

# Integrity in public procurement: perspectives from developing countries

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presented at

**ESCAP Training Workshop on**  
“Training course on Government Procurement Negotiations”

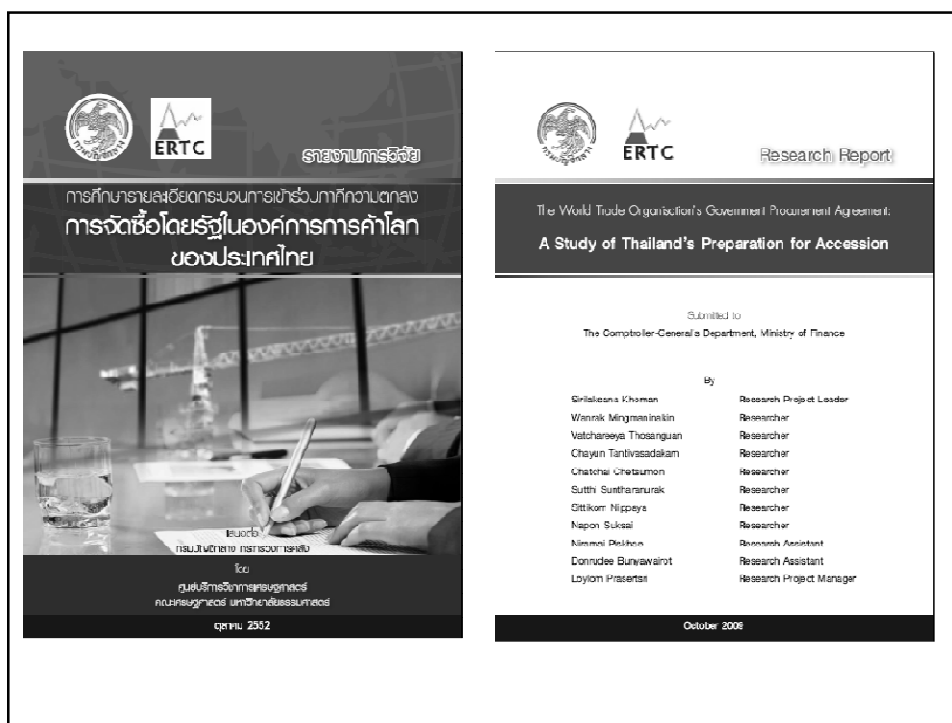
Bangkok, Thailand  
May 26-27, 2016

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## Questions

- What are the procurement problems in developing countries (using Thailand as an example)?
- GPA principles: can they benefit developing countries?
- How does domestic law compare with the GPA?
- Would the GPA help alleviate current governance problems?
- Are there any pitfalls for developing countries, and how do they need to prepare?

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## What are the procurement laws and regulations in Thailand?

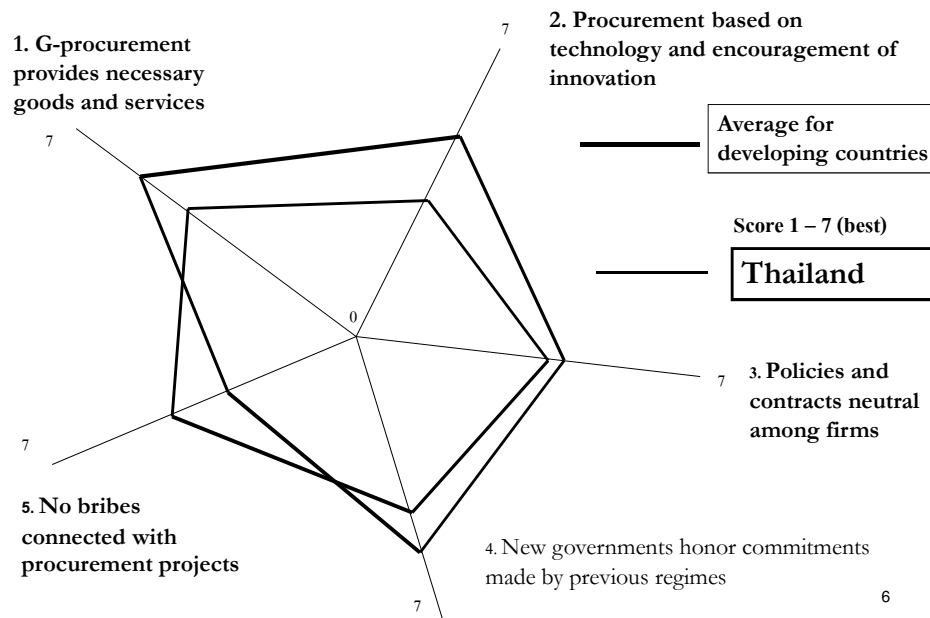
- Office of the PM Regulations B.E. 2535 (1992) amended 6 times; currently being drafted into an Act
- Office of the PM Regulations regarding Electronic Procurement B.E. 2549 (2006)
- Ministry of Interior Regulations regarding procurement for local administrative organisations B.E. 2538 (1995); 2548 repealed.
- Large state enterprises (such as PTT, EGAT, Thai Airways) and public organisations established under their own Act have their own procurement regulations (based on the OPM Regulations of B.E. 2535)
- Act regarding public tendering offenses B.E. 2542 (1999) covering both public officials and private sector
- Regulation of the Audit Committee on Fiscal and Budgetary Discipline B.E. 2544 (2001)

## Problems

- Proliferation of regulations and amendments
- Only one has the status of an Act; exemptions abound
- Regulations often do not serve efficiency goals
- Problems of transparency

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## World competitiveness report assessment



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## Problems

- Inefficient use of public funds
  - Lowest price
  - Delays
  - Cumbersome rules
- Loopholes and opportunities for corruption

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## Incidence of transparency problems

- **High risk areas:**
  - **Ad hoc emergency projects, such as relief of natural disasters**
  - **National security projects that require secrecy**
  - **Repair and maintenance projects where difficulties occur in assessing work required**
  - **Non-durable items that are used up**
  - **Large projects where the returns are high**

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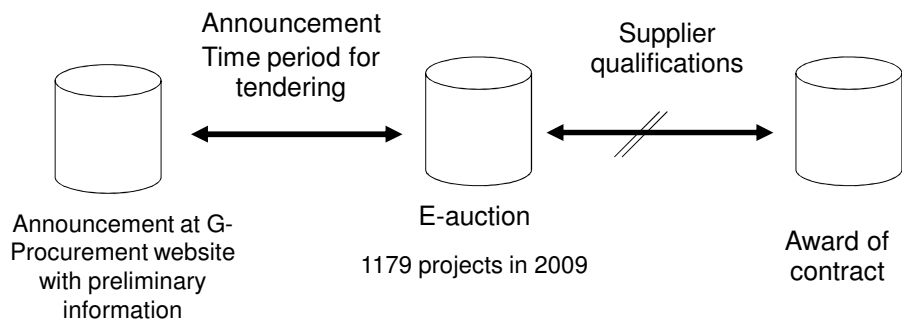
## Risks at each stage of procurement

- Project initiation
- Technical specifications and reference prices
- Canvassing suppliers
- Tendering process
- Contract design and management
- Verification and acceptance of work



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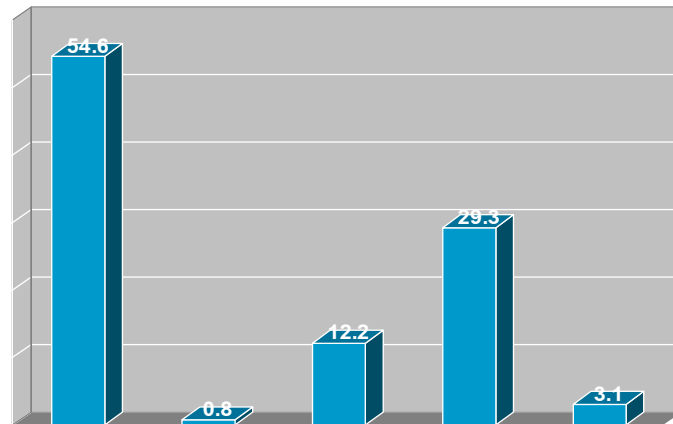
## Assessment of transparency in E-procurement



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## Results

% projects



Score

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### Difficulties in designing procurement system

- Multiple objectives of government procurement
- Designing system that aligns with personal incentives
- Same behavior/ opposite motives
  - Strict conformity
  - “Special method”
  - Lowest price
  - Detailed specifications

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## Can the GPA help?

- **How does Thai law compare with the GPA?**
- **Some similarities and differences:**
  - Principles
  - Thresholds
  - Tendering process
  - Time periods
  - Challenges and publication of results

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### **Principles**

- GPA: openness, transparency and non-discrimination
- Thai regulations: openness and transparency
  - Announcements and dissemination of information through Public Relations Department, Mass Communication Organisation of Thailand, G-Procurement website, etc.
  - Procurement committee required often with citizen participation
  - Contracts worth more than one million baht have to be sent to Office of the Auditor-General and Revenue Department within 30 days of signing
  - Regulations for e-procurement also include additional criteria: value for money, transparency, efficiency and effectiveness, and accountability and responsibility for completion
  - At least 3 tenderers (in case of standards license or meeting quality control systems)

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## **Principles: discrimination**

- Thai regulations place emphasis on products made in Thailand and Thai producers (Part 2 Section 2 Articles 16 and 17 OPM Regulations on Government Procurement B.E. 2535)
- Example: Procurement of pharmaceutical products (Article 60-64 of OPM B.E. 2535) – preference given to Government Pharmaceutical Organisation (GPO), by using “special case method” (วิธีการพิเศษ) provided that the price differential does not exceed 3 per cent of the reference price established by the MOPH for products of the same generic name
- Thai regulations promote the use of Thai advisors (Article 74 of B.E. 2535 OPM Regulations)

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## **Principles: “discrimination”**

- If there are 3 or more producers who hold licenses to display Thai Industrial Standards Institute (TISI) marks OR 3 or more producers with factories certified for quality control systems, preference is given to these products.
- Procurement Regulation, General Section, A. 5, states that factories certified for quality control systems must meet ISO 9001 or ISO 9002 in the area of production certified by TISI or ISO or other agencies approved by the MOI

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## Principles: “discrimination”

- Except for construction projects, tenderers **displaying standards certification** (แสดงเครื่องหมายมาตรฐาน) **or products from factories certified for quality systems** (ผลิตจากโรงงานที่ได้รับการรับรองระบบคุณภาพ) are given preference, provided that their price is not more than 5 per cent higher than the lowest price tendered, in which case the procuring entity should negotiate with the certified supplier. If the price can be negotiated down to 3 per cent (or a rate set by the procurement committee), that supplier can be chosen.

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## Tendering method

- 6 methods are specified: negotiation, price search, open tendering, special method, special case method, and open electronic tendering
- Methods determined by value thresholds:
  - **Negotiation** for procurement of less than 100,000 Baht
  - **Price search** for procurement between 100,000 Baht and 2 million Baht
  - **Open electronic tendering** for procurement over 2 million Baht

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## Tendering method

- Method determined by conditions:
  - **Special case method** used by government agencies specified in LAO regulations given the following conditions:
    - when the LAO is the producer or hirer as approved by the Prime Minister
    - when there is a law or a Cabinet Decision approving purchase or hiring, including other agencies specified by law or by Cabinet decision, such as the purchase of pharmaceuticals (Article 61)
- Method determined by value threshold and conditions:
  - **Special method** for procurement for which there is justification (Article 23 and 24) **for procurement above 100,000 Baht**

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- The 6 methods in the OPM Regulations B.E.2535 can be classified into two groups:
  - Without competition: Special method, Special Case method, and negotiation
  - With competition: Price search, Open bidding and open bidding through electronic means.

<b>GPA tendering</b>	<b>Thai OPM regulations tendering method</b>
1. open tendering 2. selective tendering 3. limited tendering  “insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;”	1. Negotiation 2. Price search 3. Open bidding - 2 step open bidding (Technical bid and price bid) 3. Special method 4. Special case method 5. Electronic bidding (Ministry of Finance)

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Central Government Procurement by Method, FY 2005-2009					
Method	2005	2006	2007	2008	2009
	(%)	(%)	(%)	(%)	(%)
Negotiation	17.79	14.78	13.89	14.94	17.05
Selective tendering/search	21.52	16.08	13.89	11.98	12.01
Open tendering	30.71	26.90	16.83	10.71	9.35
Special method	12.28	11.58	14.10	16.98	17.03
Special case method	7.64	5.81	7.21	8.24	8.57
e-Auction	10.07	24.85	34.07	37.15	35.98
Other	0.00	5.75	7.09	6.24	6.07
Total	100.00	100.00	100.00	100.00	100.00
Open tendering + e-auction	40.79	51.74	50.91	47.86	45.33

Source: calculated from Comptroller-General's Department data

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Ministry	Open tendering and e-auction	Other tendering methods
1. Industry	3.80 %	96.2 %
2. Commerce	8.74 %	91.26 %
3. Transport	68.30 %	31.7 %
4. Tourism and Sports	78.33 %	21.67 %

Calculated from Comptroller-General's data, 2009

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## Thresholds for authorisation

- **Negotiation, price search, and open tendering:**
  - Head of department: not exceeding 50 million Baht
  - Permanent Secretary: 50 – 100 million Baht
  - Minister: more than 100 million Baht
- **Special method (Articles 23, 24 similar to GPA Article XIII)**
  - Head of department: not exceeding 25 million Baht
  - Permanent Secretary: 25 – 50 million Baht
  - Minister: more than 50 million Baht
- **Special case method:**
  - Head of department able to approve without limit, with prior approval of the Prime Minister or Cabinet

## Thresholds for authorisation: LAOs

- **PAO:** President: not exceeding 100 million Baht, Governor: above 100 million Baht
- **Pattaya City:** Pattaya City Manager: not exceeding 100 million Baht, Governor: above 100 million Baht
- Municipality (1) *Municipality Council:* Mayor not exceeding 100 million Baht, Council: not exceeding 300 million Baht, Governor: above 300 million Baht  
(2) *Mayor:* mayor not exceeding 300 million Baht, Governor: above 300 million Baht
- **Value Thresholds** (for special method, procurement from ad hoc subsidy, domestic loan, aid, and foreign loan)
  - 1. PAO Governor: above 10 million Baht
  - 2. Pattaya City Manager: not exceeding 10 million Baht, Governor: above 10 million Baht
  - 3. Municipality (1) *Council:* mayor: not exceeding 10 million Baht, Municipality Council: not exceeding 20 million Baht, Governor: above 20 million Baht  
(2) *Mayor:* mayor: not exceeding 20 million Baht, Governor: above 20 million Baht
- For special case method: no limit

## Tambon (sub-district) Administration

- Chairman of the Administration Committee can authorize without limit, except for conditions under Articles 44 and 45
  - Chairman can approve amounts not exceeding 50 million Baht
  - Tambon Administration Committee: 50 – 100 million Baht
  - District Officer: 100 – 200 million Baht
  - Provincial Governor: above 200 million Baht
- Special method, procurement using subsidy, domestic loans, foreign loans, and foreign aid
  - Chairman: not exceeding 5 million Baht
  - Tambon Administrative Committee: 5-10 million Baht
  - District Officer: 10-20 million Baht
  - Provincial Governor: above 20 million Baht
- Special case method: Chairman can approve without limit

GPA most common thresholds for covered procurement	Thailand's thresholds for procurement method
<p>1. Central Government (Annex I)  Goods and services not incl construction:  130,000 SDRs (~ 6.8 m Baht)  Construction: 5 m SDRs (~ 265 m Baht)</p> <p>2. Local Government (Annex 2)  Goods and services not incl construction:  355,000 SDRs (~ 18.8 m Baht)  Construction: 5 m SDRs (~ 265 m Baht)</p> <p>3. Others (Annex 3)  Goods and services not incl construction:  400,000 SDRs (~ 21.2 m Baht)  Construction: 5 m SDRs (~ 265 m Baht)</p>	<p>1. Negotiation: not exceeding ฿100,000</p> <p>2. Price search: &gt; 100,000, not exceeding ฿2 million.</p> <p>3. Open bidding by electronic means: above ฿2 million.</p> <p>4. Special method: above ฿100,000</p> <p>5. Special case method: no limit</p> <p>27</p>

#### Article X Technical Specifications and Tender Documentation

- A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.
- Similar provisions in Thailand, but enforcement is a problem.

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## Article X Technical Specifications

- 2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
  - (a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics;
- Not specified in Thai regulations

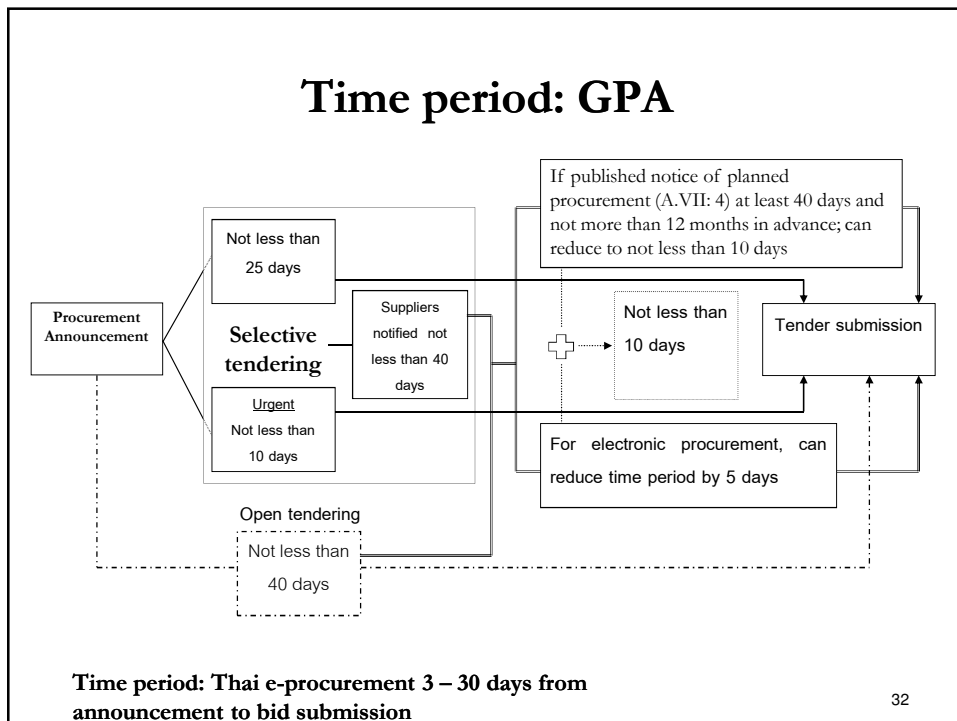
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Article XVI Transparency of Procurement Information	Thai Transparency of Procurement Information
promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clauses mandated by law or regulation and incorporated by reference in notices and tender documentation, and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public;	<ul style="list-style-type: none"> <li>• law</li> <li>• regulation</li> <li>• standard contract clauses mandated by law or regulation and incorporated by reference in notices and tender documentation</li> <li>• administrative ruling of general application only for procurement valued above 50,000 Baht</li> <li>• disseminated and remains readily accessible to the public at <a href="http://www.gprocurement.go.th">www.gprocurement.go.th</a></li> <li>• Not covering judicial decision</li> </ul>

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Article XVI Transparency of Procurement Information	Thai Procurement Information
<p><i>Collection and Report of Statistics</i></p> <p>4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period</p>	<ul style="list-style-type: none"> <li>• Submission of report of procurement contracts over 1 million Baht to Auditor-General.</li> </ul>

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## Benefits of GPA membership

- **Transparency**
  - Probably more efficient use of government budget
  - Stimulates fair competition
  - Helps honest and efficient suppliers
  - May lead to industrial growth and development
- **Possible opportunities for Thai suppliers to access GPA member procurement markets**

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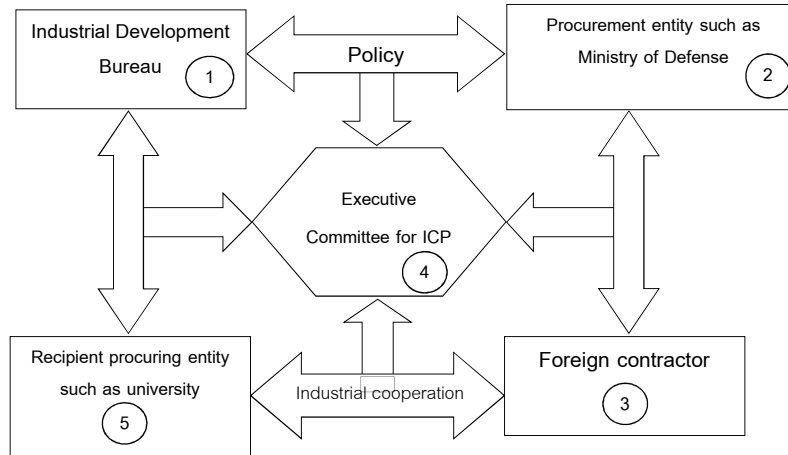
## Developing countries flexibilities in GPA

- **Transition period**
  - Price preference programme
  - Offsets
  - Phased-in addition
  - Higher thresholds

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## Taiwan's Industrial Cooperation Program (ICP)

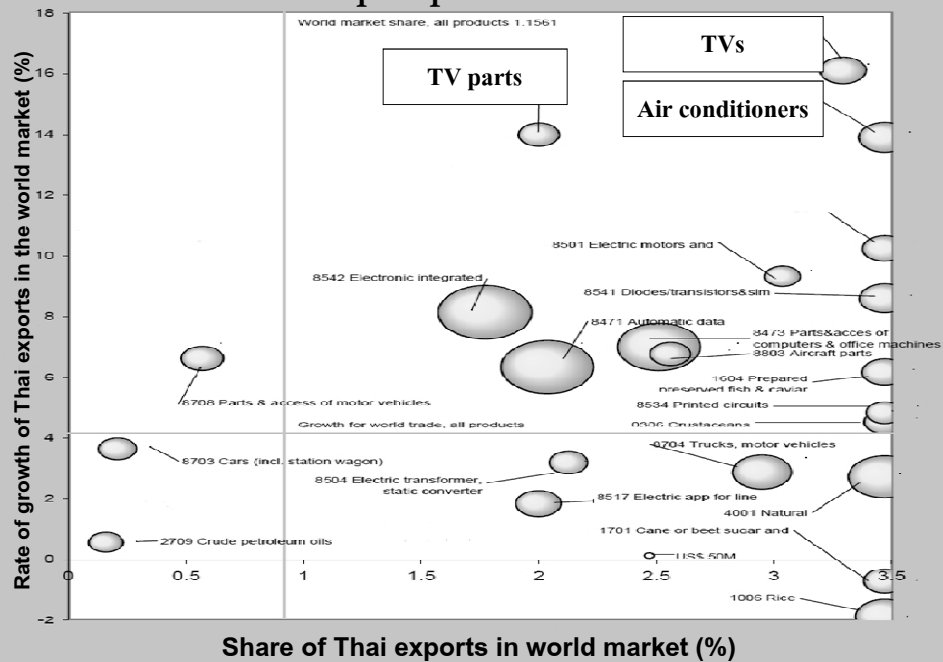
### Industrial cooperation and management of offsets

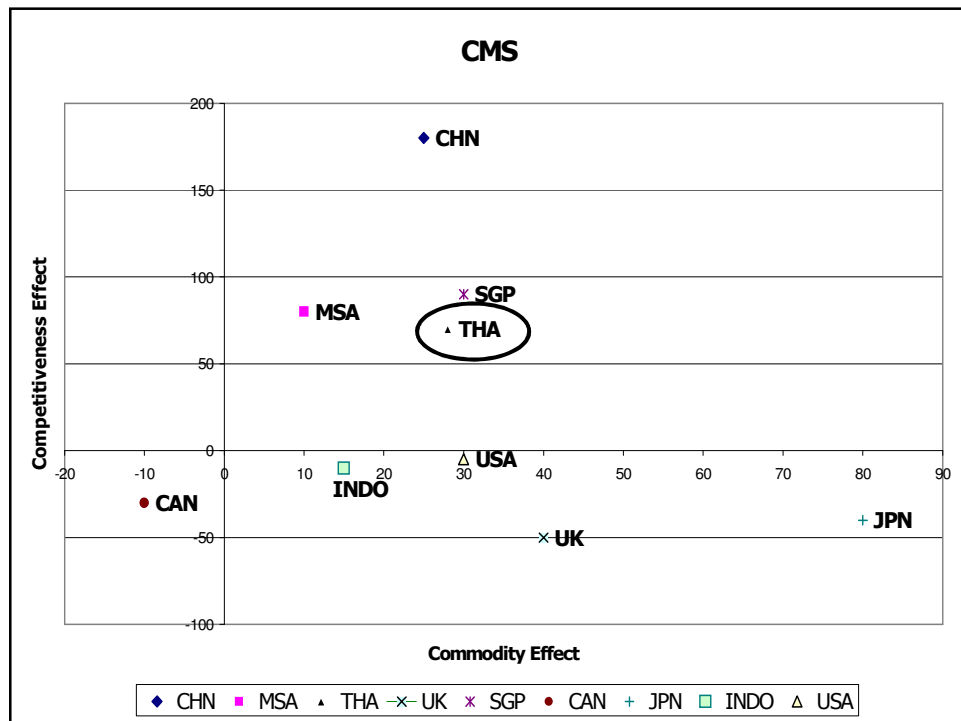
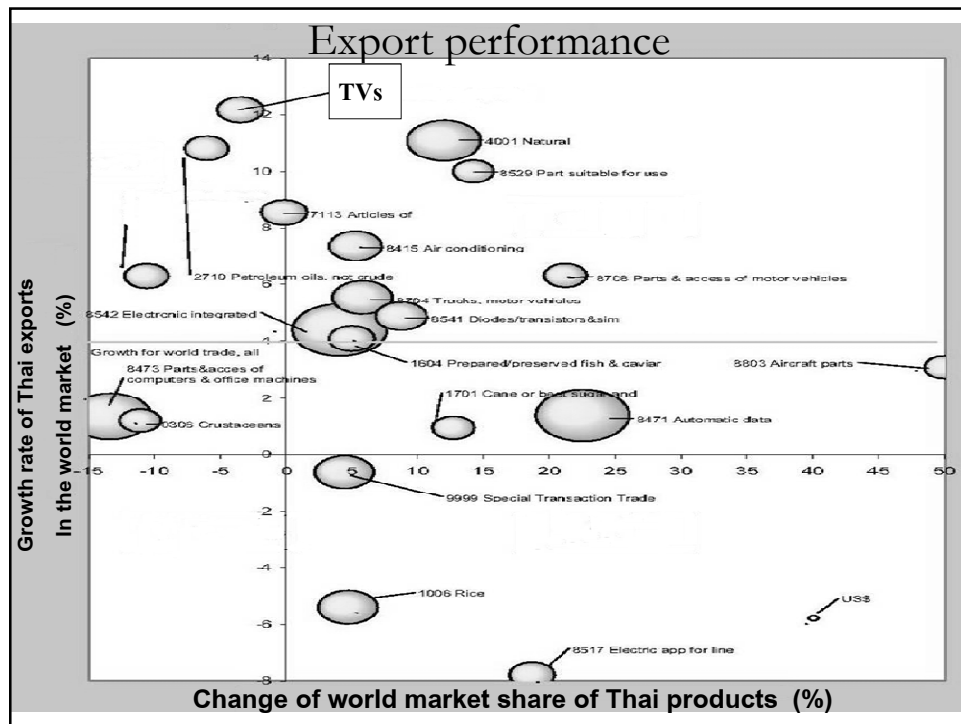


ที่มา: Chih-Cheng Yeh (Interview, July 8, 2009)

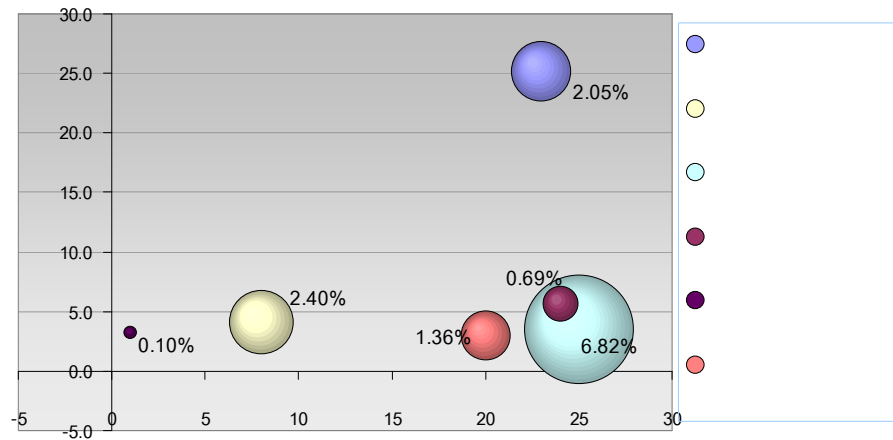
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## Export performance



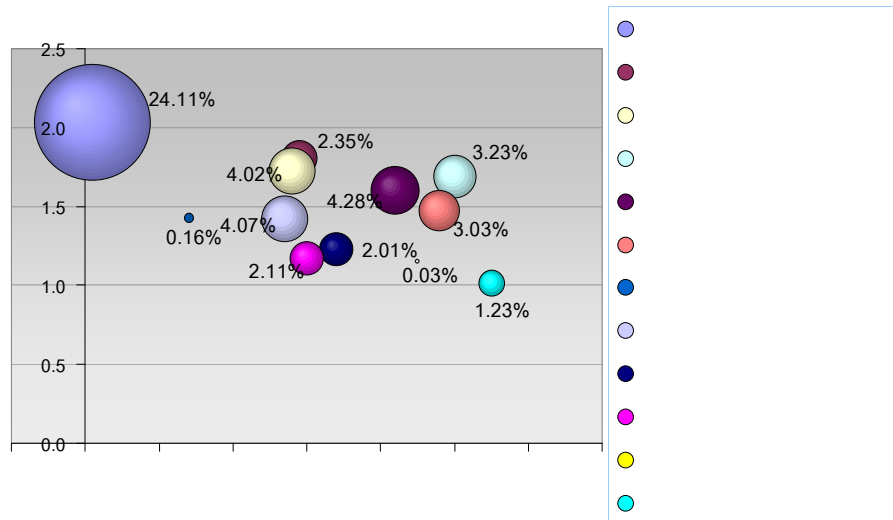


## Group 1: Highly competitive



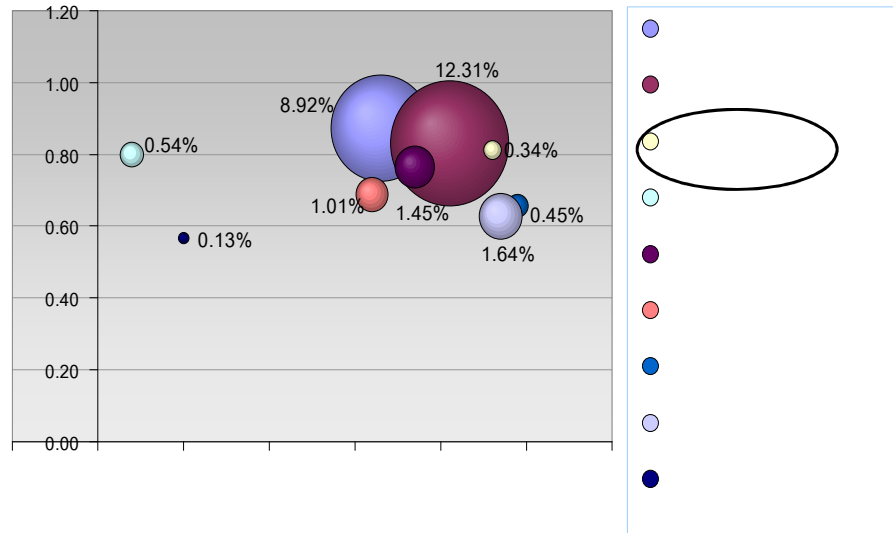
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## Group 2: competitive



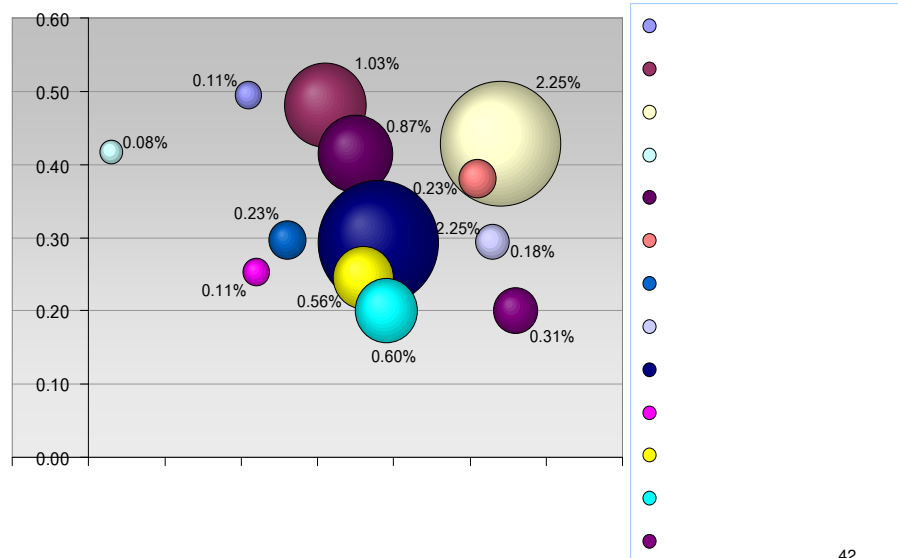
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### Group 3: uncompetitive



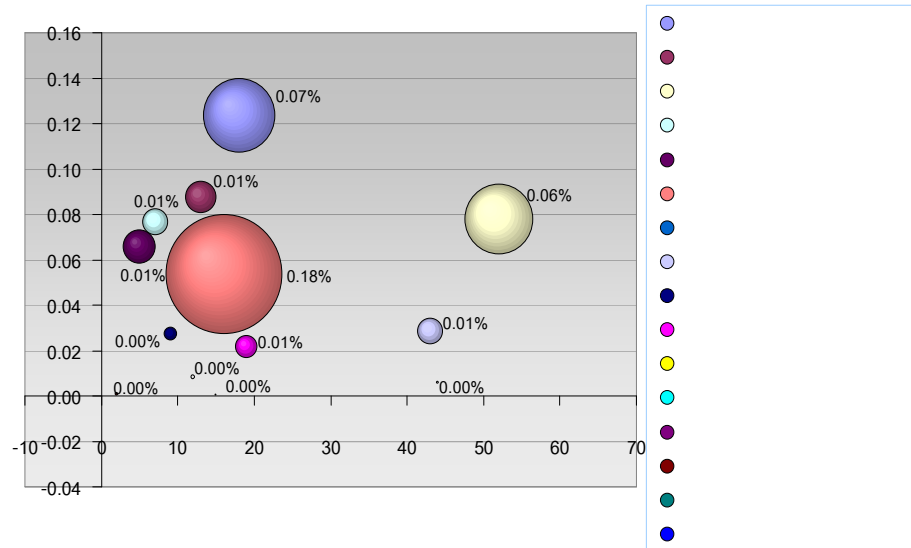
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### Group 4: very uncompetitive



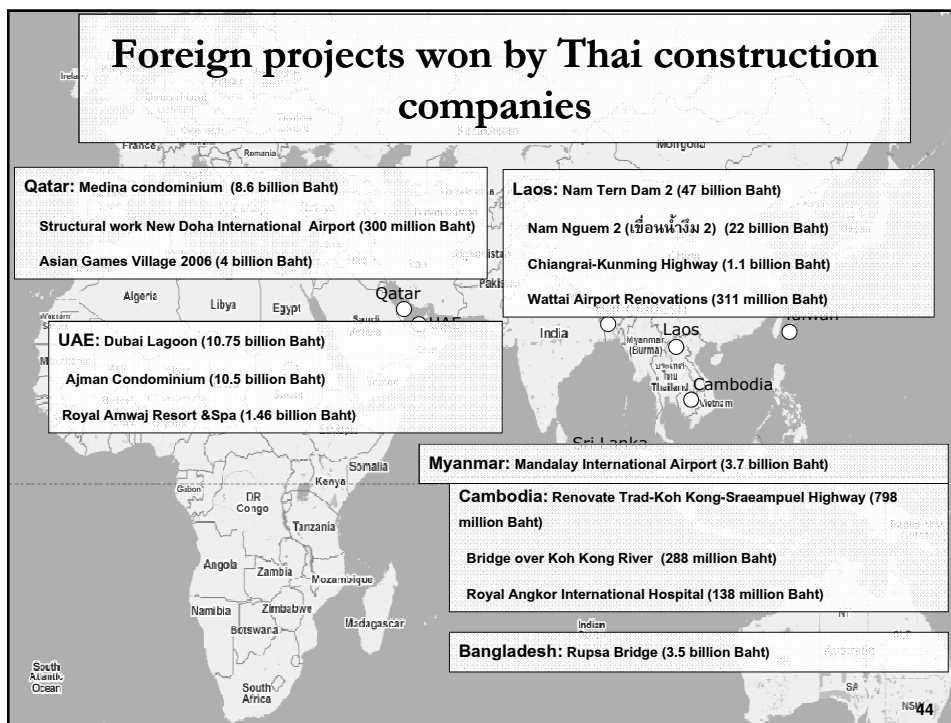
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### Group 5: highly uncompetitive



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# Foreign projects won by Thai construction companies



- **World Bank construction projects awarded to Thai construction companies**



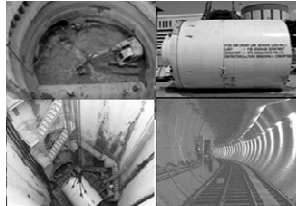
**Ranking of construction companies (not incl affiliates) by revenue 2007**

Rank	Revenue (US\$ m)	Company	Country
1	41,650	Vinci	France
2	29,843	Bouygues' Construction	France
3	29,171	ACS	Spain
4	27,000	Bechtel	U.S.
5	23,739	China Railway Group	China
10	19,602	Skanska	Sweden
193	1,444	Italian-Thai Development	Thailand
200	1.336	Tobishima Corporation	Japan

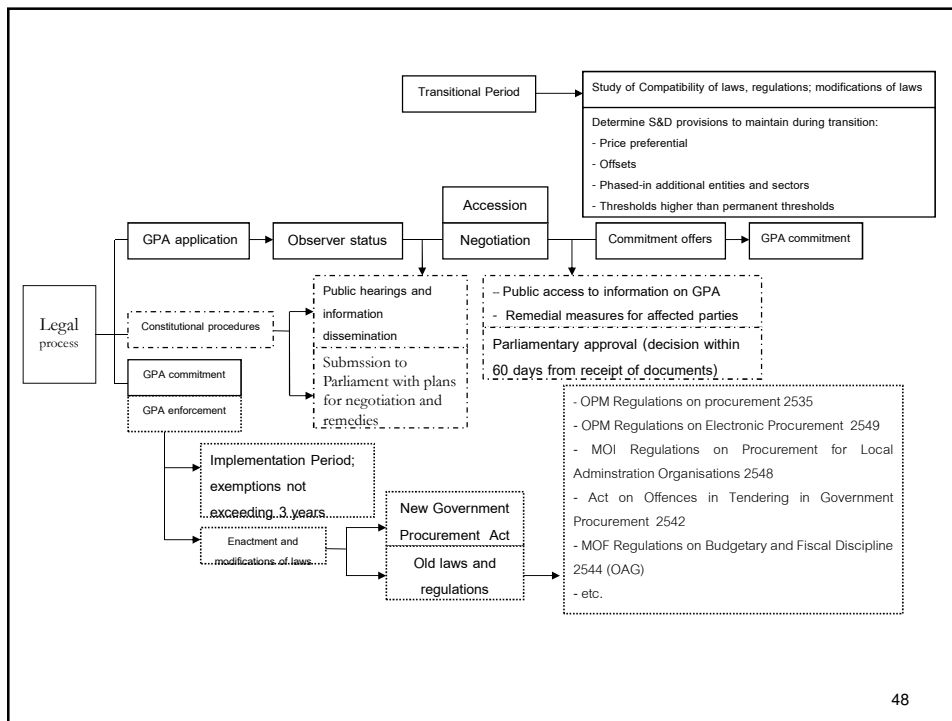
Soucre: International Construction, July-August 2008, Vol. 47, No.6, p.16-24

## Examples of procurement cases initiated by foreign governments

- 2005: US Department of Justice and SEC fined Invision Company for bribing Thai official in the **CTX** explosive detection device case
- 2008: Japanese Government prosecuted Nishimatsu Construction Co for allegedly bribing Thai officials in case of BMA's drainage tunnel project
- 2009: Los Angeles court sentenced defendants in the Bangkok Film Festival bribery case



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## **Conclusion**

- Opening up of government procurement markets could lead to more transparency
- Thailand would benefit from applying for observer status in the GPA
- Consider countervailing measures that do not exist in GATS or GPA
- But Thailand needs to clean up her own house in the mean time