



3rd International Conference on Management and Economics

London, United Kingdom

17 - 19 July 2026

Conditions for access to the Public Procurement Market for tenders from Third Countries

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Abstract

The globalization of trade and the expansion of international supply chains have increased the participation of third-country tenderers in public procurement procedures. However, this openness has also raised concerns regarding reciprocity, unfair competition, state subsidies, strategic dependencies, and unequal access to foreign procurement markets. As a result, the European Union and other states have gradually introduced legal and policy instruments designed to regulate access conditions for tenderers from third countries. The issue of third-country access to public procurement markets is therefore situated at the intersection of international trade law, EU internal market law, competition policy, and national security considerations. Access conditions are shaped by international agreements such as the World Trade Organization Government Procurement Agreement (GPA), bilateral trade agreements, EU procurement directives, and more recently the International Procurement Instrument (IPI), established by Regulation (EU) 2022/1031. Access to public procurement markets for tenderers from third countries represents a complex legal and economic issue shaped by international trade law, EU internal market principles, strategic policy objectives, and geopolitical considerations. While the European Union traditionally promoted one of the world's most open procurement systems, increasing concerns regarding reciprocity, foreign subsidies, strategic dependencies, and national security have led to significant regulatory evolution. Contracting authorities must navigate a challenging legal environment involving international obligations, EU procurement directives, competition concerns, and strategic policy goals. At the same time, policymakers must balance the economic benefits of open competition against the need to protect essential public interests and ensure fair market conditions.

Keywords: Public Procurement; International Procurement Instrument; EU Internal Market; Competition Policy; Contracting Authorities