

**Enforcement procedures under the GPA:  
Domestic bid challenge,  
WTO dispute settlement procedures and  
possible developments**

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# Private Bid Challenge

- Private bid challenge introduced by GPA 1994
  - supervision of compliance with the GPA in the hands of entities best placed to identify any apprehended breaches of the GPA and most likely to suffer harm as a result of those breaches



# Basic Process

- aggrieved supplier to seek resolution of complaint in consultation with the procuring entity
- the procuring entity to accord (non-prejudicial) impartial and timely consideration to the complaint
- where that complaint is unsuccessful in resolving the perceived breach, the GPA member must provide non-discriminatory, timely, transparent and effective procedures enabling private bid challenge



# Review Bodies

- challenges to be heard by a court *or* by an impartial and independent review body
- where the review body is not a court
  - either its decision must be subject to judicial review  
or
  - the review body must be endowed with quasi-judicial procedures



# Specific Procedures

- right to be heard;
- right to be represented;
- access to all proceedings;
- proceedings can take place in public;
- *reasoned* opinions or decisions given in writing;
- witnesses can be presented;
- documents disclosed to the review body



# The Challenge

- available against alleged breaches of the Agreement arising in the context of procurements
- at the suit of suppliers who have, or have had, an interest in that procurement
- supplier may be required to bring challenge within specified time limit of not less than 10 days



# Remedies

- rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities
- possible suspension of the procurement process, subject to public interest
- correction of the breach of the Agreement or compensation for the loss or damages suffered
  - may be limited to wasted costs of tender or protest



# Possible Developments

- Proposals provide clarity but do not greatly change substance
  - specifies administrative or judicial review process
  - deals with failure of party to provide remedies
  - 10 day period must be sufficient
  - if initial review is not by designated authority, then an appeal to such an authority must be available





# Dispute Settlement

- where benefits accruing under the Agreement are directly or indirectly nullified or impaired, or
- the attainment of any objective of the Agreement is being impeded by another Party,
- a Party may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties



# Dispute Settlement Understanding

- the rules and procedures of the Dispute Settlement Understanding apply
- save that cross-retaliation is excluded:
  - no dispute arising under the GPA may result in the suspension of concessions or other obligations