

GOVERNMENT PROCUREMENT IN JAPAN

The EU-Japan EPA offers additional opportunities to EU businesses in the Japanese government procurement market on top of those already available for foreign companies under the WTO Agreement on Government Procurement (GPA). This guide explains in brief how you can use the EPA to your advantage.

WHERE? JAPANESE GOVERNMENT ENTITIES COVERED BY INTERNATIONAL REGULATIONS ON GOVERNMENT PROCUREMENT

WTO GPA	EU-JAPAN EPA ADDITIONS
<ul style="list-style-type: none"> • Central government entities, local branch offices, attached organization (WTO Annex 1) • Sub-central government entities (47 Prefectures + 19 designated cities) (WTO Annex 2) • 114 other government organizations (WTO Annex 3) 	<ul style="list-style-type: none"> + 6 additional government organizations + Additional Designated City (Kumamoto) + 89 medical & academic institutions (Sub-central government) + (currently) 54 "core" cities

HOW? GOVERNMENT PROCUREMENT INFORMATION

Finding what opportunities are available is the logical first step in entry into Japan's government procurement market. There are a number of online information options in English, where tenders open to foreign suppliers on equal footing with domestic companies are listed:

PORTAL	COVERAGE
Japan External Trade Organization (JETRO)	Government entities covered under WTO GPA
Choutatsu Portal	National government entities and attached agencies
EU-Japan Center for Industrial Cooperation's Government Procurement Information	Website gathering tender information at all levels using WebCrawler technology combined with automatic translation

The English information available are summaries attached to the original notice to tender published in the government gazettes. In most cases, they are the only information provided in English. The tender procedures themselves are conducted entirely in Japanese. **However, in anticipation of the EPA, some individual organizations, such as [Tokyo Metro](#), which manages most of Tokyo's subway systems, have already started enlarging their procurement information offerings in English.**

WTO TENDERS:

Contracts above specific [thresholds](#) which are conducted under internationally agreed rules (about 300 per week).

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PUBLICLY-OWNED POWER GENERATION

Although the majority of electric power infrastructure in Japan is privatized, there are still 26 prefectures and 3 cities (Yokohama, Kitakyushu and Kumamoto) where part of the electric power production-, transport- and distribution infrastructure is managed by public utilities. This concerns primarily power generation infrastructure such as dams, wind parks and solar parks.

In the WTO GPA, Japan excludes procurement related to the production, transport or distribution of electricity by sub-central government entities ([Annex 2, Note 5](#)). The EPA opens procurement related to these for European companies, with [thresholds](#) applicable to sub-central government entities.

HOW? **ELIGIBILITY**

Japanese government organizations expect their suppliers to **qualify in advance**, before being allowed to participate in a tender procedure.

“The contract for RIKEN (A2) have the grade A, grade B or grade C qualifications during fiscal year 2018 in manufacturing or selling business for participating in tenders by RIKEN, or in tenders by single qualification for every ministry and agency (...)”

For procurement of goods and services by national government organizations, a common **supplier qualification** system exists. It allows companies to tender at multiple organizations with one supplier certificate. For construction-related tenders, suppliers need to obtain qualifications with each individual entity. Qualification results in a ranking of companies according to their business size, level of experience and skills and business performance. At the national level, SMEs will usually qualify as either C or D if it involves goods and services.

Qualification for participation in **construction-related procurement** is a more cumbersome process, as it involves an assessment by third-party organizations designated by the government. Commonly known as *keishin*, it is a two-staged process, where companies first need to obtain the *keishin*-certification before they can qualify as supplier with a government entity. It involves a substantial amount of paperwork, all of which needs to be prepared in Japanese. The *keishin*-certificate is valid for 1 year and 7 months, but in practice the process makes it necessary to renew annually, in order not to lose the qualification.

ACCOMPLISHMENTS

- Number of technical staff
- Labour welfare condition (social insurance)
- Number of years in construction business
- Accounting practices in construction business
- R&D expenditures
- ISO certification
- Employment and training of young engineers and trained workers
- Amount of sales for completed construction work
- Amount of sales for completed construction work as prime contractor
- Financial indicators realized outside Japan

In the EPA, Japan has committed itself to improve assessment practices, in particular with regard to the *keishin* business evaluation process. European businesses are to be assessed in a fair and non-discriminatory manner and **accomplishments, made outside of the country are to be regarded as equivalent. This includes the assurance, that while Japanese government institutions may require relevant prior experience, they can no longer require this experience be acquired within Japan.**

Depending on the type of product offered, other qualifications may be as well. This can range from ISO certification or licenses to sell medical products to registration as a construction company and recognition of engineering qualifications.





SUPPLIER QUALIFICATIONS

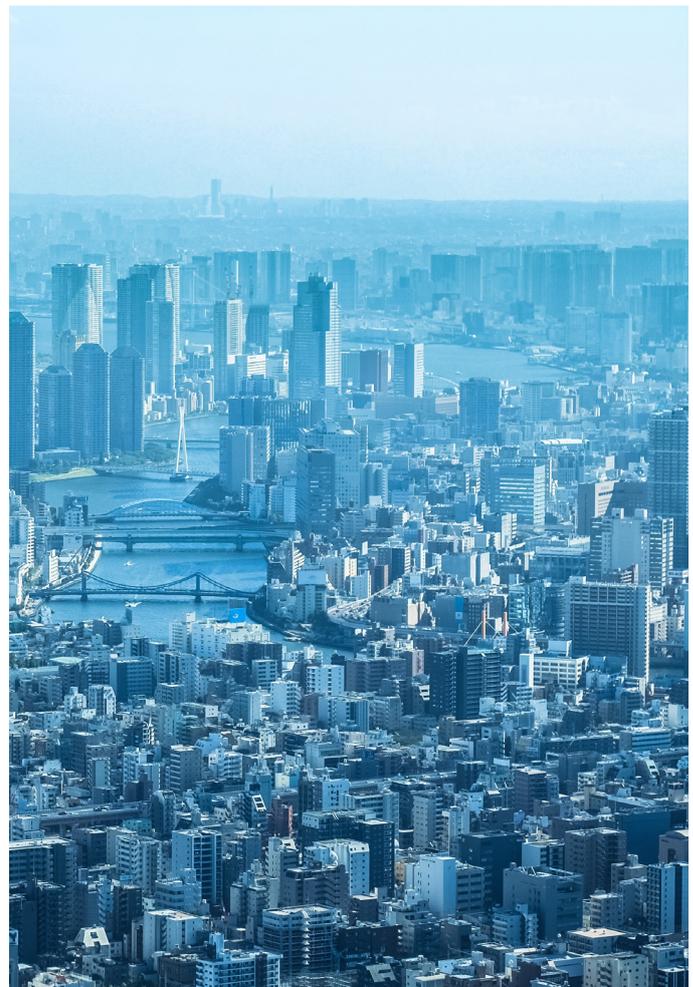
LEVEL	NATIONAL GOVERNMENT ENTITIES		SUB-CENTRAL ENTITIES (INCLUDING TOKYO)	
Type	Goods & Services	Construction	Goods & Services	Construction
Scope	Common qualification	One entity	Entity and attached agencies	Entity and attached agencies
Validity	Max. 3 years	Max. 2 years	Max. 2 years	Max. 2 years
Costs	Free	Costs external assessment	Free	Costs external assessment
Ranking	A,B,C,D	Points	Varies by entity	Points
Application process	Online or at desks at each ministry	<i>keishin</i> followed by assessment by procuring entity	Varies by entity	<i>keishin</i> followed by assessment by procuring entity
Processing period	About 1 week after submission	1. <i>keishin</i> Quick service (3 days), or longer	Varies by entity	1. <i>keishin</i> Quick service: 3 days, or longer

DEADLINES

Although Japan has voluntarily set a minimum of 50 days (WTO: 40 days) as the period between the invitation to tender and the submission of bids, in practice, the period to prepare documentation to prove eligibility is often much shorter. Depending on the organization and product, this can range from one week after the notice to tender to the same day as the tender deadline. In this short period, documentation such as supplier qualification certificates, **technical information and test reports** about the product/service offered need to be prepared and submitted. It should be noted that English summaries often omit this early deadline.

EPA: TECHNICAL SPECIFICATIONS & TEST REPORTS

Both sides have agreed that environment-friendly technical specifications applied by procuring entity will be appropriate to the goods procured and objectively verifiable and non-discriminatory in order not to be used as a way to exclude certain suppliers. In case test reports or certificates of conformity are required, Japan will recognize those issued in the EU as equal. (Art. 10.8/10.9)



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RAILWAYS RELATED PROCUREMENT

Under the WTO GPA, foreign suppliers of rolling stock and related equipment were effectively barred from participation in procurement, due to Japan's liberal application of an Operational Safety Clause (OSC).

In the EPA, Japan has agreed to remove the OSC for European companies, giving them the opportunity to offer their products and services on an equal footing.

Suppliers active in this sector should keep in mind that most of the sector has already been privatized and that the large JR companies currently offer procurement information on a voluntary basis. Removal of the OSC will therefore primarily have an impact on the procurement practices of the JR companies that are still publicly owned ([JR Hokkaido](#), [JR Shikoku](#) and [JR Freight](#)), [Japan Railway Construction, Transport and Technology Agency \(JRRT\)](#), [Tokyo Metro Co. Ltd.](#) and the Bureaus of Transportation of larger cities operating public transport systems.

Prospective suppliers will need to qualify with these entities directly, in order to be eligible to enter tender competitions. Some of the entities have already started with a more active approach to attract EU suppliers, ahead of the ratification of the EPA.

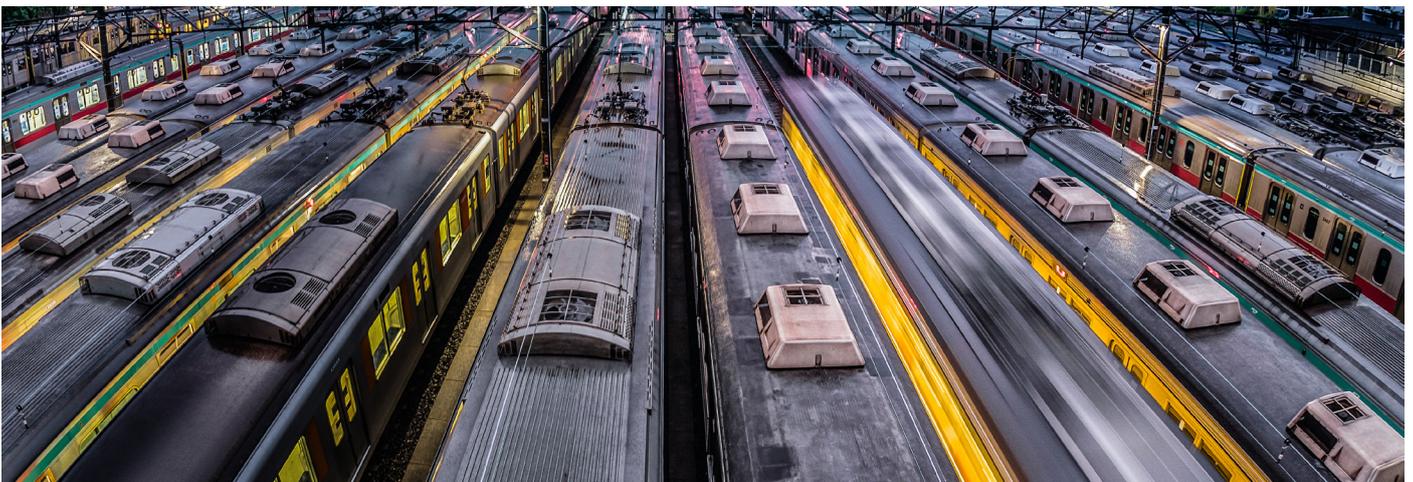
SPECIFICATIONS

Specifications about the product or service procured can be obtained in various ways. This ranges from entities where the specifications need to be picked up in person at the department that has issued the tender or receiving it during an explanatory meeting to downloading the information directly from the government entities' website. In some cases, the organizations will charge a fee to obtain specification, or require to obtain a password to enter the entity's online procurement environment. In the English summaries of the tender notice usually a telephone number is provided as a point of contact. Please note that in this case it is usually expected that the enquiry is made in Japanese.

Japanese tender specifications are usually high in detail, often based upon an existing product or the result of consultations with Japanese companies expected to participate in the competition. They contain minute details concerning the product or service required. Prospective bidders are then expected to provide documentation, showing that their product meets all these specifications.

CONSTRUCTION TENDERS:

Construction projects are usually cut up into smaller contracts



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DECISION MECHANISMS

In order of their occurrence, Japanese government entities employ the following types of tender procedures in case of internationally regulated tenders:

• Open competitive tenders

- Lowest price;
- Overall Greatest Value (OGV), where both technical merit and price are considered. OGV is often standard for construction tenders;
- Plan-competitions.

• Single tenders

- Government entity procures from designated supplier for reasons such as compatibility or exclusive rights. (Often seen in IT related tenders, for compatibility reasons)

• Selective tenders

- The government entity designates a number of eligible suppliers, who are deemed able to provide the product or service request, and invites them to enter the competition. Other interested suppliers can apply to join this competition. **In the EPA, Japan has explicitly agreed to ensure that the number of suppliers will be sufficient to guarantee sufficient competition, and not limit the competition to a small number of domestic suppliers.**

For tender procedures conducted under local regulations, selective tenders are more prevalent. For very small contracts, government entities usually employ so-called "Open counter" procedures, where eligible suppliers submit a quotation and the lowest price is selected.

REVIEW PROCEDURES

As stipulated by the WTO GPA, Japan has review procedures in place in case a supplier in a tender procedure has a complaint. Individual government entities have these procedures as well. The Japanese government has established an [Office for Government Procurement Challenge System \(CHANS\)](#), designed for arbitration in case of larger contracts. In practice is seldom called upon. Many businesses tend not to file complaints due to fear it might damage their business relationships or take too long. **On a number of aspects, the EPA addresses some of the issues European companies had until now with these procedures, in Article 10.12, which will give companies more instruments to ensure fair competition.**

• **Impartial judgements:** To safeguard the impartiality of the designated authorities tasked to deal with complaints about procurement procedures, **Japan has agreed that it will ensure that members will be independent, impartial and free from external influence during their appointment and possess the necessary legal and professional qualifications.**

• **Timely action:** Japan has agreed to have procedures in place to ensure that **swift temporary measures in case of a complaint are taken** to make sure the supplier keeps the opportunity to participate in the procurement and that no contract (with exceptions) shall be concluded before a decision or recommendation.

• **Concrete corrective actions:** Different from the WTO-GPA, **a number of concrete corrective actions** are explicitly mentioned in the EPA. These include measures such as removal of discriminatory technical, economic or financial specifications, repetition of the procedure without changing the conditions or payment of compensation.



EU-Japan EPA **GUIDELINES** Government Procurement

CHALLENGES

The conclusion of the EU-Japan EPA offers European businesses more opportunities to compete on an equal footing with their Japanese counterparts. It does however not end many other challenges of doing business with Japanese government entities. EU SMEs should take in consideration that other factors, such as cultural and linguistic barriers will need to be addressed in order to fully take advantage of the EPA. European businesses engaging in business dealings Japanese government entities, should be aware that many government officials are not accustomed to deal directly with foreign businesses, or might not even aware of the agreements made regarding government procurement. Thorough preparations and tenacity will remain two of the conditions necessary to profit from the EU-Japan EPA to the fullest.

MORE INFORMATION IN ENGLISH

- **Japan Tax & Public Procurement Helpdesk (JTTP):** <https://www.eu-japan.eu/government-procurement>
- **Japan External Trade Organization:** <https://www.jetro.go.jp/en/database/procurement>
- **Ministry of Foreign Affairs of Japan:** <https://www.mofa.go.jp/policy/economy/procurement/index.html>
- **Chotatsu Portal:** <https://www.p-portal.go.jp>
- **Tokyo Metropolitan Government Tender information service:** <https://www.e-procurement.metro.tokyo.jp/indexPbi.jsp>
- **Tokyo Metropolitan Government Bureau of Finance:** <http://www.zaimu.metro.tokyo.jp/en/index-e.html>
- **Tokyo Metro Co. Ltd. procurement information:** https://www.tokyo-metro.jp/lang_en/corporate/business/procurement/index.html
- **WTO GPA Coverage Schedules:** https://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm



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