Government Procurement of the Korea-Peru FTA

Submitted by: Korea
Government Procurement of the Korea-Peru FTA

Mookyung Cho

Ministry of Trade, Industry and Energy

General Facts


  Korea: 11% of GDP
  Peru: 8% of GDP

- WTO GPA 1994 and revised GPA status
  - Korea: GPA 1994 (Jan 1997), revised GPA (Jan 2016)
  - Peru: non-member

GPA has 17 parties covering 45 WTO members (including 8 APEC members: Canada, Hong Kong, Japan, Korea, New Zealand, Singapore, Chinese Taipei, United States)
## Timeline

### Korea-Peru FTA

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>GPA 1994 Entered into Force</td>
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<tr>
<td>2006</td>
<td>Provisional Agreement</td>
</tr>
<tr>
<td>2009</td>
<td>Negotiations Launched</td>
</tr>
<tr>
<td>2011</td>
<td>Signed</td>
</tr>
<tr>
<td>2014</td>
<td>Entered into Force</td>
</tr>
<tr>
<td>2016</td>
<td>Concluded</td>
</tr>
</tbody>
</table>

### Revised GPA in WTO

- **Provisional Agreement GPA 1994**
  - Entered into Force (Korea)

## Main Elements of Text

- **Covered Procurement** (similar to revised GPA)
  - not procured with a view to commercial sale or resale, or for use in the production or supply for commercial sale or resale
  - by any contractual means, including purchase, lease, rental, or hire purchase, with or without an option to buy
  - for which the value equals or exceeds the relevant threshold
  - that is conducted by a procuring entity
Main Elements of Text

• **General Principles** (include new rules of revised GPA*)
  - **National Treatment and Non-discrimination**
    - shall accord treatment no less favorable than domestic suppliers
    - shall not discriminate on the basis of degree of foreign affiliation or ownership
    - shall not discriminate on the basis that the goods or services are of the other Party
  - **Use of Electronic Means**
    - shall use generally available information technology systems and software
    - shall maintain mechanisms that ensure the integrity of requests for participation and tenders
  - **Prohibition of Offsets**
    - shall not seek, take account of, impose, or enforce offsets

Main Elements of Text

• **Conditions for Participation** (revised GPA*)
  - limit such conditions to those that are essential to ensure that a supplier has the legal, financial, commercial, and technical abilities
  - **shall not require** that the supplier has previously been awarded one or more contracts by a procuring entity of the Party*
Main Elements of Text

- **Procedural Rules** (include new rules of revised GPA*)
  - Information on Intended Procurement
  - Time-Periods (deadlines for the submission of tenders)
  - Tendering Procedures (open, selective, limited tendering)
  - **Electronic Auctions***: information that the procuring entity shall provide before commencing the auction
  - Opening of Tenders and Awarding of Contracts
  - Disclosure of Information
  - Domestic Review Procedures for Supplier Challenges

Market Access - In General

<table>
<thead>
<tr>
<th>Thresholds</th>
<th>Korea</th>
<th>Peru</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Central Government</strong></td>
<td><strong>Goods and Services</strong></td>
<td>SDR 95,000 (SDR 50,000 for 5 years after effective date)</td>
</tr>
<tr>
<td></td>
<td>* Revised GPA: SDR 130,000</td>
<td></td>
</tr>
<tr>
<td>Construction Services</td>
<td>SDR 5 million</td>
<td>SDR 5 million</td>
</tr>
<tr>
<td><strong>Local Government</strong></td>
<td>Goods and Services</td>
<td>SDR 200,000</td>
</tr>
<tr>
<td></td>
<td>Construction Services</td>
<td>SDR 15 million</td>
</tr>
<tr>
<td><strong>Public Institutions</strong></td>
<td><strong>Reserved</strong> (will commit to the same level as revised GPA)</td>
<td>SDR 400,000</td>
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<tr>
<td></td>
<td>* Revised GPA: SDR 400,000</td>
<td></td>
</tr>
<tr>
<td>Construction Services</td>
<td>SDR 15 million</td>
<td>SDR 15 million</td>
</tr>
</tbody>
</table>

Note: Covered entities are listed in Annex.

SDR 1= approx. USD 1.4 (Apr 2016)
Market Access - BOT (Build-Operate-Transfer)

• **Thresholds : SDR 15 million**

• **General Principles**
  ▫ National Treatment and Non-Discrimination

• **Procedural Rules**
  ▫ Notice of Intended Contract, Award Publication
    - publicly available in an electronic medium
  ▫ Challenge Procedures
    - an effective system for review of decisions by its competent authorities

General Exceptions

• **Essential security interests** exception
  (related to arms, ammunition, or war materials, etc.)

• **Measures necessary to protect** public moral; necessary to protect human, animal, or plant life; necessary to protect intellectual property; or related to goods or services of persons with disabilities.
Specific Exceptions

<table>
<thead>
<tr>
<th>Korea</th>
<th>Peru</th>
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<tbody>
<tr>
<td>• single tendering procurement and set-asides for <strong>small and medium-sized enterprises</strong> in accordance with the specified domestic legislation</td>
<td>• procurement programs on behalf of <strong>micro and small sized enterprises</strong></td>
</tr>
<tr>
<td>• procurement of <strong>agricultural, fishery, and livestock</strong> products in accordance with the specified domestic legislation</td>
<td>• procurement by one Peruvian procuring entity of goods or services <strong>from another Peruvian procuring entity</strong></td>
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<tr>
<td>• procurement in furtherance of <strong>human feeding programs</strong></td>
<td>• procurement of goods for <strong>food assistance programs</strong></td>
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<td></td>
<td>• acquisition of weavings and clothing made with <strong>alpaca and llama fibers</strong></td>
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