

# **International Procurement: Challenges & Opportunities**

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Morris DeFeo  
Alan Gourley  
October 23, 2013

# Overview

- Introduction
  - Historical barriers to foreign public procurement markets and international agreements opening up public procurement
- Understanding Public Procurement Regimes
  - Brazil
  - UK
  - Saudi Arabia
- Case Study
  - Approaching the market
  - Anti-corruption and regulatory compliance
  - Understanding offsets
  - Setting up joint ventures
  - Cross-cultural barriers

# Historic Barriers

- Laws requiring transparency and competitive procedures did not apply to nationals of other countries
- Countries remained free to restrict public procurement to local companies



# International Agreements

- GATT Regime (1979)
  - Liberalized trade
  - Government Procurement Code
- WTO GPA (1996)
  - Effort to open public procurement markets to global competition
  - 41 signatories
  - Establishes framework
    - Rights and obligations with respect to laws, regulations, procedures, and practices applicable to government procurement



# WTO GPA

- Cornerstones of the Agreement:
  - Non-discrimination
  - Transparency
- GPA provisions cover:
  - Tendering procedures
  - Qualification of suppliers
  - Technical specifications
  - Tender documentation
  - Award of contracts
  - Bid challenge procedures

# WTO GPA

- Application:
  - Is the government entity covered?
  - Is the type of good or service covered?
  - Does the procurement exceed the specified threshold?
  - Note – national security general reservation (Art. XXII)
- Implementation in the U.S.:
  - WTO GPA and other bilateral and multilateral agreements opening up public procurement (e.g., NAFTA, DR-CAFTA)
  - Trade Agreements Act of 1979 (“TAA”)

# Select Public Procurement Regimes

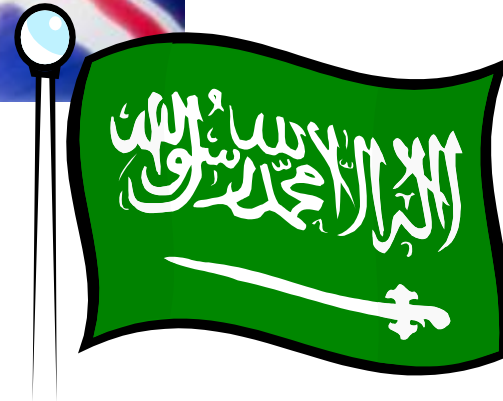
- Brazil



- UK



- Saudi Arabia



# Brazil

- Increased government spending makes it an attractive market
- Major infrastructure programs announced (approximately \$800 billion over next 5 years)
  - Transportation (highways, railways, ports, airports)
  - Energy (oil and gas)
  - Coastal security, offshore asset security, naval expansion



# Brazil

- Legislation
  - Public Procurement Law (“PPL”), Fed. Law 8,666/93
  - Special Regime for Public Procurements (“RDC”), Fed. Law 12,462/2011 (exclusively applicable to procurements related to upcoming sporting events)
  - Defense sector rules, Fed. Law 12,598
- General principles for public procurement
  - Equality
  - Transparency
  - Abidance by bid document
  - Sustainable national development
  - Objectivity
  - Low price

# Brazil – Buy National Restrictions

- Preference
  - Minimum national content requirement
  - Preference margin: 25% of price
- Options
  - Enter into joint venture or consortia with Brazilian company or local subsidiary

# Brazil - Remedies

- Pre-award
  - Challenge tender documents
  - Challenge qualification of tenders
- Post-award
  - Administrative appeals
  - Complaints to applicable Audit Court

# UK

- EU Regime
  - EU Legislation
  - UK implementation
- Separate UK legal systems:
  - England and Wales
  - Scotland
  - Northern Ireland

# UK

- EU Legislation
  - Treaty of the Functioning of the EU
  - Directive 2004/18 (Public Sector Directive)
  - Directive 2004/17 (Utilities Directive)
  - Directive 2009/81 (Defense Directive)
  - Directives 89/665 and 92/13 (the Remedies Directives)

# UK

- Implementation
  - 2006 Regulations (Public Contract, Utilities)
  - 2009 Regulations (EU Remedies Directive)
  - 2011 Regulations (Bribery Act 2010)
  - 2011 Defence Regulations (Defence Directive)
- Enforcement
  - No specific administrative tribunals charged with enforcing public procurement rules (cases brought in courts)
  - Traditionally, the UK has not had a culture of challenging awards

# UK

- International access to UK procurement market
  - WTO GPA signatory
  - National security exemption
  - DoDMOU

# Saudi Arabia

- 2013 Budget anticipated expenditures of SAR 820 billion (approximately US\$ 218.67 billion)
  - Defense and security
  - Education and training
  - Health and social affairs
  - Water, agriculture and infrastructure
  - Transport and telecommunications
  - Municipality services



# Saudi Arabia Legal Context

- Public procurement governed by:
  - Government Bids and Procurement Law
  - Government Procurement Regulations (“GPR”)
  - Implementing regulations (“GPIR”)
- Buy National preference
  - Priority given to National Products (“NP”) and Products of National Origin (“PNO”)
  - Preference provided for in terms and specifications of solicitations/contracts

# Saudi Arabia - Disputes

- Any dispute arising from a government contract will be resolved by three-member committee established by Ministry of Finance
- Decisions can be appealed to the Saudi Arabian Grievances Board
- Arbitration not usually an option
- No right to stop work during resolution of dispute
- Contract governed by Saudi law: Saudi legislation and Islamic law as enforced in Saudi Arabia

# Case Study

- Issue spotting in the context of a hypothetical foreign government procurement
  - How to engage and rely on foreign agents
  - Addressing anti-corruption compliance
  - Understanding offset requirements
  - Setting up joint ventures
  - Cross-cultural barriers



# An Opportunity

**Abdulrahman Al Keiber <AAK@saudi-def-co.com>**

October 23<sup>rd</sup>, 2015 1:14am

To: Alan Beaumont

Reply-To: AAK@saudi-def-co.com

Re: Interesting opportunity

---

Friend Alan,

Here is the RFP from the Royal Saudi Air Force we discussed yesterday. I spoke with my cousin and he confirmed this is a real opportunity.

They want 4 helo simulators to train loadmasters (configured for the 24 Bell Iroquois) and a 3 year support contract with 2 optional years. We will not have a lot of time because RSAF sees this as a pretty simple procurement, but I think we can make good money and have a good position for more work.

What do you think?

Abdulrahman

# An Opportunity

**Abdulrahman Al Keiber <AAK@saudi-def-co.com>**

October 23<sup>rd</sup>, 2015 8:22am

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Alan,

The RFP does not say this, but they said they want to see a Saudi company get this.

You don't have to have the company ready now, but you could set-up a new one or you could do a joint venture with a Saudi company.

I think the second way is best, and my company would be a good match.

AK.

You replied October 23<sup>rd</sup>, 7:49am

Sent from idesk

Thanks Abdulrahman, What's it going to take to win? Alan.

**Abdulrahman Al Keiber <AAK@saudi-def-co.com>** October 23<sup>rd</sup>, 2015 1:14am

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---

Alan,

I think your standard technical proposal will be fine. They are asking for a list of non-technical documents as well (see attached). We can help with the bid bond as well.

Please let me know today if Virginia Defense wants this work, otherwise we will have to go look for another partner so we don't lose this opportunity.

AK.

You replied October 23<sup>rd</sup>, 8:37am

Sent from idesk

Thx. What do you need from us? Best, Alan

**Abdulrahman Al Keiber <AAK@saudi-def-co.com>** October 23<sup>rd</sup>, 2015 8:22am

To: Alan Beaumont

Reply-To: AAK@saudi-def-co.com

# An Opportunity

## **Kingdom of Saudi Arabia Ministry of Defense & Aviation and Inspectorate General FORM OF COMPANIES PREQUALIFICATION FOR BIDDING (SUPPLY CONTRACTS PROGRAM)**

1. Company Name and Commercial Registration (CR)
2. Office Address and General Manager's Name
3. Correspondence Address and Name of Person in Charge
4. Address in the Kingdom of Saudi Arabia and Name of Authorized Person
5. Type of Company
6. Company's Financial Status, attach certified copy of the Company's Budget for the last two years
7. Authorized Capital
8. Paid up Capital
9. Company's Financial Capacity, Stock, Assets, Liabilities
10. Company Owners (10% or more) with details
11. Names of board of Directors with details
12. Number of Employees by category, include all technical and engineering staff
13. Valid licenses
  - Classification Certification by Min.of Public works
  - Chamber of Commerce Membership Certificate
  - Certificate of local eminent bank
  - Certificate by the Department of Zakat & Tax
  - Date of first FAA certificate (if applicable)Attach authenticated copies of above certificates
14. Authenticated copies of Licenses by the Authority for the company to do business.

# An Opportunity

15. Statement of previous contracts/projects
16. Current activities (with details)
17. Experience (with details)
18. Company locations and storage facilities (with details)
19. Equipment and Facilities (with details)
20. Previous Government Contracts last ten years (with details with Certification of Performance)
21. Company Lawyer and address
22. Company's Proprietors and address
23. Major banks the company deals with and contacts
24. Foreign companies licensed by the Ministry of Commerce (details)
25. Details of previous projects the company failed to operate
26. Lawsuits and pronounced adjudications (with details)
27. Company's Organization Chart (with details)
28. Market stock, manufacturer/repair conditions
  - Authorization for repair and sale of spare parts
  - Provide catalogue of available stock, prices, and delivery times
  - What is the company's capacity to manufacture? What are the quality control measures? What items are manufactured by the company?
  - Can company provide urgent services? What is the time-span to respond to quotation requests? What is the average time of delivery?
  - Names of subcontractors approved by the company?
29. What is the company policy for Saudization of the technical and administrative positions in the program contract?
30. What is the % of Saudi personnel in the company?
31. Declaration of probity / Declaration of submission



# Analysis & Discussion

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What do you think?

Abdulrahman

# Analysis & Discussion

- Anticorruption compliance
  - Al Keiber who?
  - Cousin?
- Export controls
  - Helo simulators and Iroquois helicopters: technologies involved?
  - Training and services?

# Analysis & Discussion

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# Analysis & Discussion

- Engagement and reliance on foreign agents
- Establishing subsidiaries or setting up joint ventures
- Understanding offset requirements

# Analysis & Discussion

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7. Authorized Capital
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9. Company's Financial Capacity, Stock, Assets, Liabilities (certified by tax authority)
10. Company Owners (10% or more) with details
11. Names of board of Directors with details
12. Number of Employees by category, include all technical, administrative and engineering staff
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# Analysis & Discussion

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# Analysis & Discussion

- Why so many details? Can't we just skip these?
- No – Saudi Arabia has no system like C-PARS, or D&B, or online registry that a procurement officer can check. This is the only way the buyer can assess the quality of the suppliers.

# Analysis & Discussion

What are these certifications and authentications that they ask for?

Title	Drafting in English	Delivery and Notes for the Translator	Ready to Execute in Arabic?	# original copies	CEO signs	GM signs	Company Seal	Common Notary	VA Sec. of State	Certified Translation	US Sec. of State	Embassy Authentication	Chamber Authentication
Table of Contents	Done	Done	YES	1 copies	-	-	-	-	-	-	-	-	-
Technical Proposal	Done	Done	YES	2 copies	-	Sign	Stamp	-	-	-	-	-	-
1-Formal Letter of Submission	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	Authenticate	-	-	-	-
2-Company Declarations Letter	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	Authenticate	-	-	-	-
3-Company Identification Survey	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	Authenticate	-	-	-	-
4-Declaration of Probity	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	Authenticate	-	-	-	-
5b-Articles of Organization (Certificates)	Done	Done	YES	3 copies	-	-	-	Notarize Certified True Copy	Authenticate	Translator Certification	Apostil	Authenticate	-
5a-Articles Organization (Letter)	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize Certified True Copy	-	-	-	-	-
6b-Proof of Registration (Certificates)	Done	Done	YES	3 copies	-	-	-	Notarize Certified True Copy	Authenticate	Translator Certification	Apostil	Authenticate	-
6a-Proof of Corp Registration (Letter)	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	-	-	-	-	-
7-Authorization to Sign	Done	Done	YES	3 copies	Sign	-	Stamp	Notarize	Authenticate	-	-	-	-
8- Balance Sheet (3yrs)	Done	Done	YES	3 copies	Sign	Sign	Stamp	Notarize	Authenticate	-	-	-	Authenticate
9-Bank Letter of Reference	Done	Done	YES	3 copies	-	-	-	Notarize	Authenticate	Translator Certification	-	-	-
10-Company Client References	Done	Done	YES	3 copies	-	-	-	Notarize	Authenticate	Translator Certification	-	-	-
11-Country of Origin Certificate	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	-	-	-	-	Authenticate
12-Warrantee	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	-	-	-	-	-
13-List of Shareholders	Done	Done	YES	3 copies	-	Sign	Stamp	Notarize	Authenticate	-	-	-	-
14-Letter of Solvency (Directors/ Auditors)	Done	Done	YES	3 copies	Sign	-	Stamp	Notarize	Authenticate	-	-	-	Authenticate



# Other Issues

- Cross-cultural barriers
- Enforceability of contracts and contractual interpretation
- Protection of IP and other proprietary assets and rights
- Burden of compliance with local laws and legal requirements
- Tax consequences
- Currency exchange and financial risks

# Questions / Comments / Discussion

# Contact Us



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