and provisions grown and coal produced in Iowa when found in Iowa in marketable quantities and are of a quality reasonably suited to the intended purpose and can be secured without additional costs over out-of-state products.

Iowa Code, §73.6. Governmental bodies must purchase and use coal mined or produced in Iowa by producers complying with all Iowa workers’ compensation and mining laws except when coal produced in Iowa cannot be procured in a quantity or quality reasonably suited to the purchaser’s needs; the equipment is not reasonably adapted to the use of coal produced in Iowa; or the use of coal produced in Iowa would materially lessen the efficiency or increase the cost of operating the purchaser’s heating or power plant. There is also an exception as to mines employing workers not covered by workers’ compensation plans or who permit the miners to work in individual units in their own rooms.

11 Iowa Administrative Code, 11-117.5. The Department of Administrative Services and state agencies are required to make every effort to support Iowa products and Iowa-based businesses when making a purchase. Tied responses to solicitations are decided in favor of Iowa products and Iowa-based businesses.

761 Iowa Administrative Code, 20.4. In procuring equipment, materials, supplies, and services, the Iowa Department of Transportation must resolve tie bids by giving first preference to an Iowa bidder.

**KANSAS RESIDENT BIDDER PREFERENCE**

Kansas Statutes, §75-3740. Contracts must be awarded to certified businesses that are responsible bidders and whose total cost is not more than 10% higher than the lowest competitive bid. A responsible bidder that purchases from a certified business the dollar amount of such purchases made during the prior fiscal year must be deducted from the original bid, not to exceed 10% of the original bid received from that bidder. A “certified business” includes requirements of domicile in Kansas and conducting business primarily in Kansas or production substantially all in Kansas. In the state agency purchase of passenger motor vehicles, 3.0% of the bid amount is subtracted from bids of responsible bidders offering motor vehicles assemble in Kansas which match the exact specifications of the agency.
KENTUCKY RESIDENT BIDDER PREFERENCE

Kentucky Revised Statutes, §45A.645. State agencies shall purchase Kentucky-grown agricultural products if they meet the agency's quality standards and pricing requirements.

Kentucky Revised Statutes, §45A.494. If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference is given to the resident bidder. A resident bidder is an individual, partnership, association, corporation or other business entity that is authorized to transact business in Kentucky and has, for one year prior to and through the date of advertisement of the contract for bidding, has filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund, and maintained a Kentucky workers' compensation policy.

LOUISIANA RESIDENT BIDDER PREFERENCE - Louisiana Revised Statutes, §38:2211 et seq. constitutes the Louisiana Public Bid Law (governs public works and the purchase of materials and supplies by most public entities) and §39:1551 et seq. constitutes the Louisiana Procurement Code (governs purchase of certain services, materials and supplies, and major repairs by most state agencies).]

Louisiana Revised Statutes, §27:246. Casino gaming operators and the Louisiana Economic Development and Gaming Corporation, in purchasing or contracting for goods and services, must give preference and priority to Louisiana residents, laborers, vendors, and suppliers if reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency. In selecting a casino operator, the Louisiana Economic Development and Gaming Corporation must give preference to an operator who demonstrates a willingness and ability to purchase and contract for goods and services from or with Louisiana residents, laborers, vendors, and suppliers.

Louisiana Revised Statutes, §38:2251 and §39:1595. Preferences are given to bidders whose Louisiana business workforce is comprised of a minimum of 50% Louisiana residents for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana, Pursuant to §39:1554 and §38:2251 governs the procurement of construction by governmental bodies of Louisiana, but does not apply to any procurement of supplies, services, or major repairs by the state. Pursuant to §39:1554 and §39:1595 applies to every expenditure of public funds by Louisiana, irrespective of source, under any contract for supplies, services, or major repairs except grants or contracts between the state and political subdivisions or other governments except as otherwise provided by law. [NOTE: Except as noted below, §38:2251 and §39:1595 are substantially identical.]

With regard to agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products, Louisiana products must be procured or purchased as long as the product meets Louisiana product criteria, the product is equal to or better in quality to other products, and the cost does not exceed by more than 10% the cost of other products.

Meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry must be procured or purchased if equal in quality to other meat and meat products and the cost does not exceed by more than 7.0% the cost of other products.

Domesticated or wild catfish which are processed in Louisiana but grown outside Louisiana must be procured or purchased if equal in quality and the cost does not exceed by more than 7.0% the cost of catfish processed outside Louisiana.

Produce processed in Louisiana but grown outside Louisiana must be procured or purchased if equal in quality and the cost does not exceed by more than 7.0% the cost of produce processed outside Louisiana.
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Under §39:1595, eggs or crawfish which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry must be procured or purchased if equal in quality to other meat and meat products and the cost does not exceed by more than 7.0% the cost of other products.

Except as otherwise provided in §38:2251 or §39:1595, as applicable, materials, supplies, or equipment which are Louisiana products equal in quality to other products may be purchased if the cost of such items does not exceed the cost by more than 10% the cost of other items manufactured, processed, produced, or assembled outside the state and the Louisiana product vendor agrees to a sale price equal to the lowest bid offered.

These preferences do not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state, do not affect preferences applicable to brick manufacturers, do not apply to firefighting or rescue equipment, and do not apply to treated wood poles and pilings.

The provisions of §38:2251 do not apply to a drainage district or sewerage and water board located in New Orleans wherein the cost of products produced or manufactured in the Louisiana does not exceed by more than 5.0% the cost of products which are equal in quality to products produced or manufactured outside Louisiana in purchases of one million dollars or more.

Louisiana Revised Statutes, §38:2253. All things being equal, preference is given to firms doing business in Louisiana. Preference is inferior to and superseded where conflicting with Louisiana Revised Statutes, §38:2251.

Louisiana Revised Statutes, §38:2255. Printing, lithographing, embossing, engraving, binding, record books, printed supplies, stationery and office supplies, and equipment must be purchased from Louisiana firms and all printing, lithographing, embossing, engraving, and binding in connection therewith must be done in Louisiana by Louisiana firms and by Louisiana labor unless the bid submitted by a firm outside Louisiana is 3.0% lower than the lowest bid submitted by a Louisiana firm. This section does not apply to specialized forms and printing, such as continuous forms, margin punched forms, football tickets, 24 sheet poster, music printing, steel dye and lithographed bonds, decalcomanias, revenue stamps, lithographing and bronzing on acetate, college annuals, fine edition binding, and books.

Louisiana Revised Statutes, §38:2256. It is permissible to purchase supplies not ordinarily obtainable from Louisiana firms from non-resident firms authorized and otherwise qualified to do business in Louisiana that maintain an office in Louisiana where payment may be made; however, Louisiana firms shall first be given opportunity to furnish supplies and be given preference.

Louisiana Revised Statutes Ann., §38:2184. Cost and quality being equal, preference is given to supplies, material, or equipment produced or offered by Louisiana citizens.

Louisiana Revised Statutes, §39:1594. In state contracts awarded by competitive sealed bidding, Louisiana resident businesses are given preference against nonresident businesses in tie bids if there will be no sacrifice or loss in quality.

Louisiana Revised Statutes, §39:1595.5. When purchasing items at retail, purchases must be from a retail dealer located in Louisiana as long as the items are equal in quality and the cost does not exceed by more than 10% the cost of items from a retail dealer located outside Louisiana.

Louisiana Revised Statutes, §39:1595.3. For services to organize or administer rodeos and livestock shows, where state-owned facilities are used to house or contain such activities, preference is given to Louisiana vendors if services equal in quality and do not exceed the cost by more than 10% the cost of services available from outside Louisiana.
Louisiana Revised Statutes, §38:2251.1. Milk and dairy produced or processed in Louisiana must be purchased when equal in quality and the cost does not exceed by more than 10% the cost of milk from outside Louisiana.

Louisiana Revised Statutes, §38:2251.2 and §39:1595.6. Steel rolled in Louisiana must be purchase when equal in quality, the cost does not exceed by more than 10% the cost of steel rolled outside Louisiana, and sufficient quantities of steel rolled in Louisiana are available.

Louisiana Administrative Code, Title 34, §529. In state contracts awarded by competitive sealed bidding, preference is given to resident businesses in a tie bid if there is no sacrifice or loss of quality. A resident business is one that is authorized to do and is doing business under the laws of Louisiana that either maintains its principal place of business in Louisiana or employs at least two employees who are Louisiana residents.

Louisiana Executive Order No. BJ 2010-16 (August 27, 2010). Louisiana businesses should be utilized to the greatest extent possible when soliciting prices in the procurement of small purchases.

**MAINE RESIDENT BIDDER PREFERENCE**

Maine Revised Statutes, Title 26, §1301. Preference is given to workmen and bidders who are residents of Maine for contracts for constructing, altering, repairing, furnishing or equipping buildings or public works if the bids are equally favorable with bids submitted by non-resident contractors.

Maine Revised Statutes, Title 5, §1825-B. Tie bids are awarded to Maine bidders or to bidders offering commodities produced or manufactured in Maine if price, quality, availability, and other factors are equal.

**MARYLAND RESIDENT BIDDER PREFERENCE**

Maryland State Finance and Procurement Code, §14-407. State schools and facilities shall give a purchasing price preference of not more than 5.0% to bidders providing food grown in Maryland which is consistent with bid specifications.

**MASSACHUSETTS RESIDENT BIDDER PREFERENCE**

Massachusetts General Laws, Part I, Title II, Chapter 7, §22 - Preference is given in tie bids for supplies and materials manufactured and sold within Massachusetts. An additional preference may be applied for supplies and materials manufactured and sold in cities and towns of Massachusetts that are designated as depressed areas.

Massachusetts General Laws, Part I, Title II, Chapter 7 §23B – In the purchase of agricultural products including, but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products, or products processed into value added products as part of a Massachusetts farm operation, preference is given to the purchase of products grown in Massachusetts or products produced using products grown in Massachusetts as well as fish, seafood, and other aquatic products. Unless the price exceeds by more than 10% the price of products of agriculture grown or produced using products grown outside Massachusetts, state purchasing agents must purchase the products of agriculture grown or produced using products grown in Massachusetts.

Massachusetts Executive Order No. 523, (June 29, 2010). Executive Order No. 523 establishes the Small Business Purchasing Program that is administered by the Massachusetts Operational Services Division. Contracts from $10,000 to $150,000, unless otherwise excepted, must be awarded to registered small business bidders participating in Massachusetts Small Business Purchasing Program if best value criteria is
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met to be eligible, a business entity must be one that has its principal place of business in Massachusetts, has been in business for at least one year, employs a combined total of 50 or fewer full time equivalents in all locations, and has gross revenues of $15 million or less based on a three-year average.

**MICHIGAN RESIDENT BIDDER PREFERENCE**

Michigan Compiled Laws, §45.85. Other things being equal, supplies offered by bidders with established local business in the county have preference in contracting for the maintenance and operation of each county office, department, and institution.

Michigan Compiled Laws, §18.1261. All other things being equal, in all purchases made by the Department of Management and Budget, preference is given to products manufactured or services offered by Michigan-based firms or by facilities with respect to which the operator is designated as a clean corporate citizen (the definition of which incorporates, pursuant to §324.1401, being "situated in Michigan").

Michigan Compiled Laws, §24.61. All printing paid for in whole or in part with state funds, except that which is printed for primary school districts, counties, townships, cities, villages, or legal publications ordered for or by elective state officers, must be printed in Michigan.

**MINNESOTA RESIDENT BIDDER PREFERENCE**

Minnesota Statutes, §16C.06. The reciprocal preference and the preferences pursuant to §16C.0725 (Recycled Materials) and §16C.16 (Small Businesses) are not cumulative.

Minnesota Statutes, §16C.16. For specified goods or services, the commissioner of administration may award up to a 6.0% preference to targeted group small businesses and veteran-owned small businesses, and may award up to 6.0% (and up to 4.0% for construction bids) to small businesses located in economically disadvantaged areas. The definition of "small business" is limited to a business with its principal place of business in Minnesota.

Minnesota Statutes, §16B.16C.073. Whenever practicable, public entities shall purchase paper which has been made on a paper machine located in Minnesota.

Minnesota Statutes, §84.025. All all-terrain vehicles purchased by the commissioner of natural resources must be manufactured in Minnesota.

Laws of Minnesota 2013, Chapter 85, Article 6, Section 11. No solar photovoltaic module may be installed that is financed directly or indirectly, wholly or in part, with money appropriated in this act, unless the solar photovoltaic module is made in Minnesota as defined in Minnesota Statutes, §16B.323, Subdivision 1, Paragraph (b).

Minnesota Administrative Rules, 1230.0900. Preference is given to a Minnesota firm whenever a tie involves a Minnesota firm and one whose place of business is out of state.

Minnesota Administrative Rules, 1230.1810. For commodities and services, certified target group small businesses are awarded up to a 6.0% preference.

Minnesota Administrative Rules, 1230.1830. For commodities and services, economically disadvantaged small businesses are awarded up to 6.0% preference. For construction projects, economically disadvantaged small businesses are awarded up to 4.0% preference.
MISSISSIPPI RESIDENT BIDDER PREFERENCE

Mississippi Code, §31-3-21. Preference is given in public contracts to resident contractors (includes nonresident persons, firms, or corporations and their subsidiaries and affiliates that have been qualified to do business in Mississippi and have maintained a permanent full-time office in Mississippi for two years prior to January 1, 1986).

Mississippi Code, §31-5-17. Every public officer, contractor, superintendent, or agent in construction of state or public buildings or any public works must employ only workmen and laborers who have resided in Mississippi for two years preceding such employment.

Mississippi Code, §31-5-19. Any out-of-state person(s), firm, or corporation that obtains a contract for public buildings or public works must comply with the provisions of §31-5-17 upon undertaking the contract or work.

Mississippi Code, §31-5-23. In public works, only materials grown, produced, prepared, made, and/or manufactured in Mississippi should be used. Preference is not given to such materials when other materials of like quality produced out-of-state may be purchased at less cost or when materials of better quality produced out-of-state may be purchased at a reasonable cost.

Mississippi Code, §31-7-15. When two or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured in Mississippi, and price, quality, and service are equal, the commodities grown, processed or manufactured in Mississippi are given preference. Additionally, where both price and quality are the same, regardless of where the product is manufactured, a foreign manufacturing company with a factory in Mississippi and more than 50 employees working in Mississippi has preference over any other foreign company.

Mississippi Code, §31-7-18. Local governing authorities are given authorization to accept the lowest bid received from a motor vehicle dealer domiciled within county of the governing authority for motor vehicles with a gross weight rating less than 26,000 pounds and a price not greater than 3.0% over the price or cost the dealer pays the manufacturer. If a county does not have an authorized motor vehicle dealer, the governing authority may so accept such bids from motor vehicle dealers in an adjoining county.

Mississippi Code, §31-7-47. In public contracts, preference is given to resident contractors.

Mississippi Code, §19-13-111. Where bids equal in all respects between resident and nonresident bidders, county boards of supervisors shall give preference to citizens of Mississippi.

MISSOURI RESIDENT BIDDER PREFERENCE

Missouri Revised Statutes, §34.070. Preference must be given to commodities and tangible personal property manufactured, mined, produced, processed, or grown in Missouri and to all firms, corporations, or individuals doing business as Missouri firms, corporations or individuals, when quality is equal or better and delivered price is the same or less. Such preference may also be given when competing bids, in their entirety, are comparable.

Missouri Revised Statutes, §34.073. In letting contracts for the performance of any job or service, preference must be given to all firms, corporations, or individuals doing business as Missouri firms, corporations or individuals, or that maintain Missouri offices or places of business when quality is equal to or better and price quoted is the same or less. Such preference may also be given when competing bids, in their entirety, are comparable. The commissioner of administration must give further preference pursuant to §34.076.

Missouri Revised Statutes, §34.074. In letting contracts for the performance of any job or service, all state agencies and political subdivisions shall give a three-point bonus preference to service-disabled veteran
businesses doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business.

Missouri Revised Statutes, §34.080. Institutions in Missouri supported in whole or part by public funds (excluding municipal corporations, political subdivisions, or public schools) that are required to purchase coal for fuel must purchase and use coal mined in Missouri or an adjoining state if the cost is not greater than the cost of coal mined elsewhere, including the cost of transportation.

Missouri Revised Statutes, §50.780. Preference may be given to merchants and dealers within the county may be given by county commissioners, provided the price is not above that offered elsewhere.

Missouri Code of State Regulations, Title 6, §250-3.020. In the construction and repair of buildings and the making of purchases, preference is given by the Board of Curators of the University of Missouri to firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals. Preference is also given by the Board to any commodities, products, materials, supplies, provisions, and other articles produced, manufactured, mined or grown in Missouri and to services when of suitable quality, with a requirement that quality and fitness or articles always be considered in determining the right to the preference; however, if not found in marketable quantities in Missouri, preference need not be given to Missouri products, materials, supplies, provisions, commodities, and other articles. Preference is also given by the Board to products of the mines, forests, and quarries of Missouri, and all materials, commodities, products, supplies, provisions, and other articles produced, manufactured, mined, or grown in Missouri when they can be secured without additional cost over foreign products or the products of other states. Corporations not incorporated under the laws of Missouri, firms whose members are not residents of Missouri, and individuals who are not residents of Missouri who have and maintain a regular place of business in Missouri for the transaction of their business are deemed as doing business as Missouri firms, corporations, or individuals in consideration of bids for the University of Missouri.

NEBRASKA RESIDENT BIDDER PREFERENCE

Nebraska Revised Statutes, §82-323. The Nebraska Arts Council shall give preference to regional artists in selection and commissioning of artists.

Nebraska Revised Statutes, §73-107. If all other factors are equal, a Nebraska resident disabled veteran or a business located in a designated enterprise zone shall be allowed a preference over any other resident or nonresident bidder.

9 Nebraska Administrative Code, §4-003. Nebraska vendors are given preference in tie bids.

NEVADA RESIDENT BIDDER PREFERENCE

Nevada Revised Statutes, §333.300. If two or more lowest bids are identical, and lowest bids are by bidders resident outside of Nevada, preference is given to bidders providing goods produced or manufactured in Nevada or supplied by a Nevada resident dealer.

Nevada Revised Statutes, §333.3366. When awarding a contract under §333.300(2) (for materials, supplies, and equipment with an estimated cost exceeding $50,000), if a local business owned by a veteran with a service-connected disability submits a bid or proposal and is a responsive and responsible bidder, the bid or proposal shall be deemed to be 5.0% lower than the bid or proposal actually submitted.
NEW MEXICO RESIDENT BIDDER PREFERENCE

New Mexico Statutes, §13-1-21. When making a purchase using a formal bid process (competitive sealed bid process), public bodies should deem a bid submitted by a New Mexico:

(1) resident business to be 5.0% lower than the bid actually submitted;

(2) resident veteran business with annual revenues of one million dollars or less to be 10% lower than the bid actually submitted;

(3) resident veteran business with annual revenues of more than one million dollars but less than five million dollars to be 8.0% lower than the bid actually submitted; and

(4) resident veteran business with annual revenues of five million dollars or more to be 7.0% lower than the bid actually submitted.

When a public body makes a purchase using a formal bid process and the bids are received for both recycled content goods and nonrecycled content goods, the public body shall deem:

(1) bids submitted for recycled content goods from any business, except a resident veteran business, to be 5.0% lower than the bids actually submitted;

(2) bids submitted for recycled content goods from a resident veteran business with annual revenues of one million dollars or less to be 10% lower than the bids actually submitted;

(3) bids submitted for recycled content goods from a resident veteran business with annual revenues of more than one million dollars but less than five million dollars to be 8.0% lower than the bids actually submitted; and

(4) bids submitted for recycled content goods from a resident veteran business with annual revenues of five million dollars or more to be 7.0% lower than the bids actually submitted.

When a public body makes a purchase using a formal request for proposals process (competitive sealed proposal process), not including contracts awarded on a point-based system, the public body shall award an additional:

(1) 5.0% of the total weight of all the factors used in evaluating the proposals to a resident business;

(2) 10% of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of one million dollars or less;

(3) 8.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of more than one million dollars but less than five million dollars; and

(4) 7.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of five million dollars or more.

When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional percentage of the equivalent as follows:

(1) 5.0% of the total possible points to a resident business;

(2) 10% of the total possible points to a resident veteran business that has annual revenues of one million dollars or less;

(3) 8.0% of the total possible points to a resident veteran business that has annual revenues of more than one million dollars but less than five million dollars; and

(4) 7.0% of the total possible points to a resident veteran business that has annual revenues of five million dollars or more.
When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident businesses, these preferences shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal. The preferences in this section pertaining to resident veteran businesses with annual revenues of more than $1,000,000 but less than $5,000,000 and those pertaining to annual revenues of $5,000,000 or more are limited to an aggregate ten million dollars per year. A business shall not be awarded both a resident business preference and a resident veteran business preference.

New Mexico Statutes, §13-1-120. For each proposed state public works project, local public works project or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, state highway and transportation department selection committee or local selection committee, as appropriate, must consider the following criteria, among others: the amount of design work that will be produced by a New Mexico business within this state and proximity to or familiarity with the area in which the project is located.

New Mexico Statutes, §13-4-1. All contracts for construction of public works or for repair, reconstruction, including highway reconstruction, demolition or alteration thereof, must be awarded to resident contractor whenever practicable.

New Mexico Statutes, §13-4-2. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a:

(1) resident contractor to be 5.0% lower than the bid actually submitted;
(2) resident veteran contractor with annual revenues of one million dollars or less to be 10% lower than the bid actually submitted;
(3) resident veteran contractor with annual revenues of more than one million dollars but less than five million dollars to be 8.0% less than the bid actually submitted; and
(4) resident veteran contractor with annual revenues of five million dollars or more to be 7.0% less than the bid actually submitted.

When a public body awards a contract using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional:

(1) 5.0% of the total weight of all the factors used in evaluating the proposals to a resident contractor;
(2) 10% of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of one million dollars or less;
(3) 8.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of more than one million dollars but less than five million dollars; and
(4) 7.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of five million dollars or more.

When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional percentage of the equivalent as follows:

(1) 5.0% of the total possible points to a resident contractor;
(2) 10% of the total possible points to a resident veteran contractor that has annual revenues of one million dollars or less;
(3) 8.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of more than one million dollars but less than five million dollars; and
(4) 7.0% of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of five million dollars or more.

When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident contractors, these preferences shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal. The preferences in this section pertaining to resident veteran contractors with annual revenues of more than $1,000,000 but less than $5,000,000 and those pertaining to annual revenues of $5,000,000 or more are limited to an aggregate ten million dollars per year. A contractor shall not be awarded both a resident contractor preference and a resident veteran contractor preference.

New Mexico Statutes, §63-9F-6. In the invitation for proposals or bids from telecommunications companies to design and implement a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals, New Mexico residency is given a weight of five percent of the total weight of all evaluation factors and any business that qualifies as a resident business shall receive a 5.0% preference.

New Mexico Administrative Code, §1.4.1.25. All statutory preferences to resident businesses, resident veteran businesses, resident contractors, and resident veteran contractors must be applied in regard to invitations for bids and requests for proposals in accordance with statute in determining the lowest bidder or offeror.

New Mexico Administrative Code, §1.4.2.8. When bids are received only from nonresident businesses and resident businesses or from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business or, as applicable, resident manufacturer whose bid is nearest the bid price of the low nonresident business bidder if the bid price of the resident bidder or manufacturer is made lower than the nonresident’s bid when multiplied by a factor of 0.95. When bids are received from nonresident businesses, resident businesses, and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer, or to the resident business if no resident manufacturer is eligible for award, whose bid is nearest the bid price of the low nonresident business bidder if the bid price of the resident manufacturer is made lower than the nonresident’s bid when multiplied by a factor of 0.95.

New Mexico Administrative Code, §1.4.3.8. In public works construction procurements, when bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest the bid price of the low nonresident contractor if the bid price of the resident contractor is made lower than the nonresident’s bid when multiplied by a factor of 0.95. The resident contractor preference is the only bidding preference that applies to public works construction contracts.

**NEW YORK RESIDENT BIDDER PREFERENCE**

New York State Finance Law, §165. When letting contracts for purchase of food, solicitations may require provisions that mandate that all or some of the required food products are grown, produced or harvested in New York, or that any processing of such food products take place in facilities located within New York state based upon a list issued by the Commissioner of Agriculture and Markets identifying food products that are beneficial and available in sufficient quantities for competitive purchasing.
OPENNESS OF PUBLIC PROCUREMENT MARKETS IN KEY THIRD COUNTRIES

NORTH CAROLINA RESIDENT BIDDER PREFERENCE

North Carolina General Statutes, §143-59. Preference is given as far as practicable to products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina, provided there is no sacrifice or loss in price or quality.

North Carolina Governor’s Executive Order No. 50 (February 17, 2010). On contracts for purchases of goods, the Secretary of Administration is directed to develop a "price matching" protocol for North Carolina resident bidders whose price is within 5.0% or $10,000 of the lowest bid (whichever is less).

NORTH DAKOTA RESIDENT BIDDER PREFERENCE

North Dakota Century Code, §48-05-02.1. When purchasing coal for heating purposes, state agencies, political subdivisions, and public schools shall give preference to bidders supplying coal mined in North Dakota if it will provide the same British thermal units of heating value for an equivalent or lower total bid price than coal mined elsewhere and delivered.

North Dakota Century Code, §46-02-15. Where practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and other printed stationery must be awarded to a resident North Dakota bidder (one who, pursuant to North Dakota Century Code, §44-08-02, has maintained a bona fide place of business in North Dakota for at least one year prior to the date of the contract award).

OHIO RESIDENT BIDDER PREFERENCE

Ohio Revised Code, §125.09. Preference is given for products produced or mined in Ohio and bidders with a significant Ohio economic presence qualify for award on same basis as if their products were produced in Ohio. Non-Ohio businesses are restricted from bidding on printing contracts if home state excludes Ohio businesses from bidding on state printing contracts. The preference should not result in an excessive price for a product or acquiring a disproportionately inferior product.

Ohio Revised Code, §125.56. All printing is to be executed in accordance with Ohio Revised Code, §125.11 except for printing contracts requiring special, security paper of a unique nature unless it will result in an excessive price (exceeds the lowest price submitted by a non-Ohio bidder by more than 5.0%) or acquiring a disproportionately inferior product. Ohio Revised Code, §125.11 provides for awarding a contract to the lowest responsive and responsible bid from among the bids that offer products that have been produced or mined in Ohio where sufficient competition can be generated in Ohio to ensure compliance does not result in an excessive price for a product or acquiring a disproportionately inferior product.

Ohio Administrative Code, §123:5-1-11. Preference is to be given to Ohio bids for products produced or mined in Ohio or a border state. Where preliminary analysis identifies the apparent low bid as one other than an Ohio bid or a border state bid, 5.0% is applied to the price if the apparent low bid is one other than an Ohio bid or border state bid offering a domestic source end product.

Ohio Administrative Code, §123:5-1-06. Any bid response that is not for a domestic source end product may be removed except where it is determined that compliance would result in an excessive price or acquiring an inferior product. After such determination, bids are evaluated such that preference is given to Ohio bids for products produced and mined in Ohio or a border state. Where preliminary analysis identifies the apparent low bid as one other than an Ohio bid or border state bid offering a domestic source end product, 5.0% is applied to the price. If selection of the lowest Ohio bid will not result in an excessive price
or a disproportionately inferior product or service, contract award should be to the lowest responsible and responsive Ohio bid at the bid price quoted.

Ohio Department of Administrative Services, General Services Division, Domestic & In-State Preferences, PUR-003 (revised December 1, 2007). Ohio bidders are identified as offering Ohio products or having a significant economic presence (the latter requiring payment of Ohio taxes, registration and license to do business in Ohio, and ten or more employees based in Ohio or 75% or more of employees based in Ohio). Border state bidders are identified as those located in Kentucky, Michigan, Pennsylvania, Indiana, and New York. For mined products if sufficient competition exists, the following preference instructions are listed in the following order: award to lowest responsive and responsible bidder offering Ohio mined product; award to lowest responsive and responsible border state bidder offering same border state mined product (except Indiana); when lowest responsive and responsible Ohio bidder offering non-Ohio mined product, after application of 5.0% preference, award to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5.0% range; when lowest responsive and responsible border state bidder offering non-border state mined product, after application of 5.0% preference, award to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5.0% range; and, when lowest responsive and responsible non-Ohio/border state bidder offering non-Ohio/border state mined product, after application of 5.0% preference, award to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5.0% range. For mined products if sufficient competition exists, the following preference instructions are listed in the following order: award to any lowest responsive and responsible bidder offering Ohio product; award to lowest responsive and responsible bidder with significant Ohio economic presence offering domestic/Canada/Mexico product; award to lowest responsive and responsible border state bidder offering domestic/Canada/Mexico product; when lowest responsive and responsible non-Ohio/non-border state bidder offering domestic/Canada/Mexico product, after application of 5.0% preference, award to lowest responsive and responsible Ohio/border state bidder if within 5.0% range; when lowest responsive and responsible bidder offering foreign product, after application of 6.0% preference, award to foreign product if greater than 6.0% less costly than lowest responsive and responsible bidder offering Ohio/domestic/Canada/Mexico product.

OKLAHOMA RESIDENT BIDDER PREFERENCE

Oklahoma Statutes, Title 19, §788. When quality and prices equal, preference is given in contracts for county hospital construction work, alteration, additions, and repairs to materials produced in Oklahoma and to construction contractors domiciled, having and maintaining offices in and being citizen taxpayers of Oklahoma.

Oklahoma Statutes, Title 61, §9. In construction or repair of state institutions pursuant to Section 31 of Article X of the State Constitution, contracts must contain a provision requiring employment of Oklahoma labor and use of Oklahoma materials if available and if the quality meets the standards available from outside Oklahoma and can be procured at no greater expense than the same quality of labor or material from outside Oklahoma.

Oklahoma Statutes, Title 61, §10. In the construction or repair of institutions pursuant to Section 33 of Article X of the State Constitution, contracts must contain a provision requiring employment of Oklahoma labor and use of Oklahoma materials if available and if the quality meets the standards available from outside Oklahoma and can be procured at no greater expense than the same quality of labor or material from outside Oklahoma.

Oklahoma Statutes, Title 74, §85.44D. The State Purchasing Division of the Office of Management and Enterprise Services shall give preference to suppliers of wood products made from or products
manufactured utilizing materials from trees harvested in Oklahoma if the price for the products and materials is not substantially higher than the price for other wood products and materials and the quality and grade requirements are otherwise comparable.

**OREGON RESIDENT BIDDER PREFERENCE**

Oregon Revised Statutes, §279A.120. In awarding a public contract, preference is given to goods or services manufactured or produced in Oregon if price, fitness, availability, and quality are equal.

Oregon Revised Statutes, §279A.128. A contracting agency that uses public funds to procure goods or services for public use under Oregon Revised Statutes Chapter 279B (Public Contracting – Public Procurements) may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within Oregon if they cost not more than 10% more than other goods or services. If more than one bidder qualifies for the preference, further preference may be given to a bidder that resides in or is headquartered in Oregon.

Oregon Administrative Rules, §137-046-0300. Identical offers for goods or services, or both, and personal services under Oregon Revised Statutes, §279A.120 are awarded to those manufactured, produced, or to be performed in Oregon. Under Oregon Revised Statutes, §279A.128, a percentage of not more than 10% for goods fabricated or processed entirely in Oregon or services or personal services performed entirely in Oregon and, if more than one offeror so qualifies, an additional preference may be given to a qualifying offeror that resides in or is headquartered in Oregon.

Oregon Administrative Rules, §731-005-0660. With regard to projects for highway and bridge projects, if no federal funds are involved, preference is given to bidders whose principal offices or headquarters are located in Oregon.

**PENNSYLVANIA RESIDENT BIDDER PREFERENCE**

Pennsylvania Statutes, Title 71, §650. Any heating system or heating unit installed in a facility owned by the state must be fueled by coal produced from mines in Pennsylvania.

**RHODE ISLAND RESIDENT BIDDER PREFERENCE**

Rhode Island General Laws, §37-2-8. Foodstuffs grown or produced in Rhode Island by Rhode Island farmers are given preference when available and purchased at prevailing market prices.

Rhode Island General Laws, §37-2-59.1 For contracts entirely supported by state funds, all other things being equal, preference is given to Rhode Island architectural, engineering, and consulting firms or secondly those professionals who propose a joint venture with a Rhode Island firm.

Rhode Island General Laws, §37-2-80. Where contracts are entirely supported by state funds and two or more bidders respond and are equal on all other factors, the chief purchasing officer shall select a vendor or service provider whose headquarters or primary place of business is in Rhode Island first and those who propose a joint venture with such an in-state business second.

**SOUTH CAROLINA RESIDENT BIDDER PREFERENCE**

South Carolina Code, §11-35-1520. In a tie bid for contract, preference is given to South Carolina firms first and to or South Carolina produced or manufactured products second.
South Carolina Code, §12-28-2930. In awarding highway construction contracts, preference is given to a South Carolina contractor if the bid is not more than 2.5% than an out-of-state bid.

South Carolina Code, §11-35-3215. When qualifications are equal, South Carolina resident design service (architect-engineer, construction management, or land surveying service) provider must be selected if a resident and nonresident firm are otherwise equally qualified.

South Carolina Code, §11-35-1524. The price of any offer for a product made, manufactured, or grown in South Carolina is decreased by 7.0%. The price of a bidder’s price is decreased by 7.0% if the bidder maintains an office in South Carolina and either

(i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract;

(ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or

(iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds 50% of the bidder’s total bid price.

This section does not apply to competitive sealed proposals, motor vehicle purchases, acquisition of supplies or services relating to construction, procurements valued at $10,000 or less. Under no circumstances may the cumulative preferences applied to the price of a line item exceed 10%.

SOUTH DAKOTA RESIDENT BIDDER PREFERENCE

South Dakota Codified Laws, §5-18A-25. If all things are equal, preference is given to a resident business if the low bid was submitted by a nonresident business, to a resident manufacturer if the low bid was submitted by a nonresident manufacturer, to a resident business whose principal place of business is in South Dakota if the low bid was submitted by a resident business whose principal place of business is not in South Dakota, and to a nonresident business providing or utilizing supplies or services found in South Dakota if the low bid was submitted by a nonresident business not providing or utilizing supplies or services found in South Dakota. In computing price, the cost of transportation, if any, including delivery, is considered.

TENNESSEE RESIDENT BIDDER PREFERENCE

Tennessee Code, §12-3-1108. Preference is given in state purchasing of meat or meat by-products to meat producers located within Tennessee as long as terms, conditions, and quality are equal.

Tennessee Code, §12-3-1109. Preference is given in school purchasing of meat or meat by-products to meat producers located within Tennessee as long as terms, conditions and quality are equal.

Tennessee Code, §12-3-1113. Preference is given to goods, including agricultural goods, produced or grown in Tennessee or offered by Tennessee respondents. Goods produced in Tennessee are given equal preference if cost and quality are equal and, if cost and quality are equal, agricultural products grown in Tennessee are given first preference and agricultural products offered by Tennessee respondents are given second preference. Preference is given to Tennessee vegetation when making purchases for landscaping
purposes, when cost and quality are equal. Preference is given to services offered by a Tennessee respondent if the services meet state requirements and expected quality and the cost does not exceed the cost of other similar services of similar quality that are not offered by a Tennessee respondent.

Tennessee Code, §12-3-1110. Preference is given in public purchasing to coal mined in Tennessee if such coal is available at a delivered price which is equal to or less than coal mined outside Tennessee.

Tennessee Code, §12-3-1111. Preference is given in public purchasing to natural gas produced from wells located in Tennessee if such gas is available at a price which is equal to or less than gas produced from wells outside Tennessee, with transportation costs taken into account.

**UTAH RESIDENT BIDDER PREFERENCE**

Utah Administrative Code, R33-6-111. In the event of tie bids, contracts are awarded to procurement items offered by Utah resident bidders.

**VERMONT RESIDENT BIDDER PREFERENCE**

Vermont Statutes, Title 29, §46. In acquisitions and commissions for art in public buildings, priority shall be given to Vermont artists.

**VIRGINIA RESIDENT BIDDER PREFERENCE**

Virginia Code, §2.2-4324. In the case of a tie bid, preference is given to goods produced in Virginia and goods or services or construction provided by Virginia persons, firms or corporations. A Virginia person, firm, or corporation is a resident of Virginia if organized pursuant to Virginia law or maintains a principal place of business within Virginia.

Virginia Code, §2.2-4325. In determining the award of any contract for coal to be purchased for use in state facilities with state funds, award shall be to the lowest responsive and responsible bidder offering coal mined in Virginia so long as the bid price is not more than four percent greater than the low responsive and responsible bidder offering coal mined elsewhere.

Virginia Code, §2.2-4328. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced locally or provided by persons, firms, or corporations with a principal place of business in the locality.

**WASHINGTON RESIDENT BIDDER PREFERENCE**

Washington Revised Code, §43.19.748. All printing, binding, and stationery work done for any state agency, county, city, town, port district, or school district in Washington shall be done within Washington, except the officers of any such public corporation may have the work done outside Washington if: such work cannot be executed in Washington, the lowest charge for which such work can be procured exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality, or all bids for the work or any part thereof are excessive and not reasonably competitive.

**WEST VIRGINIA RESIDENT BIDDER PREFERENCE**

West Virginia Code, §5A-3-37. For purchase of commodities or printing made on competitive bids, a successful bid shall be determined and accepted as follows:
(1) from an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred West Virginia residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 2.5% of the latter bid (for purposes of this subdivision, any partnership, association or corporation resident vendor of West Virginia which does not meet the requirements of this subdivision solely because of the continuous four-year residence requirement shall be considered to meet the requirement if at least 80% of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this subdivision, including the continuous four-year residency requirement); or

(2) from a resident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least 75% of the vendor's employees are residents of West Virginia who have resided in West Virginia continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 2.5% of the latter bid; or

(3) from a nonresident vendor, which employs a minimum of one hundred West Virginia residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of one hundred West Virginia residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least 75% of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in West Virginia continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 2.5% of the latter bid; or

(4) from a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than 5.0% of the latter bid; or

(5) from an individual resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 3.5% of the latter bid; or

(6) from a resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least 75% of the vendor's employees are residents of West Virginia who have resided in West Virginia continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 3.5% of the latter bid; or

(7) notwithstanding any provisions of subdivisions (1), (2), (3), (4), (5) or (6) of this subsection to the contrary, if any nonresident vendor that is bidding on the purchase of commodities or printing by the director or by a state department is also certified as a small, women or minority-owned business pursuant to section fifty-nine [§5A-3-59] of this article, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subsection.
WISCONSIN RESIDENT BIDDER PREFERENCE

Wisconsin Administrative Code AB, §4.05. Preference is given to Wisconsin artists in the purchase of commission of original works of visual art for buildings constructed by the state when no other basis exists for differentiating finalists.

Wisconsin Administrative Code ADM, §8.03. In the case of tie bids, an award shall be made to Wisconsin suppliers in preference to out-of-state suppliers as provided in Wisconsin Statutes, §16.75.

WYOMING RESIDENT BIDDER PREFERENCE

Wyoming Statutes, §16-6-803. Preference is given to Wyoming artists in acquisition of art for placement within public buildings.

Wyoming Statutes, §16-6-301. When contracts are let for public printing, except for compilation, codification, revision, or digest of the statutes or case law of Wyoming, they shall be let to the responsible resident making the lowest bid if the bid is not more than 10% higher than that of the lowest responsible nonresident bidder. "Resident" means any person or business entity who has been a bona fide resident of Wyoming as defined in Wyoming Statutes, §16-6-101(a)(i) for one year or more immediately prior to bidding and who has an established printing plant in actual operation in Wyoming immediately prior to bidding.

Wyoming Statutes, §16-6-102. If a contract is let for construction, major maintenance, or renovation of any public building or other public structure or for making any addition thereto or for any public work or improvements, the contract shall be let, if advertisement for bids is required, to the responsible certified resident making the lowest bid if it is not more than 5.0% higher than that of the lowest responsible nonresident bidder.

Wyoming Statutes, §16-6-104. Wyoming made materials and products, and Wyoming suppliers of products and materials of equal quality and desirability have preference over materials or products produced or supplied outside Wyoming. The preference shall be applied in the same manner as the preference in Wyoming Statutes, §16-6-102.

Wyoming Statutes, §16-6-105. As long as quality is equal, Preference by a differential not to exceed 5.0% shall be given in all purchases for supplies, material, agricultural products, equipment, machinery and provisions to be used in the construction, major maintenance and renovation of institutions, supplies, materials, agricultural products, equipment, machinery and provisions produced, manufactured, or grown in Wyoming, and supplies, materials, agricultural products, equipment, machinery, and provisions supplied by a resident of Wyoming, competent and capable to provide service for the supplies, materials, agricultural products, equipment, machinery, and provisions within the state of Wyoming.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency’s authority to publish.
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