

CRNM PRIVATE SECTOR TRADE BRIEF

The CRNM Private Sector Trade Brief is supported by a project funded by the Inter-American Development Bank Multilateral Investment Fund (MIF) to "Strengthen the Private Sector's Role in the Caribbean Community's External Negotiations." It is a monthly publication which forms part of the CRNM private sector outreach activities to update the CARICOM private sector and solicit their feedback on developments in the external trade negotiations.

TRADE OPPORTUNITIES IN GOVERNMENT PROCUREMENT

Volume 13, July-August 2006

IN THIS ISSUE: We burst the myth that the business of trade is not the remit of government by exploring the multi-billion dollar global market for government procurement. We examine the approach being taken to government procurement in trade negotiations and focus on the Caribbean's position. Finally, we recommend a strategy for penetrating new markets by seeking government contracts first and then seeking private contracts after gaining some initial market share.

-  **OVERVIEW OF THE GLOBAL MARKET FOR GOVERNMENT PROCUREMENT (GP)**
-  **GOVERNMENT PROCUREMENT POLICY IN THE WORLD TRADE ORGANIZATION (WTO)**
-  **STRATEGIES TO BENEFIT FROM GOVERNMENT PROCUREMENT**

OVERVIEW OF THE GLOBAL MARKET FOR GOVERNMENT PROCUREMENT (GP)

Government procurement (i.e. public contracts for goods, services or works) is big business. It is estimated that Caribbean firms are currently missing on over US\$120 bn in business generated by such contracts within CARICOM itself, the United States and the European Union (EU).

Caribbean governments have firmly adhered to a policy stance that the regional GP market is too small to be opened up to international competition. As a result, commitments beyond transparency (i.e. notification of tendering procedures etc.) are usually difficult to make.

The traditional view has been that the business of international trade is between firms and not governments. However, the EU estimates that the public procurement market at all levels of government is approximately US\$850 bn annually. In the US, the market is approximately US\$600 bn annually, of which US\$200 bn is spent at the level of the federal government.

Moreover, it is estimated that most developed countries import roughly 8% of their public procurement expenditure. As such, between the EU and the US, there is a US\$116 bn market for imports related to public procurement which, currently, is not being effectively targeted by CARICOM firms. Policymakers' main tool to influence overseas GP policy is the determination of thresholds which are important to provide a ceiling above which public procurement contracts have to go to international tender (i.e. overseas suppliers have to be allowed to bid.)

There is much anecdotal evidence of firms in the water treatment business, as well as in software development and civil engineering, which have made progress in penetrating the region's GP market. They have established offices in multiple destinations to enhance their ability to bid for international GP contracts. This strategy is being encouraged for other regional firms. However, one view is that the lack of a regional GP policy to possibly improve transparency and provide for a seamless regional market is a constraint to doing more business in this area.

Also, in the context of the Caribbean's current negotiations with the EU regarding the proposed Economic Partnership Agreement (EPA) and likely negotiations with Canada and the USA for new trade agreements, it will be necessary to have a regional approach to GP that goes beyond notifications or transparency towards market opening through reducing thresholds for CARICOM firms.

However, one view is that firms are already penetrating both the regional and global GP markets without this framework but it is unclear what transaction costs are involved. It is important to note that the Caribbean's position in most external negotiations is that the region's GP market should not be open to external competition.

GOVERNMENT PROCUREMENT PROVISIONS IN THE WTO

The first global Agreement on Government Procurement (GPA) was negotiated during the Tokyo Round of multilateral trade negotiations and entered into force on January 1, 1981. Its purpose was to open up as much government procurement business as possible to international competition. The GPA was designed to make laws, regulations, procedures and practices regarding government procurement more transparent. It sought to ensure that these laws, regulations, procedures and practices did not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

The existing agreement and commitments were negotiated in the Uruguay Round. These negotiations achieved a 10-fold expansion of coverage and extended international competition to national and local government entities whose collective purchases are worth several hundred billion dollars each year. The agreement also extended coverage to services (including construction services), procurement at the sub-central level (for example, states, provinces, departments and prefectures), and procurement by public utilities.

The existing agreement, which took effect on January 1, 1996, has reinforced rules guaranteeing fair and non-discriminatory conditions of international competition. For example, governments are required to put in place domestic procedures which aggrieved private bidders can use to challenge procurement decisions and obtain redress in the event such decisions are not consistent with the rules of the agreement.

The agreement applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is 130,000 Special Drawing Rights (SDRs), the equivalent of US\$185,000 in June 2003. For purchases of goods and services by sub-central government entities, the threshold varies but is generally in the region of SDR 200,000. For utilities, the thresholds for goods and services are generally in the area of SDR 400,000. In the case of construction contracts, the threshold value is generally SDR 5,000,000.

In the existing GPA, a large part of the general rules and obligations concern tendering procedures. There are 28 GPA members: namely Canada, the European Communities (comprising the group's 25 member states of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom), Hong Kong, China, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland and the United States. Countries negotiating accession are Albania, Bulgaria, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, Panama and Chinese Taipei.

Attempts to include GP in the current Doha Round of multilateral trade negotiations failed. As such, there is no binding mandatory trade regime on GP as the GPA is an agreement which individual member states chose to join.

No CARICOM member states are party to the GPA, which falls under the World Trade Organization (WTO), or are observers to the agreement. Because of this, the GPA's provisions do not apply to public procurement policy within CARICOM. This amplifies the need for a regional public procurement policy. There is significant variation in treatment of GP with some economies having high threshold values to trigger an international tender process. Furthermore, no CARICOM firm will have access to the GP market of WTO member states which are signatories to the GPA.

In an effort to facilitate more efficient public procurement, CARICOM member states have been deliberating about the character of a regional policy on public procurement. This policy could be geared towards facilitating CARICOM firms to bid on public contracts within the regional grouping. So far, a draft policy has been prepared but it is yet to be adopted by member states.

It is felt that the CARICOM market is already open, even without this policy. However, regional firms are usually unable to take the best advantage of the opportunities because of the large number of contracts which go to international tender. Additionally, joint bidding has not traditionally been encouraged and, as a result, it is not a very common practice among CARICOM firms. This practice further constrains their ability to bid on large public contracts going to international tender. It is also believed that more information needs to be provided within the region for public contracts, including online tender notices accessible to the region's private sector.

STRATEGIES TO BENEFIT FROM OFFSHORE GOVERNMENT PROCUREMENT

There is a view that the GP market can provide an incubator for small firms to learn about a new export market and, from that experience, extend into private export contracts. However, where thresholds are too high, these firms will still effectively be locked out of the market, and also will not have the capacity on their own to bid on contracts that are too large. Where applicable, these

firms will have to do what is called 'joint bidding' where they bid as a consortium of firms. Joint bidding is a modern practice which could allow for more access by small firms to the GP market.

We recommend that firms interested in the offshore GP market (i.e. the public procurement market in another country) examine a number of options:

- 1) Form consortiums of firms which would allow for greater use of "joint bidding" in countries where this strategy is practiced;
- 2) Encourage the adoption of a regional GP policy framework which embraces the most modern practices;
- 3) Establish (i.e. set up a firm) in territories issuing many public contracts in order to get registered with national contracts commissions;
- 4) Enter into JVs with local partners in the issuing country; and
- 5) Inform themselves on public contracts by utilizing web resources such as the following.
 - a. <http://www.tendersdirect.co.uk/default.aspx>
 - b. <http://www.merx.com/>
 - c. <http://www.compranet.gob.mx/> and
 - d. <http://www.fedbizopps.gov/>).

Caribbean firms should be aware that where public procurement is based on foreign aid, there will be conditionalities which could reduce their ability to bid for contracts in those cases where their country is not a contributing member of the donor/development agency.

We invite companies which have been interfacing with government procurement mechanisms globally and regionally to share their experiences by emailing us at privatesector@crnm.org. Such feedback could prove invaluable to the CRNM in negotiating to improve the Caribbean's capacity to meet these requirements and unlock more export sales for regional firms via public procurement means.