



Trade Negotiations between the European Union and the Philippines

EU Proposal on Public Procurement

Explanatory note - February 2017

This factsheet gives a general overview of the European Union's (EU) proposal for a chapter on Public Procurement in the Free Trade Agreement (FTA) envisaged between the EU and The Philippines. The text of the EU proposal was presented to the Philippine Government experts shortly in advance of the negotiating round and is now available on the [website](#) of the European Commission.

Why do we negotiate rules on Public Procurement?

Public procurement refers to the government's activity of purchasing goods and services which the government needs to carry out its functions. So it refers to the situation where public authorities (and the entities which they control) are acting in the role of a buyer.

In absolute terms, government procurement amounts to:

- around 2.4 trillion EUR in the EU,
- over 6 trillion USD globally.

It makes up:

- 10-25% of GDP of national economies,
- 19% of GDP in the EU.

In emerging economies like the Philippines, these figures are often even higher.

The EU is a strong supporter of an ambitious opening of international public procurement markets. Experience has shown that opening of these markets can improve governments' ability to get better value for money by:

- gaining access to a richer and more diverse pool of goods and services,
- increasing efficient use of public resources.

The opening of public procurement markets is also a powerful tool to:

- fight corrupt practices,
- increase transparency,
- enhance legal certainty.

Main objectives

The EU proposal aims to:

- Set modern procurement disciplines on the basis of international recognised standards, which seek to make sure that public contracts are concluded in a transparent, efficient and non-discriminatory way,
- Provide a level playing field (at least over time) for EU suppliers when participating in public procurement markets in the Philippines.

What do we negotiate?

The two key issues in public procurement are rules and market access.

Rules

Rules set out the relevant principles which public authorities and government-controlled companies should respect when spending public money. They seek to make sure that this money is spent in a transparent, efficient and equitable way.

- Transparency

The FTA should define a transparent tendering process to make sure that information about the procurement regime and individual procurement opportunities is made available to all interested parties. Bidders should be entitled to know in advance which rules apply when tendering.

Transparency is also an instrument to ensure fair competition among tenderers, thus guaranteeing an equitable access to public contracts.

In a wider societal/political context, transparency is an instrument to increase accountability of public authorities as regards the way in which they spend tax money and thus, ultimately, to improve anti-corruption policies and governance.

- Principles

The FTA should also establish standard principles which support a modern procurement regime as promoted by the EU internally and externally:

- Non-discrimination

International standards should apply, rather than non-recognised technical standards.

- Open tendering

All suppliers (domestic and foreign) should be allowed to tender.

- Competitive tendering

All competitors should have equal chances and access to the same information. Also, all decisions should be based on economic criteria only.

- Qualitative tendering

Procuring entities can take into account objective aspects as quality and environmental concerns.

- Due process

Various procedural guarantees should be present, such as a reliable regulatory framework which makes sure that all admissible bidders are treated fairly. An effective review is an important element of due process. This means that bidders can ask independent review bodies to review procurement decisions, for example regarding the availability of interim measures or compensation.

Market access

Market access provisions, also known as market coverage, define which tenders should be open to foreign companies.

In principle, nothing in public international law stops sovereign entities from closing their procurement markets to foreign suppliers and foreign products. But countries increasingly realise that they benefit from open procurement markets. Therefore they negotiate with other countries to mutually access each other's tenders. Coverage rules define to which individual procurements the negotiated procedural and substantive safeguards apply.

- Other issues

Other topics in EU procurement policy are:

- treatment of Public Private Partnerships (PPPs),
- electronic means of organising procurement processes (e-Procurement).

These topics will also be discussed during the negotiations with the Philippines.

What is not covered?

None of the bilateral trade agreements which the EU negotiates obliges the EU or other countries to liberalise or privatise any public services. Therefore negotiations with the Philippines do not affect public services.