A proposed regulation in the European Union (or EU) may impose penalties on and restrict foreign companies from bidding on European public procurements contracts if their home nations refuse to open their own public procurement markets to more competition. What exactly is public procurement? What is the value of EU public procurement contracts? To what extent have other nations closed their own public procurement markets to foreign competition? And will the proposed EU regulation be effective in opening them up?

When an individual needs clothing, furniture, paper, or any other supplies, he will usually buy them from a retail or wholesale business. If he needs a service such as tax return preparation, he will seek out professional advice. Most private companies also purchase their supplies directly from other businesses or hire contractors to perform a certain service. Even most governments around the world do the same. They usually do not make their own bridges, computers, roads, and military equipment. Instead, governments buy (or procure) these items from the private sector or hire companies to carry out specific services.

How does the public procurement process work? When a government needs a certain good or service, it publishes a public notice (called a tender) in a newspaper or other kinds of publications which invites a wide range of companies to make a bid. In the EU, these open competitions for a tender make up approximately 73 percent of all government contract awards, according to officials of the European Commission.

How do governments pay for these goods and services? They use tax and other revenues collected from the public. Because governments in the modern era carry out many different duties and have many more responsibilities, they must continuously purchase various goods and services from the private sector. As a result, public procurement plays a large role in the economies of many nations.

In fact, government expenditures make up a significant portion of the EU economy, say EU staff members. “Every year, around one-fifth of the EU’s GDP is spent by different levels of government bodies to procure goods, works, and services,” they say. The EU Commission estimates that “the total value of invitations to tender for contracts subject to EU public procurement rules was approximately €447 billion (or 3.7 percent of the EU’s GDP) in 2010.”

How does an EU government decide which company’s bid to accept for a good or service? Under various national regulations and practices, a winning bid should offer the best good or service at a competitive price.

Even though different nations in Europe have different public procurement rules, the EU had passed various directives which call on each EU member nation to establish minimum standards and guidelines for its public procurement system. To carry out the broad goals of any directive, the EU calls on nations to draft, pass, and then enforce their own domestic laws and regulations using their own legal systems and procedures. The EU bureaucracy itself does not change or enforce the domestic laws in individual countries.


The EU procurement market is open not only to EU-based companies, but also to those from other nations, analysts say. The EU claims that it has the most open public procurement market in the world. According to the World Trade Organization, nearly 85 percent of the €420 billion EU public procurement market (or €352 billion) is open to bidders from other nations. Of course, not every sector of the EU procurement market is completely open to foreign bidders. Under current directives, experts point out that EU governments may give preference in awarding contracts to EU member states in the utilities and defense sectors, for example.

Just as foreign bidders can compete in the EU public procurement market, EU companies also compete in the public procurement market in nations outside of the EU. Each year, European companies could access worldwide up to €1000 billion in public procurement, says the EU, noting that its companies submit successful bids for international procurement contracts in many sectors, including pharmaceuticals, public transport, railway, construction, medical equipment, information technology services, energy generation, water treatment, and environment management.
As in the case of the EU, other nations (including the EU’s major trading partners) restrict foreign companies from bidding in certain sectors of their respective public procurement markets. In Japan, 28 percent of the public procurement market (amounting to €27 billion) is open to international competition, says the EU. The United States has opened 32 percent of its public procurement market to foreign bidders.

But according to a memorandum from the EU Commission, “many third countries are reluctant to open their public procurement markets to international competition or to open those markets further than what they have already done.” For example, it notes that China has not signed any international agreement relating to public procurement. Based on data available from 2007, China’s public procurement market is worth €83 billion and is growing. Since the Chinese market is not completely open, European companies can access only a fraction of that market, noted an EU press release. Because of these restrictions, the EU says that its companies lose substantial trading opportunities.

So how is the EU addressing closed procurement markets in nations outside of the EU? In March 2012, the EU Commission adopted a “Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union’s internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (COM/2012/0124 final - 2012/0060 (COD),” which it believes will level the playing field for the 27 EU member states in the international public procurement markets.

What does this proposal call on EU nations to do? The Commission encourages Member States to notify the Commission if a third country is discriminating against them repeatedly in their public procurement markets. If the complaint is true, the Commission could then restrict access to the EU procurement market.

What kinds of restrictions can EU contracting authorities impose on a non-EU nation which refuses to open its procurement market? If the country outside the EU does not engage in negotiations to address access in the public procurement markets, the Commission may allow EU contracting authorities exclude tenders above €5 million in value from that nation.

The proposed regulation could come into effect in the second half of 2013, according to an EU press release.