

**IDB-INTAL Workshop on GPA accession for Brazilian  
Sub-central Government Officials  
18-21 May 2021**

**Some Key Take-aways from Day 3**

(A very informal summary by the Workshop Chairman, Prof. Robert Anderson)

1) **Professor Sue Arrowsmith** gave an important presentation on “Operationalizing and internalizing the GPA’s obligations”, touching on: (i) GPA coverage issues; (ii) contract award procedures; (iii) domestic review (complaint systems); and (iv) other matters. She stressed, inter alia, that:

- The GPA is intended to cover only those procurements that are potentially subject to international bidding. Especially at the sub-national level, many procurements of interest to small and medium-sized enterprises are not subject to the GPA’s requirements by virtue of the agreement’s thresholds and other exclusions;
- There are, nonetheless, benefits to applying “GPA-based” procedures and remedies even to contracts not covered by the GPA, even if those markets are closed to foreign suppliers;
- Each GPA Party can design/keep its own procurement methods and nomenclature, provided they are consistent with the GPA’s principles and broadly “fit” within the methods enumerated in the Agreement (open tendering, selective tendering and limited tendering);
- The GPA’s rules are *minimum standards* – hence, countries may (if they so wish) impose stricter or additional requirements;
- GPA accession affords an opportunity to look more broadly at award procedures, asking how they can be improved?
- Experience suggests that specialized review bodies have important advantages over courts in providing speedy and effective resolution of supplier complaints (the GPA permits both approaches).

In closing, Prof. Arrowsmith stressed the usefulness for any acceding country of building up a supportive network of lawyers and academics with knowledge of the GPA/related international experience and instruments (Brazil already has a very good start in this area!). GPA accession is an opportunity to drive wider reform of public procurement law and professionalization of the procurement workforce.

2) **Prof. Steven Schooner** offered a similarly powerful presentation on the over-riding importance of giving greater priority to sustainability objectives in public procurement activities and processes. The well-being of future generations depends on it! The concept of sustainability, as manifested e.g., in the UN SDGs, is broader and more inclusive than mere “green procurement”. The revised GPA is supportive of the goals of sustainable procurement in multiple ways, including language in Article X on Technical Specifications that permits specifications intended “to promote the conservation of

natural resources or protect the environment”; and the scope for use of outcome-based award criteria, including sustainability objectives, in awarding GPA-covered contracts.

- 3) **Antonella Salgueiro** gave a complementary presentation citing specific provisions in the GPA that ensure due freedom for GPA Parties to respond to national policy concerns e.g., with respect to national security and the protection of human life and health. Great care has been taken by the Parties to ensure due flexibility in a wide set of circumstances. This has been important e.g., in responding to the COVID-19 pandemic, in the context of which Parties and their procuring entities have enjoyed broad discretionary authority.<sup>1</sup>
- 4) I (**Prof. Anderson**) provided a framework for understanding the benefits that Brazil may expect to enjoy from joining the GPA and associated costs or challenges. The expected benefits go well beyond market access considerations and include, e.g.:
  - Possibilities for achieving enhanced value for money in Brazil’s own procurement activities, e.g., through reduced vulnerability to corruption and supplier collusion and the opportunity provided for policy renewal and adaptation;
  - Potentially increased incentives for inbound foreign direct investment due to “signaling”, reputation and “rule of law” effects; and
  - The opportunity for Brazil to: (i) set a positive example for other developing economies; (ii) influence the terms of other Parties’ accessions; and (iii) influence the future evolution of the Agreement.

With respect to associated challenges or potential costs:

- Negotiating challenges are likely to be modest given the high skill level of Brazil’s negotiators;
- Much progress has already been made in putting in place a GPA-compliant procurement system in Brazil; and
- Adjustment costs for local firms are likely to be limited in light of:
  - Potential export market gains;
  - Empirical research findings that foreign penetration of local procurement markets is limited even after GPA accession;
  - The expectation of sub-contracting and employment opportunities for local suppliers/workers even when foreign companies win contracts; and
  - The significant residual scope for supporting local enterprises due to GPA thresholds, coverage exclusions, etc., especially at the sub-central level.

---

<sup>1</sup> See also R.D. Anderson and A.C. Müller, “Keeping Markets Open While Ensuring Due Flexibility for Governments in a Time of Economic and Public Health Crisis: the Role of the WTO Agreement on Government Procurement (GPA)” (2020) 29 Public Procurement Law Review, pp. 189-198.