

Issues and Challenges of Accession to the GPA by Developing Economies: A Study of Thailand[†]

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Abstract

The World Trade Organisation's Agreement on Government Procurement (GPA) has been in effect since 1st January 1996. Its purpose was to open up the government procurement market as much as possible to international competition. However, developing countries have been reluctant to consider membership in the GPA mainly due to fear that the local industry would be adversely affected by foreign competition. This paper examines the existing laws, regulations, procedures and practices regarding government procurement in Thailand, comparing them with major features of the 2006 Revision of the GPA. It looks at current procurement problems in Thailand, and assesses whether membership in the GPA would help alleviate these problems. It concludes that greater transparency in government procurement would benefit Thailand, but preparatory steps are needed to determine Thailand's comparative advantage and assist domestic suppliers to adjust during the transition.

I. Introduction

The main principles of the World Trade Organisation's Government Procurement Agreement (GPA) are transparency, non-discrimination, the fostering of efficiency, as well as market access. It is a plurilateral agreement; Parties to the agreement number 41 out of the 153 WTO members¹ or about 26 per cent. Another 23 WTO members currently have observer status, out of which nine are negotiating accession.

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Government procurement is a focus of attention because its sheer size plays an important role in the world economy. It is estimated that government procurement budgets average about 10-20 per cent of Gross Domestic Product in many countries and that the economic crisis in the United States and beyond will further increase the role of government spending, as affected countries grapple with the aftershocks by using stimulus packages of their own. In addition, the international trading community, including Thailand's major trading partners, has continually shown interest in opening up procurement markets, at both bilateral and multilateral levels.

In Thailand, recent stimulus packages are adding to the already upward trend in government spending. The government investment budget, not including state enterprises and local administration, had already seen huge successive increases, by an average of 40 per cent per annum, from about 53 billion Baht (US\$ 1.6 billion) in fiscal year 2005 to approximately 134 billion Baht (US\$ 4.01 billion) in fiscal year 2008. As the worldwide financial crisis threatened to engulf countries large and small, stimulus packages shepherded through in early 2009, totalled 1.6 trillion Baht (US\$48.5 billion). Huge budget deficits were seen in 2009 and 2010, and are already in the works for 2011.

Procurement refers to all contracts between a government agency and public or private companies or individuals, and includes all consultancies and professional services, construction, maintenance and material supply contracts, as well as facilities contracts, capital equipment and property and leasing arrangements. The size of these contracts and the general lack of 'private sector' discipline, means that procurement is a lucrative market that could offer vast opportunities for wrongdoing. Regulations are therefore laid down with the expressed objective of ensuring that public funds are used efficiently and transparently.

This paper compares the similarities and differences between the GPA and Thailand's procurement regulations, focusing on development issues and the need to balance the interests of developed and developing countries. The paper finds that membership of the GPA should be beneficial to emerging nations in terms of increased transparency and

hopefully efficiency in the allocation of public resources. There are, however, some concerns regarding the structure of the international procurement market and the possibility of international collusion or subsidies by governments, that may be relevant to developing countries. Preparations and studies that need to be undertaken by developing countries, and Thailand in particular, are identified, and suggestions regarding modifications of the GPA are also made.

II. Legal and Institutional Framework

Thailand's structured procurement system dates back more than a century, and is highly decentralised. There is currently no central procuring authority, although some Ministries had dabbled into centralised procurement for supplies, with unsatisfactory results. Therefore each of Thailand's 200 government agencies individually procures the goods, services, and works it needs.

There is a plethora of legislation concerning government procurement. The main legislation is the Regulation of the Office of the Prime Minister (OPM) on Procurement, enacted in 1992 and amended six times, the latest being No. 6, 2002. The OPM Regulation stipulates procurement procedures and standardised contracts. All government agencies in central administration must comply with these regulations.

Procurement by local administrative agencies is governed by the Regulation of the Ministry of Interior on Provincial Administration Procurement. The key principles in the Regulation are similar to those of the OPM. Large state-owned enterprises can set their own procurement regulations, if they were created under their own Act, as can public organisations, set up under the Public Organisations Act of 1999. Cabinet Decisions can also lay down policy guidelines, and these also need to be consulted. Laws, regulations, and policy guidelines on public procurement are published in the Royal Gazette. They are also posted on the websites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior.

Since 2006, procurement over THB2 million (USD60, 000) has had to be conducted through an electronic auction (under the OPM Regulations regarding Electronic Procurement, 2006).

The only legislation that has the status of a parliamentary law is the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies (1999). This law, administered by the National Anti-Corruption Commission (NACC), criminalises collusion and bid-rigging and imposes sanctions on both public officials and private entities for criminal offenses. It is designed to ensure fairness and transparency in the awarding of contracts.

Oversight of procurement rests with the Comptroller-General's Department (CGD), established in 1890, and this office can be consulted in case of uncertainty or ambiguity. The Public Procurement Management Office (PPMO) in the Comptroller-General's Department within the Ministry of Finance, theoretically controls, monitors, and evaluates procurement by all central government agencies. It also determines regulations and guidelines related to government procurement. In addition, the Committee in Charge of Procurement (CCP), established under the OPM regulations, interprets the regulations, makes recommendations concerning its enforcement and amendment, grants exemptions, and hears complaints. For specific procurements, the procurement personnel of the agency involved must prepare a proposal to be approved by the head of the agency. Selection committees evaluate offers and select the winning bids. Individual agencies are encouraged to publish projects and awards of contracts on their websites, and compliance is one of the key performance indicators by which the agency is evaluated annually.

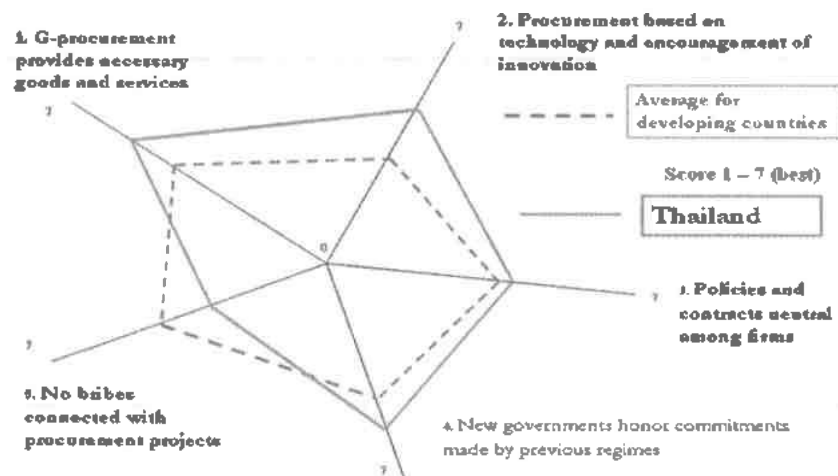
All procurement is subject to audit and evaluation by the Office of the Auditor-General (established in 1932 and transformed from the Inspection Department, formerly the Royal Audit Office set up in 1875, and became an autonomous and independent statutory body in 1999 after the 1997 Constitution). A copy of all contracts valued at one million Baht (US\$30,000) or above, has to be submitted to the Auditor-General's Office. The Bureau of the Budget also plays a role in overseeing

government procurement by stipulating standards for commonly-used items; for others, the procuring agency can set its own specifications. The Prosecutor-General also plays a role in reviewing any bidding document and contract which does not follow standardised forms, especially for mega-projects.

III. What are the Problems?

A quick overview of Thailand's procurement can be seen from the procurement assessment in the Global Competitiveness Report, as represented in Figure 1. Thailand's procurement appears to perform well, in providing the necessary goods and services for the public, scoring 4.3 for 'composition of government spending', compared with the mean for developing countries of 3.1 and even higher than the OECD mean of 4.0 out of a maximum of 7. Table 1 presents the scores for selected countries included in the report. Technological innovation also appears to be encouraged, with a score of 4.0, compared with the developing-countries' mean of 3.6.

Figure 1: Global Competitiveness Report Assessment of Procurement



Source: Constructed from Table 1.

Table 1: Global Competitiveness Report on Government Procurement, selected countries.

Non-OECD economy	The composition of government spending in your country (1= is wasteful, 7=provides necessary goods and services not provided by the market)	Government decisions on the procurement of advanced technology products are based on (1=price alone, 7=technology and encouraging innovation)	When deciding upon policies and contracts, government officials (1=usually favor well-connected firms and individuals, 7=are neutral among firms and individuals)	New governments honor the contractual commitments and obligations of previous regimes (1=not true, 7=true)	How commonly do firms in your industry give irregular extra payments or bribes connected with public contracts/investment projects (1=common, 7=never)
Peru	2.8	2.7	2.9	3.9	4.2
Philippines	2.8	3.4	2.7	4.8	3.0
Romania	2.5	3.3	3.7	3.2	4.1
Russia	2.5	3.6	3.7	4.0	3.8
Singapore	5.9	5.7	3.1	6.3	6.4
Slovenia	3.3	4.2	3.5	4.5	4.1
South Africa	3.8	3.9	3.1	5.6	4.4
Sri Lanka	2.6	3.5	2.7	4.1	4.3
Taiwan	4.3	5.1	3.9	3.6	5.6
Thailand	4.3	4.0	3.5	4.9	3.7
Trinidad and Tobago	4.1	4.0	2.7	4.8	4.2
Ukraine	2.1	3.9	2.1	2.5	2.9
Uruguay	2.9	3.8	3.6	5.4	4.4
Venezuela	2.2	3.1	2.6	3.9	3.5
Vietnam	3.1	4.0	3.0	3.7	3.5
Zimbabwe	1.4	3.3	1.9	4.1	2.5
Mean for these developing countries	3.1	3.6	3.0	4.3	3.9
Mean for the OECD economies	4.0	4.4	4.2	5.5	5.3

Source: The Global Competitiveness Report, 2007-2002. Interview responses to questions above by business people familiar with a given economy.

Notes:

signifies the reported value is less than the average for those developing countries reported here
 signifies the reported value is more than the average for the OECD countries surveyed

number in *italics*

However when evaluated according to whether favour is given to connected firms or individuals, Thailand's score is below the developing countries' mean. In addition, when evaluated according to how commonly firms give 'irregular extra payments' in connection with public contracts and investment projects, Thailand scores a dismal 3.7 compared to the developing countries' mean of 3.9 and the OECD mean of 5.3.² The problem of non-transparency therefore appears to be paramount when analyzing procurement in Thailand.

From various interviews of foreign companies, corruption is often cited as an impediment to doing business in Thailand, along with hidden costs related to red tape, government and policy instability and inefficient government bureaucracy.³

The procurement methods and procedures, though laid down in detail and seemingly strictly enforced, allow several loopholes. The problems can be classified into four categories:

A. *No Uniform Regulations*

There is no uniform core set of regulations that apply to all government agencies, state-owned enterprises, and public organisations. Large state-owned enterprises that have become public companies, such as PTT Public Company Limited, formerly known as the Petroleum Authority of Thailand, which owns extensive submarine gas pipelines in the Gulf of Thailand, a network of LPG terminals in the country, and is involved in electricity generation, petrochemical products, oil and gas exploration and production, and the gasoline retailing businesses, as well as affiliated companies such as PTT Exploration and Production, PTT Chemicals, PTT Aromatics and Refining and PTT Green Energy, are able to make their own regulations, with approval from the Board of Directors. Likewise, AOT (Airports of Thailand Public Company Limited) and Thai Airways Public Company Limited fall under the same category.

² Global Competitiveness Report, 2001-2002, is based on interview responses to questions by business people familiar with a given economy.

³ <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/thailand/snapshot/>. Accessed July 16, 2010.

Complaints regarding procurement in state-owned enterprises are regularly submitted to the National Anti-Corruption Commission and uncovered by the Auditor-General's Office.

As for public organisations, these were created by law in 1999 and currently number 59. These are organisations set up using the government budget to provide services in a non-profit manner, but with more flexibility than government departments. They range from a science-oriented high school, learning centers, science laboratories, to trade institutes. But because they can draft their own regulations, questionable practices have been remarked on.

B. Existing Regulations do not Foster Efficiency

The process of approval of procurement is generally cumbersome, and law-abiding procurement officers are likely to select suppliers offering the lowest price, when quality considerations are vague. When specifications are required to be laid down in minute detail, together with the time lag between approval and purchase, this often prevents purchase of the most efficient or up-to-date products.

C. Methods of Procurement Allow Irregularities

The OPM regulations require the use of standardised contracts and tender documents in order to strengthen the transparency of procurement procedures. In addition, the procuring agency is required to publish the prequalification criteria and method of selection, and inform the CCP. The OPM regulations provide only very general selection criteria, namely, price, bidder's qualifications, and quality. This is ostensibly designed to increase participation and reduce the risk of collusion or failure of tendering. In addition, procuring units must notify other public agencies such as the Mass Communication Authority of Thailand, the Broadcasting Authority, and the Office of the Auditor-General, as well as print media such as daily newspaper offices about specific procurement. The minimum periods allowed for submitting tenders are also specified. For specific procurements, the procurement personnel of the agency is required to prepare a proposal to be approved by the head of the agency. Selection committees are tasked with the evaluation and selection of

offers, and the name of the winning bidder is announced on the website of the procuring agency. Requests for explanation can be made if the results appear unsatisfactory. If none of the tendered bids meets the requirements, the tender is reopened.

The OPM allows several methods of procurement, depending on several factors, including the value of the contract, the nature of the goods or services, and the urgency of the procurement. Excluding consultancy and engineering services, six methods of selection/tendering are specified according to the size of the contract:

- (i) Negotiation, applying to contracts of not more than 100,000 baht (US \$3,000).
- (ii) Price search or selective tendering method, for contracts of 100,000 baht to 2 million baht (US \$60,000).
- (iii) Open tendering or competitive bidding, for contracts over 2 million baht; under the international competitive bidding variant, invitations to tender are prepared in English and foreign firms may bid. Bids are evaluated first against the technical criteria stipulated by the procuring agency; the lowest-price bid is then selected from among those that meet the criteria.
- (iv) Special method or limited tendering, applies under certain conditions similar to those stipulated in Article XV of the WTO-GPA.
- (v) Special case method applies in the case of direct contract to authorized government agencies or state enterprises, and
- (vi) Open electronic tendering for contracts worth 2 million baht and above.

Consultancy and engineering services may be engaged by either direct negotiation with a particular consultant, or by screening qualified consultants down to a short list, inviting proposals and then negotiating on price with the candidate with the best technical proposal. Generally, a project's requirements will indicate qualifications of potential suppliers/contractors. Prequalification may be made for each project or by establishing lists of qualified bidders at the procuring agencies.

Table 2 breaks down the value of procurement of central government agencies, by method of procurement. It can be seen that 'open tendering' and 'electronic procurement' (called 'e-auction' in Thailand) which is supposed to foster competition, together form less than 50 per cent of the total value of procurement by central government agencies. Data for state-owned enterprises and public organisations are not available at any one agency and there is no central data depository. This is the main problem encountered in assessing efficiency of procurement, and the main problem with respect to transparency.

A breakdown by Ministry in Table 3 shows that in 2009 the Ministry of Industry had the lowest combined percentage (3.80 per cent) of procurement undertaken by competitive methods: 'open tendering' (2.12 per cent) and 'e-auction' (1.68 per cent), followed by the Ministry of Commerce with 0.48 per cent and 8.26 per cent, respectively, combining to make just 8.74 per cent. The Ministry with the largest percentage of procurement undertaken by these two methods is the Ministry of Tourism and Sports (20.82 and 57.51 per cent respectively, combining to make a total of 78.33 per cent).

Of course there may be extenuating circumstances, and government procurement is subject to fluctuation from year to year due to periodic infrastructural investment, yet the low percentages of procurement obtained through competitive methods indicate that further study and analysis is needed.

D. *Loopholes for Non-Transparent and Corrupt Behaviour*

To safeguard integrity, the usual supplementary apparatus is now starting to be in place, including codes of conduct, particularly those specific to procurement. The OPM regulations also address conflicts of interest, and the Organic Act on Counter Corruption 1999 contains additional conflict-of-interest provisions and the NACC has issued regulations regarding acceptance of gifts. The Royal Decree on Good Governance in State Administration 2003, the Civil Service Act 1992, and the Civil Service Ethic Standards that apply to civil servants generally should all help. Measures to promote ethical standards among suppliers and public-private sector collaboration in transparency have been initiated.

Table 2: Central Government Procurement, by Method, Fiscal Years 2005-2009 (value unit: million baht)

Method	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009	
	Value	(%)	Value	(%)	Value	(%)	Value	(%)	Value	(%)
Negotiation	19,457.15	17.04	28,118.95	13.93	30,074.66	12.91	34,050.14	14.01	14,615.97	16.02
Selective tendering	23,538.89	20.61	30,598.70	15.16	30,073.68	12.91	27,299.01	11.25	10,297.62	11.28
Open tendering	33,599.13	29.42	51,177.13	25.35	36,438.49	15.64	24,417.11	10.05	8,012.27	8.78
Special method	13,430.16	11.76	22,031.71	10.91	30,572.82	13.10	38,700.96	15.92	14,595.01	15.99
Special case method	8,352.94	7.31	11,061.61	5.48	15,600.95	6.70	18,775.06	7.72	7,349.34	8.05
e-Auction	11,021.03	9.65	47,273.16	23.42	73,757.69	31.66	84,652.54	34.83	30,843.83	33.80
Advisory services - negotiation	1,715.12	1.50	2,730.45	1.35	3,335.90	1.43	2,917.38	1.20	1,022.26	1.12
Advisory services - selection	1,493.28	1.31	2,795.91	1.38	3,588.13	1.54	3,391.97	1.40	1,332.09	1.46
Advisory services - limited conditions	1,600.64	1.40	568.96	0.28	321.82	0.14	117.85	0.05	50.04	0.05
	0.00	0.00	5,521.70	2.74	9,268.97	3.98	8,738.96	3.60	3,132.96	3.43
Total	114,208.32	100.00	201,878.27	100.00	232,983.12	100.00	243,061.00	100.00	91,251.39	100.00

Source: calculated from Comptroller-General's Department data

Table 3: Percentage Distribution of Procurement by Method and Ministry, FY 2009 (unit: per cent (%))

Agency	Method of procurement											
	Negotiation	Selective Tendering	Open Tendering	Special method	Special case method	e-Auction	Advisory services - negotiation	Advisory services - selection	Advisory services - limited conditions	Other	All methods	Opening tendering plus e-auction
Prime Minister's Office	9.92	2.47	1.12	16.70	32.52	9.55	23.77	2.58	1.37	0.00	100.00	10.67
Ministry of Defence	3.27	8.01	3.76	33.51	26.72	24.51	0.01	0.03	0.00	0.18	100.00	28.27
Ministry of Finance	62.58	3.77	2.67	14.09	1.20	15.50	0.15	0.04	0.00	0.00	100.00	18.18
Ministry of Foreign Affairs	1.64	0.03	18.59	70.84	2.06	6.67	0.17	0.00	0.00	0.00	100.00	25.25
Ministry of Tourism and Sports	9.06	6.95	20.82	3.83	1.11	57.51	0.71	0.00	0.02	0.00	100.00	78.33
Ministry of Social Management and Human Security	36.74	23.79	10.20	13.97	8.69	5.08	0.95	0.58	0.00	0.00	100.00	15.28
Ministry of Agriculture and Cooperatives	15.81	16.13	11.44	5.22	3.23	29.61	1.43	1.61	0.23	15.30	100.00	41.05
Ministry of Transport	8.42	10.28	19.36	3.05	1.19	48.94	0.41	1.35	0.01	7.01	100.00	68.30
Ministry of Natural Resources	14.40	41.36	9.39	3.79	1.20	23.76	1.76	4.24	0.00	0.09	100.00	33.15
Ministry of Information and Communication Technology	1.31	2.26	0.34	17.71	16.30	55.28	6.57	0.24	0.00	0.00	100.00	55.61
Ministry of Energy	7.27	3.30	7.49	7.77	2.92	55.38	2.72	13.14	0.00	0.00	100.00	62.88
Ministry of Commerce	20.29	11.86	0.48	42.47	2.10	8.26	3.96	4.72	0.00	5.85	100.00	8.74

Table 3 (continued): Percentage Distribution of Procurement by Method and Ministry, FY 2009 (unit: (%))

Agency	Method of procurement											
	Negotiation	Selective Tendering	Open Tendering	Special method	Special case method	e-Auction	Advisory services - negotiation	Advisory services - selection	Advisory services - limited conditions	Other	All methods	Opening tendering plus e-auction
Ministry of Interior	12.40	11.81	2.19	20.13	5.41	42.11	0.02	5.90	0.00	0.04	100.00	44.29
Ministry of Justice	9.16	5.13	11.60	12.73	8.27	52.50	0.57	0.03	0.00	0.01	100.00	64.10
Ministry of Labour	46.15	25.42	0.08	9.96	6.20	11.28	0.30	0.62	0.00	0.00	100.00	11.36
Ministry of Culture	11.75	11.60	3.37	15.97	12.88	44.43	0.00	0.00	0.00	0.00	100.00	47.80
Ministry of Science	53.46	15.43	0.40	7.23	4.03	19.46	0.00	0.00	0.00	0.00	100.00	19.86
Ministry of Education	20.14	10.46	7.39	9.77	1.64	50.35	0.17	0.00	0.06	0.01	100.00	57.75
Ministry of Public Health	37.63	11.12	8.36	15.72	3.48	23.52	0.14	0.00	0.02	0.00	100.00	31.89
Ministry of Industry	12.14	9.07	2.12	10.73	0.83	1.68	34.30	29.07	0.00	0.05	100.00	3.80
Other	18.47	3.96	2.28	25.53	5.62	43.69	0.30	0.00	0.00	0.14	100.00	45.97
Province	12.45	61.89	4.13	3.03	1.74	14.49	0.80	1.48	0.00	0.00	100.00	18.62
Central budget	6.80	11.93	11.04	30.20	8.83	20.45	0.05	6.63	0.00	4.06	100.00	31.49
CED	2.66	0.23	2.66	52.18	0.00	42.27	0.00	0.00	0.00	0.00	100.00	44.93

Source: calculated from Comptroller-General's Department data

However, actual data on the incidence of transparency problems show that the most vulnerable areas are the following:

- (i) Ad hoc emergency projects, such as relief of natural disasters
- (ii) National security projects that require secrecy
- (iii) Repair and maintenance projects where difficulties occur in assessing work required
- (iv) Non-durable items that are used up
- (v) Large projects where the returns are high

And risks are present at each stage of procurement, namely project initiation, project design, technical specifications and reference prices, canvassing suppliers, the tendering process, contract design and management, and verification and acceptance of work.

Even though e-procurement was intended to increase transparency, analysis of projects procured by electronic means in 2009 reveals that several irregularities occurred. First even though the time period from announcement to submission of tender offers is stipulated to be from 3 to 30 days, in many cases this did not occur. It could be gleaned from the electronic records that some announcements were even made after the contract had been awarded.

Somkiat (2009) devised a transparency index for electronic procurement, giving scores to projects on the following bases: timely announcement of project tender, appropriateness of the tendering period, and reasonable qualifications of supplier.

The following scores are given for announcement of project tender: number of days before tendering:

- 1.00 for more than 30 days
- 0.75 between 16-30 days
- 0.50 between 7-15 days
- 0.25 less than 7 days
- 0.00 if no website announcement or announcement after bid tendering,

- deduct 0.25 if the supplier's track record is excessive compared with the size of the project. For example, if suppliers are required to have previously undertaken billion-baht projects, to qualify for a million-baht project, this is considered excessive. The scale of the index is between 0 and 1.

Based on this index, it was found that more than 54 per cent of the projects had a score of zero, and only 3 per cent received the maximum score of 1.

Unfortunately there are inherent difficulties involved in designing a procurement system because of several factors. First, government procurement usually involves multiple objectives, with efficiency being just one of them. Often procurement is used as a means to effect a geographical redistribution of income, or to favour underprivileged groups such as the disabled. It is also difficult to design a system that aligns with personal incentives with public benefit, as the same observed behaviour could be motivated by opposite motives. Strict conformity to rules sometimes results in less efficiency; the "special method" could reflect a sinister motive or a desire to be efficient; the lowest price may involve sacrifice of quality, and detailed specifications could limit competition.

IV. Comparison of Thai Legislation with the GPA

There are both similarities and differences between Thai laws/regulations and the GPA. These will be discussed in terms of the underlying principles, the thresholds, the tendering process, time periods, and challenges and publication of results.

A. Principles

The principles emphasised in the GPA are openness, transparency and non-discrimination, whereas in the Thai regulations, only openness and transparency are the main principles. In terms of openness and transparency, announcements and dissemination of information through the Public Relations Department, Mass Communication Organisation of Thailand, the G-Procurement website, *etc.* are required. Procurement

committees have to be formed, often with citizen participation. Contracts worth more than one million baht have to be sent to Office of the Auditor-General and Revenue Department within 30 days of signing. Regulations for e-procurement also include additional criteria: value for money, transparency, efficiency and effectiveness, and accountability and responsibility for completion. At least 3 tenderers (in the case of standards license or meeting quality control systems) are required.

As for discrimination, the Thai regulations give preference to products made in Thailand and Thai producers (Part 2 Section 2 Articles 16 and 17 OPM Regulations on Government Procurement B.E. 2535), as well as contractors and consultants. For example, in procuring pharmaceutical products (Article 60-64 of OPM B.E. 2535), preference is given to the Government Pharmaceutical Organisation (GPO), by using the "special case method" provided that the price differential does not exceed 3 per cent of the reference price established by the MOPH for products of the same generic name. Thai regulations also promote the use of Thai advisors (Article 74 of B.E. 2535 OPM Regulations).

If there are 3 or more producers who hold licenses to display Thai Industrial Standards Institute (TISI) marks, or 3 or more producers with factories certified for quality control systems, a price preference of 5 per cent is given to these products. In addition, Procurement Regulation, General Section, Article 5, states that factories certified for quality control systems must meet ISO 9001 or ISO 9002 in the area of production certified by TISI (Thai Industrial Standards Institute) or ISO or other agencies approved by the Ministry of Industry (MOI).

Except for construction projects, tenderers displaying standards certification, or products from factories certified for quality systems, are given preference, provided that their price is not more than 5 per cent higher than the lowest price tendered, in which case the procuring entity should negotiate with the certified supplier. If the price can be negotiated down to 3 per cent (or a rate set by the procurement committee), that supplier can be chosen. For consultancy and engineering services, a Thai consultant must be engaged as the leading firm.

B. *Tendering Method*

The six procurement methods previously mentioned can be divided into three categories:

- (i) Methods determined by value thresholds:
 - a. *Negotiation* for procurement of less than 100,000 Baht.
 - b. *Price search or selective tendering* for procurement between 100,000 Baht and 2 million Baht, and
 - c. *Open electronic tendering* for procurement over 2 million Baht.

- (ii) Method determined by conditions:

The *Special case method* is used by government agencies specified in Local Administrative Organisations (LAO) regulations with the following conditions:

 - when the LAO is the producer or hirer as approved by the Prime Minister.
 - when there is a law or a Cabinet Decision approving purchase or hiring, including other agencies specified by law or by Cabinet decision, such as the purchase of pharmaceuticals (Article 61).

- (iii) Method determined by value threshold and conditions:

Special method, for procurement for which there is justification (Article 23 and 24) for procurement above 100,000 Baht.

The six methods in the OPM Regulations B.E.2535 can be further classified into two groups:

- Without competition: Special method, Special Case method, and Negotiation.
- With competition: Price search, Open bidding and Open bidding through electronic means.

Table 4 compares the Thai procurement methods with those of the WTO-GPA.

Table 4: Comparison of Procurement Methods: Thai OPM Regulations and GPA

GPA tendering	Thai OPM regulations tendering method
1. Open tendering 2. Selective tendering 3. Limited tendering “insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;”	1. Negotiation 2. Price search 3. Open bidding- 2 step open bidding (Technical bid and price bid) 4. Special method 5. Special case method 6. Electronic bidding (Ministry of Finance)

C. Thresholds for Authorization

In terms of administration, there are thresholds that determine the power of authorisation as follows:

- (i) For negotiation, price search, and open tendering, authority is given to the following with threshold limits:
 - a. Head of department: not exceeding 50 million Baht
 - b. Permanent Secretary: 50 – 100 million Baht
 - c. Minister: more than 100 million Baht
- (ii) For special method (Articles 23, 24 similar to GPA Article XIII)
 - a. Head of department: not exceeding 25 million Baht
 - b. Permanent Secretary: 25 – 50 million Baht
 - c. Minister: more than 50 million Baht
- (iii) For special case method:
 - a. Head of department is able to approve without limit, with prior approval of the Prime Minister or Cabinet

Thresholds for authorisation: LAOs

- a. Provincial Administrative Organisation (PAO): President: not exceeding 100 million Baht, Governor: above 100 million Baht
- b. Pattaya City: Pattaya City Manager: not exceeding 100 million Baht, Governor: above 100 million Baht
- c. Municipality
 - (1) *Municipality Council*: Mayor not exceeding 100 million Baht, Council: not exceeding 300 million Baht, Governor: above 300 million Baht
 - (2) *Mayor*: Mayor not exceeding 300 million Baht, Governor: above 300 million Baht

Value Thresholds (for special method, procurement from ad hoc subsidy, domestic loan, aid, and foreign loan)

- PAO Governor: above 10 million Baht
 - Pattaya City Manager: not exceeding 10 million Baht, Governor: above 10 million Baht
 - Municipality
 - (1) *Council*: mayor: not exceeding 10 million Baht, Municipality Council: not exceeding 20 million Baht, Governor: above 20 million Baht
 - (2) *Mayor*: mayor: not exceeding 20 million Baht, Governor: above 20 million Baht
 - For special case method: no limit
- d. Tambon (sub-district) Administration
 - Chairman of the Administration Committee can authorize without limit, except for conditions under Articles 44 and 45
 - Under Articles 44 and 45, Chairman can approve amounts not exceeding 50 million Baht, Tambon Administration Committee: 50 – 100 million Baht, District Officer: 100 – 200 million Baht, and Provincial Governor: above 200 million Baht
 - For Special method, procurement using subsidy, domestic loans, foreign loans, and foreign aid, the Chairman can authorise procurement up to 5 million Baht, the Tambon Administrative Committee: 5-10

million Baht, the District Officer: 10-20 million Baht, and the Provincial Governor: above 20 million Baht
For the Special case method, the Chairman can approve without limit.

Table 5 summarises the differences between the GPA and Thailand's OPM Regulations regarding thresholds.

Table 5: Procurement thresholds: GPA and Thailand's OPM Regulations

GPA most common thresholds for covered procurement	Thailand's thresholds for procurement method
<ol style="list-style-type: none"> 1. Central Government (Annex 1) Goods and services not including construction: 130,000 SDRs (~6.8m Baht) Construction: 5m SDRs (~265m Baht) 2. Local Government (Annex 2) Goods and services not including construction: 355,000 SDRs (~18.8m Baht) Construction: 5m SDRs (~265m Baht) 3. Others (Annex 3) Goods and services not including construction: 400,000 SDRs (~21.2m Baht) Construction: 5m SDRs (~265m Baht) 	<ol style="list-style-type: none"> 1. Negotiation: not exceeding 100,000 Baht 2. Price search: > 100,000, not exceeding 2 million Baht. 3. Open bidding by electronic means: above 2 million Baht. 4. Special method: above 100,000 Baht. 5. Special case method: no limit

D. *Technical Specifications*

There are similarities and differences between the WTO-GPA and the Thai OPM Regulations. The GPA's Article X Technical Specifications and Tender Documentation requires that:

A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

There are similar provisions in Thailand, but enforcement is a problem, especially with projects involving very advanced technology, where the suppliers themselves are often invited to write the specifications.

GPA's Article X is particularly interesting in stating that:

In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics;

The *functional requirements* are not specified in Thai regulations, and technical specifications are invariably related to physical characteristics.

E. *Transparency of Procurement Information*

Both the GPA and the Thai OPM regulations requirement publication of information. For complaint and appeal procedures, the OPM regulations state that aggrieved suppliers or contractors may lodge complaints directly with the procuring agency, the PMO's Committee in Charge of Procurement, or the Petition Council. In the case of the Petition Council, the petitioner must lodge the complaint within 90 days of knowledge of wrongdoing. The Council will then consider the petition 'without delay', and remedial measure(s) (if any) will be recommended within seven days to the Prime Minister. Remedy might include overturning the act that is inconsistent with the law, or that cannot be supported by 'justifiable reason'. It is also possible for an interim remedy to be issued by the Council itself when appropriate.

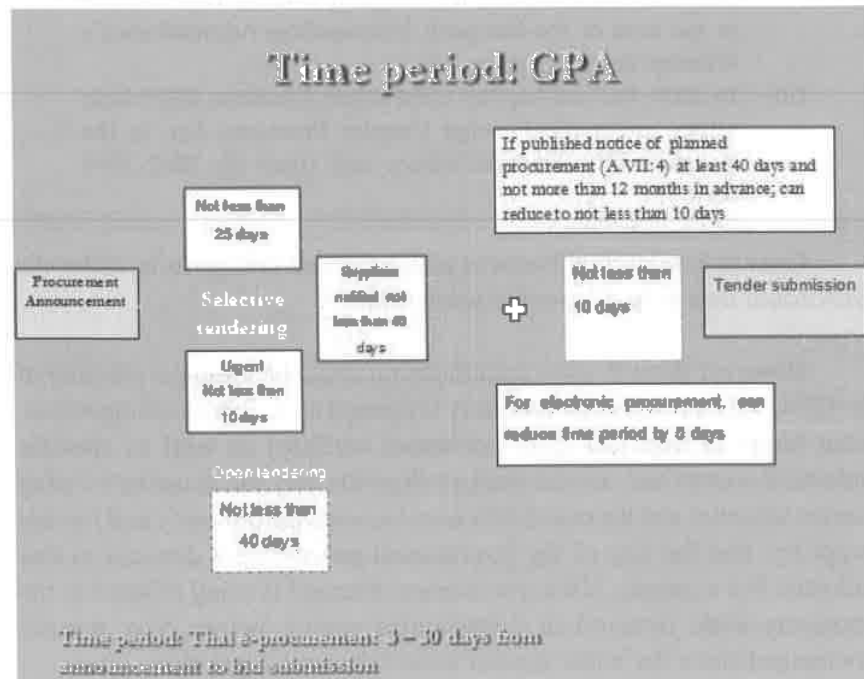
Comparison between the GPA and the Thai OPM regulation is given in Table 6.

Table 6: Comparison of Transparency of Information Requirements

Article XVI Transparency of Procurement Information	Thai Transparency of Procurement Information
<p>Promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clauses mandated by law or regulation and incorporated by reference in notices and tender documentation, and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public;</p> <p><i>Collection and Report of Statistics</i> Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period.</p>	<ul style="list-style-type: none"> • law • regulation • standard contract clauses mandated by law or regulation and incorporated by reference in notices and tender documentation • administrative ruling of general application only for procurement valued above 50,000 Baht • disseminated and remains readily accessible to the public at www.gprocurement.go.th • Does not cover judicial decisions <p>Submission of report of procurement contracts over 1 million Baht to Auditor-General.</p>

F. Time Period

The time period stipulated in the GPA is represented in Figure 2. Under competitive bidding under the OPM regulations, invitations to tender are advertised at the procuring agency and on the radio or in a newspaper, generally in the Thai language. Full information required by prospective bidders is provided in tender notices. At least 20 or 45 days are provided to allow bidders to prepare and submit tenders for competitive bidding or international competitive bidding, respectively. Some procuring agencies may publish details of contracts awarded on a voluntary basis.

Figure 2: Schematic Representation of Time period specified in the GPA

Source: Sirilaksana Khoman, *et. al.* (2009).

V. What are the Concerns and Stumbling Blocks?

Sirilaksana Khoman *et.al.* (2009) and Somkiat Tangkitvanich *et.al.* (2009) propose that the GPA could be a tool to increase transparency in Thailand's government procurement. Membership could possibly lead to greater transparency, more efficient use of government budget as it would stimulate fair competition, help honest and efficient suppliers, and may foster industrial growth and development.

Major examples of procurement cases initiated by foreign governments include:

- (i) The U.S. Department of Justice and SEC fined Invision Company for bribing a Thai official in the CTX explosive detection device case in 2005.