Short Term Policy Brief 93

Public Procurement in China: Developments and Directions for Greater Market Access

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Executive summary

- China’s public procurement market is unlikely to open further in the near future. Existing inefficiencies are tolerated in order to support national development policies. Multiple levels of Chinese government would need serious incentives before public procurement law or practice were to change in favour of more open access.

- Accession to the WTO’s Government Procurement Agreement (GPA) could result in some increased market access. Several conciliatory additions to the fourth offer notwithstanding, a multitude of disincentives for China mean a forthcoming fifth offer is unlikely to result in accession.

- Developments in the green procurement industry are likely to be progressive. China is serious about its wider green revolution and reforms to procurement practices across all levels of government are likely to benefit innovative bidding firms.

- China’s patchwork of provincial and municipal power sharing arrangements mean differing levels of government practise varying levels of public procurement protectionism.

- China already enjoys varying levels of access to developed public procurement markets without the need to open its own

- Public private partnerships or using state-owned enterprises (SOEs) as contracting authorities are not viable options to enter the Chinese procurement market. Both methods are effectively blocked by the Agent-Construction System.

- E-procurement adoption is on hold after widespread criticism of the Windows 8 platform highlighted security concerns.

- Life cycle costing public procurement practices are endemic to mature markets. European life cycle costing practices will not emerge in China in the short term.

- Public procurement markets are some of the most protected markets in the world. States with highly open, deregulated markets hesitate at foreign access to government procurement tenders and China’s recent history of a strong socialist state, national industrial policy driven growth and hands on market reforms mean future foreign access will be difficult.
Introduction: Government Procurement Law and Tendering Law

The public procurement (PP) market in China has long been closed to outsiders. Stimulus spending in 2008 and 2009 highlighted both the size and closed nature of China’s public procurement market. But international pressure through the WTO framework and scattered domestic administration are prompting central authorities to prioritise reform of the PP system. The latent culture of China’s socialist past, coupled with the sensitive nature of opening government procurement to outside suppliers means that any market access developments will be slow and—in the international sphere—cannot be expected without quid pro quo.

Public procurement is administered under two key pieces of Chinese legislation. The government procurement law (GPL) covers the direct government market, valued at C¥1.39 trillion in 2012 and the bidding and tendering law (BL) under which the much larger SOE market is administered, worth C¥11.37 trillion in 2013.

Government Procurement Law

GPL marked funds flow from the central planning budget to the Ministry of Finance (MOF). From there, they are allocated through China’s Central Procurement Catalogue to the Central Government Procurement Centre (CGPC). The procurer works with the CGPC to develop tendering documentation.

The CGPC then forms an Expert Advisory Committee that decides the winning bid. The CGPC announces the winner and publicises the name of the purchaser and project, as well as the value, date and place the project was announced, and the date the winning bid was selected.

Provincial and local government PP also fall under the GPL. Project bidding undergoes a similar process to central government procurement, except that local Public Procurement Centres (PPC) administer the tendering process. In large municipalities several smaller Public Procurement Bureaus (PPB) operate administratively under local PPCs. Local government procurement processes have been criticised, since local regulations allow the process to favour local enterprises, pushing out non-local actors.

Certain essential government functions are protected from the GPL process. Military procurement, emergency and national security procurement, procurement with international loans, and procurement of mechanical and electrical products are all exempt from any tendering process.
Criticisms of the GPL

Procurement administered under the GPL is largely impenetrable to foreign-invested enterprises (FIEs) due to existing supply networks and the Central Procurement Catalogue. Created behind closed doors, this catalogue specifies which products can be used to supply public procurement contracts. Various regional and industry catalogues also exist.

Though the GPL provides a wide variety of avenues to procurement—including open and selective tendering, competitive negotiation, single-source procurement, and request for quotation—few FIEs have been able to compete successfully in China’s PP market.

Bidding and Tendering Law

The BL falls under the jurisdiction of the National Development and Reform Commission (NDRC) and its local DRC offices, and they are typically categorised as public works projects. While the GPL regulates all central and sub-central government purchases, the BL covers SOE tenders. Any centrally government financed firms are eligible to bid for BL tenders. This includes SOEs, FIEs and joint venture FIEs (JV FIEs). While FIEs are eligible to bid for BL tenders, their bids face a calculated amount of both overt and subtle blockages.

Projects are in various sectors such as construction, power generation and supply, public transportation development, water supply, and waste treatment plants. They can be national, provincial or municipal and either localised or trans-regional. The broad scope of the law covers all public works projects that are undertaken by either SOEs or private firms that have some level of central government financing. They can be Chinese, foreign or international enterprises; however, only those in which the central government has a direct voice through financing arrangements are eligible for the tender process.

Unlike the GPL, the BL specifies no requirement for the use of industry catalogues. Still, tenderers may specify their own requirements, such as indigenous innovation preferences. And indeed multiple local and industry specific catalogues exist which may be invoked.

The BL does not require the use of public procurement centres. Instead, the bidder goes to a certified tendering company that arranges documentation, bids, forms the expert committee, and later announces the winner chosen by the local office of the National Reform and Development Commission (NDRC).
The BL’s disparate administration by various ministries and local governments across China enable local authorities to impose exclusive approval processes on tenders. There exist a multitude of contradictory laws and incongruous implementation of regulations at both provincial and municipal levels.

Figure 1. China’s public procurement administrative structure

Regulations and Institutions

The Chinese public procurement market is heavily hierarchical and centralised, but is in practice disaggregated and locally administered. While national bodies formulate the policy framework, the majority of implementation takes place at the sub-central level.

Top-down

The NDRC, MOF and Ministry of Commerce (MOFCOM) provide policy and implementation direction, but the Ministry of Science and Technology (MOST), Ministry of Housing and Urban Development (MOHURD) and the Ministry of Environmental Protection (MEP) also have some degree of policy control. For example the 2006 MOST directive on indigenous innovation resulted in the adoption of local product preferring catalogues in order to promote domestic technology inputs.
There is a complex interplay between different ministries and different levels of state, provincial and local governments. Implementation depends on local specification and adaptations of formal regulations and informal procedures. Therefore a patchwork of differing local tendering procedures exists under nominally unified national laws.

*Local*

Structural and regional differences mean that some products are tendered at the provincial level, but in other regions the same product is tendered at the municipal level. This creates logistical and legal barriers for FIEs attempting to bid simultaneously on multiple tenders across the country. Between different administrative bodies’ varying capacities, local political economy, and China’s urban-rural divide, FIEs find themselves excluded from many projects.

Similar multiplicities exist for regional procurement catalogues: there are at least 68 separate catalogues issued by 22 provincial and municipal governments. The catalogues are formed by the relevant government agencies and are effectively used to require domestic or local inputs.

*Lack of Transparency*

Decentralised administration of PP in China decreases transparency. Uncompetitive practices encourage inefficiencies that hamper China’s ability to maintain control over its own government’s purchasing agenda.

The NDRC’s call for suggestions to reform the Supporting Regulations for Tenders and Bids in 2012 suggests a desire to improve transparency and efficiency. Still, China’s continued resistance to opening its PP market under the WTO Government Procurement Agreement (GPA), signals that it intends to maintain strong control over the sector. If it were simply a case of systemic inefficiency, China would surely rush to implement cleaner protocols. However, maintaining state control over bidding and tendering laws and requiring domestic inputs is clearly in China’s interests. Maintaining current local control mechanisms will help to delay accession to the GPA. There is little incentive for China to centralise the process and in so doing increase transparency.
Market Data

**Difficulties in Methodology**

Assessing the size of China’s public procurement market is fraught with difficulties. Figures for procurement under the Government Procurement Law (GPL) are relatively reliable, but are published only slowly and are not disaggregated. Figures for the GPL sector are of little use to foreign investment enterprises (FIEs) though, as the market remains largely closed. On the other hand, the market under the Bidding and Tendering Law (BL) is estimated to be worth around 10 times that of the GPL. Despite nonstandard legal and tendering practices this market presents the most opportunity for FIEs. The majority of public works projects are completed under the BL and estimates put local government spending as high as 80 per cent of total BL tenders. In addition to the GPL and BL, many Ministry level projects are budgeted directly; the Beijing-Shanghai high-speed rail project was funded directly by the Ministry of Railway’s budget. Projects like these are therefore not included in either the GPL figures or the BL estimates.

Methods for estimating the size of China’s BL procurement market are currently unsophisticated. There are three standard measures for estimating BL spending.

1. The OECD estimates that industrialised states spend between 12 and 20 per cent of annual GDP on public procurement. Conventional assumptions put China’s government procurement market at the upper end of this range. Taking GDP figures and applying this 20 per cent metric for procurement yields crude estimates that are nevertheless easily applied to national, provincial and municipal levels.

Using this method gives national gross figures of C¥11.37 trillion for 2013.

2. Directly use National Bureau of Statistics (NBS) figures on government spending

Using this metric yields reasonably reliable numbers. However, the figure includes all government spending (salaries, utility costs etc.) and is therefore an overestimation of the public procurement market.

Using this method gives national gross figures of C¥13.97 trillion for 2013.

3. Fixed asset investment (FAI) figures are provided by the NBS. As many BL procurement tenders are capital works projects, the use of FAI figures is an attempt to gauge the procurement market by construction proxy. While capital works construction is integral to China’s development model, these FAI numbers also include both private and foreign investment. Those figures generally link to
real estate, which does not distinguish between new and existing developments and also ignores services procurement. Figures for FAI represent around 70 per cent of GDP and are a huge overestimation of the procurement market.

Using this method gives national gross figures of C¥43.65 trillion for 2013.

While all three methods represent only crude estimations, the figures derived from methods one and two roughly coincide. The OECD standard 20 per cent of GDP method suggests C¥11.37 trillion for 2013 while the NBS government spending method gives C¥13.97 trillion at 24.5 per cent of GDP. While we estimate the true size of the PP market in China to be somewhere between these two figures it is unlikely that China’s socialist legacy and heavy dependence on SOEs would yield a PP market any smaller than the OECD’s upper range of 20 per cent. Using the 20 per cent method is likely to be a conservative estimate of the true value of the procurement market in China. Consequently, we prefer to apply this method to disaggregated figures for the provincial and municipal procurement markets.

We have included FAI investment figures to demonstrate the potential size of the construction market, which is the key opportunity for FIEs attempting to navigate the Chinese PP market.

Data

![Figure 2. China’s public procurement market 2011-13](image-url)
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<th>Provinces</th>
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<th>Fixed asset investment</th>
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Source: National Bureau of Statistics

Note: National GDP and provincial GDP figures are collected separately by the national bureau of statistics and provincial statistics bureaus, each using different source data and metrics. Additionally local governments often exaggerate figures to appear more economically advanced. Note on methodology: Three metrics are used to estimate the size of the public procurement market. 1. Provincial GDP times 20 percent. 2. Gross government spending. 3. Fixed Asset Investment. FAI is investment in fixed capital or the replacement of depreciated fixed capital such as machinery, land, buildings, installations, vehicles, or technology.

Figure 3. China’s provincial public procurement markets 2011-13
### 2012 estimates of municipal public procurement markets

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Source: NBS and local government finance bureaus
Note: Methodology used is 20 percent of GDP metric

Figure 4. China’s municipal public procurement markets 2012
Figure 5. China’s public procurement market 2011-13. The size of China’s public procurement market is probably between C¥11.37 trillion and C¥13.97 trillion.

Figure 6. China’s GPL. Last year, the estimated value of the BL market stood at around €1.3 trillion, larger than South Korea’s 2013 nominal GDP.
Figure 7. China’s public procurement market 2011-13. Though the growing GPL market is effectively closed to FIEs, it represents only a fraction of the larger BL market.
Closed Markets

Barriers to Entry

The procurement market in China is now superficially open to foreign investment enterprises (FIEs). In reality, a series of institutional and situational factors preclude FIEs from equal market access alongside Chinese state-owned enterprises (SOEs). These include enforced technology transfers and local supply requirements. In addition to the barriers examined below, FIEs are subject to inadequate intellectual property rights (IPR) protection, forced technology transfers, discriminatory financial incentives and pricing controls.

Preference for Domestic Products

Definitions of domestic products have meant that products made in China by Chinese firms enjoy broader market access than products domestically produced by FIEs.

Under the government procurement law (GPL), preferential treatment is given to domestic products. Foreign products may only be purchased if the domestic equivalent is over 20 per cent more expensive.

Domestic products are conventionally defined as those with over 50 per cent of value added in China. Regulations that define foreign goods as those that have passed through Chinese customs mean that goods produced with foreign inputs in Chinese export processing zones (EPZs) may be eligible for procurement supply. Nonstandard practices leave many FIEs unsure whether their products qualify as domestic or not. Indigenous innovation and technology transfer policies are not overtly stated and their widespread use is a result of ingrained practices in provincial and municipal government as much as they are about serving national agendas.

While the GPL overtly prefers domestic products, projects under the BL practice protections through policy implementations such as the Indigenous Innovation directive. The 2006 Ministry of Science and Technology recommendation has meant that Indigenous Innovation Product Catalogues effectively act as forms of protectionism. Conversely, indigenous innovation policies have been criticised for pressuring FIEs into transferring technology, business practices and trade secrets to Chinese partners in order to reach the market. Both criticisms mark serious barriers to entry for FIEs.

China achieves de facto protectionism by maintaining international commitments to GPA accession at the national level while ignoring, to the point of encouraging, obfuscation of bidding and tendering processes and ingrained use of local supply networks at lower
levels of government. For practical purposes this creates a two-tiered system of compliance and incompliance.

**Time**

A lack of knowledge, consistency and applicability exists in the time frames between announcing a tender and accepting a winner. This is a serious obstacle for FIEs.

After the tender announcement, potential GPL suppliers have 20 days to submit their bid. There is a widely acknowledged time lag between the process’ launch and the publication of information, favouring those firms with inside contacts. EU minimum notice periods vary from 36 to 52 days.

Similarly, BL tender processes suffer from a lack of temporal consistency. Under the BL, FIEs are given 12-14 days between announcement of the bid and the submission deadline. However chinabidding.org, the English language centralised tender communication service advises that firms only have 7-10 days for bidding.

The reality on the ground is that tendering time windows are often irrelevant. Close relationships between SOEs and government agencies mean bids are often already decided as soon as tenders are announced. Some commentators have suggested FIE’s strengthen their relationships with local partners and officials. This should not be necessary in an open market economy.

**Evaluation**

Evaluation criteria, scoring systems and other feedback on the bidding process are largely unavailable or selective. This is the case under both the GPL and the BL. Published post bid information is often inadequate. Pre-bid tender criteria are used to predetermine winners by deliberately targeting specifications where a certain firm enjoys a competitive strength. Therefore the bid evaluation process can be a show, with the process targeting a favourite.

Laws and regulations are ineffectual and unenforceable in the face of embedded local patronage networks. Thus, the market remains effectively closed to the majority of FIEs. Even with an ‘open market’ China’s invisible hand decides which sectors are open and to whom.

**Notification**

Article 16 of the BL requires all tender announcements to be published in a public manner. Yet, it does not specify acceptable means for doing so. Without guidance on how to publicise the announcement, tendering authorities are free to announce tenders
in any manner they wish; the scope is so wide they can effectively ignore the requirement altogether.

Similarly, unsuccessful bidders are often not promptly told that the contract has already been awarded. With no information it is difficult for a firm to understand why it was not awarded a contract. Suppliers are often left waiting with no idea whether they can begin work or not.

**Appeals**

The GPL has an appeals process that is administered directly by the Ministry of Finance (MOF). It consists of a three-step process of query, complaint, and litigation.

1. Submit a query to the procuring entity (Central Government Procurement Centre (CGPC), Public Procurement Centre (PPC), Public Procurement Bureaus (PPB))
2. If unsatisfied with the reply from the procurement bureau, file a complaint with the MOF within 15 days of query response
3. If unsatisfied begin litigation proceedings through the People’s Court

Appeals currently take place after the contract has been awarded and construction or other fulfilment obligations of the contract have already begun. Therefore there is little hope of reversal or rectification.

The BL entirely lacks an appeals process. While the NDRC is responsible for administering appeals and has devolved authority to local DRCs to receive and process appeals, there currently exists no institutional or administrative framework in which to do so.

Though GPL and BL appeals reform could streamline the procurement process and help fight corruption, the current GPL appeals format applied broadly to the BL is unlikely to satisfy FIEs.

**Decentralisation**

The fragmented, decentralised nature of a vertically hierarchical system in an economy the size of China’s is a recipe for contradiction. Sub-central institutions’ develop their own procedures and practices, creating a network of nonstandard public procurement systems. Different levels of government operating under idiosyncratic systems means that firms bidding on multiple tenders across the country are faced with vastly different bureaucratic realities. Standardised directives on which level of government to approach do not exist.
**Agreement on Government Procurement**

China’s stalled accession to the WTO’s Agreement on Government Procurement, a plurilateral agreement open to WTO member states, presents an additional institutional hurdle for foreign investment enterprises (FIEs) intending to compete in the Chinese procurement market. The first Government Procurement Agreement (GPA) offer from China was rejected in 2007, the recent fourth offer at the end of 2013 was also deemed inadequate. A new offer is expected later in 2014.

*Enhanced GPA offer*

China’s fourth GPA offer of 31 December 2013 was delivered as a last minute solution to the commitment to the China-United States Strategic and Economic Dialogue. It should not be taken as a significant improvement or a serious offer.

China Policy notes the addition of the Chongqing municipality public procurement (PP) market to the already offered self-governing municipalities of Beijing, Shanghai and Tianjin as well as the addition of the provinces of Liaoning, Hebei, Henan, Hubei and Hunan and the lowering of the transitional delay from five to three years for the core central provinces of Hebei, Henan, Hubei and Hunan. However the details of an offer never meant for serious consideration may be distracting.

The sensitive political nature of autonomous regions such as Xinjiang means there will be little prospect of economic liberalisation of PP markets in greater western China.

Rather than analyse what is included in the piecemeal fourth offer or the projected fifth offer, the reality is that the GPA offers are stalling tactics for the Chinese to asymmetrically benefit from the wider WTO framework to better serve a national development strategy.

*Limitations*

An estimated 80 per cent of procurement occurs at the local government level, yet no local agencies were included in the latest GPA offer. Furthermore, the list of state-owned enterprises (SOEs) remains the same as in the first offer. As such, the GPA essentially does not cover central government entities or the services sector.

Most utilities are excluded under the latest offer. This includes roads, railways, civil aviation, ports, urban transport, electricity, water resources, energy, postal services and telecommunications. There is also limited access to public contracts in construction.

*Control*

Under the Temporary Government Procurement Measures to Promote the Development of Medium-Small Enterprises of 2011, 30 per cent of government procurement is
reserved for SMEs. In practice many large enterprises use wholly owned subsidiaries to access benefits meant for SMEs. China maintains that freedom to pursue national industrial and social policies such as these must not be compromised in any GPA accession offer.

Europe has suggested that inefficiencies in the public procurement system result in losses to the greater Chinese economy. Chinese policies suggest that such inefficiencies are tolerated for the sake of an albeit indirect control over an immense market directly servicing the Chinese state.

Domestic Chinese commentary suggests little support for ascension to the GPA. Conflicting laws and disjointed PP apparatus across provincial levels make prospects of streamlining and standardising PP practices onerous and expensive. Remaining outside the arrangement enables China’s lawmakers to use another economic policy tool to favour local producers. As such, the current fragmented system serves China’s policy objectives.

Regardless of any potential losses posed by removing barriers to its PP market, economic advantages from ascending to the GPA may not materialise for several reasons.

1. The transnational nature of supply chains, coupled with China’s current comparative advantage in manufacturing, means that Chinese products are already exploiting markets of GPA members without a need for formal accession.

2. Policy and coordination changes to PP systems would affect SOEs entrenched in the current framework. An open PP market would prompt overarching changes to SOE operation and organisation in order to compete effectively.

3. Accession to the GPA does not eliminate trade protectionism. Anti-dumping suits may still be employed to hinder or prevent Chinese entry into foreign PP markets.

4. The cost benefit ratio for the Chinese state, Chinese SOEs or Chinese private firms is not clear. Chinese actors gaining access to foreign governments’ markets may not derive the same benefits as foreign actors hoping to penetrate Chinese procurement projects.

Centre-local Disconnect

China is governed as a non-federal unitary state with Beijing in principle making decisions for the rest of the country. As this is impossible in practice, the result is centre-local disconnect. China’s existing patchwork of regulatory PP laws partially effect limited de facto federalism which works toward central interests. Regionally, conflicting regulations act as a catalyst for local officials to exercise personal discretion and act on local preferences, further devolving central power.
In terms of PP this regulatory environment advances the centre’s wider economic, social and environmental policy goals. Allowing sub-national governments to source locally supports regional economic development policies. Multipliers circulating in regional economies stimulate further development in economically backward regions. GPA accession would reduce the central authority’s ability to practice resource transfers and enact economic development strategies in this way.

Development of local economic opportunities or limited political devolution can work to assuage resident minorities’ dissent or stabilise disadvantaged groups.

Though the existing patchwork of regulatory laws across different regions may appear to hamper attempts at centralised control, these seeming inefficiencies can in many ways better serve the central interests of the state than a national PP framework could.

**Future developments**

*Green Public Procurement*

Though the 12th five-year plan officially urges a Chinese green revolution, there is still a lack of political will for green public procurement (GPP). Minimal training and legal expertise compromise government’s ability to act effectively, exacerbated by a dearth of cooperation between authorities. Green products’ perceived cost, reinforced by a general lack of information, make for little incentive to reform the system in favour of green PP.

Where GPP is desirable, current GPP policy is convoluted and general. Laws do not specify rules and regulations, nor define eco-friendly products. This has enabled rampant ‘green washing’—the sale of non-sustainable products as green.

*GPP catalogues*

In September 2006 China’s Ministry of Finance (MOF) and the State Environmental Protection Administration (now the Ministry for Environmental Protection) formally called for GPP. Green procurement catalogues were subsequently written to enumerate eco-friendly products and producers. The MOF and NDRC created the Public Procurement List of Energy-Saving Products and the MOF and the Ministry of Environmental Protection MEP also released the Public Procurement List of Environmental Labelling Products.

Products on these lists are selected according to criteria described by the Environmental Labelling Certification and the China Energy Label. The central government adjusts both lists bi-annually in order to update the products included on the lists and to provide technical support for GPP implementation.
However, there is no clear distinction between domestic input requirements and GPP catalogue sourcing. The procurement market may remain artificially protected and GPP effectively ignored when it suits the tendering authority.

**Implementation**

In reality, local laws and practices have seriously diluted the lists’ implementation. Still, improving the quality and performance standards of listed products would be a welcome step towards GPP. Selection criteria that both weigh environmental efficiency more heavily and consider life cycle costing would benefit FIE market access.

The GPA makes no specific mention of GPP. The Sixth Recital of the Preamble to the WTO agreement, however, recognises the need to protect the environment and develop sustainably. Therefore, it is generally held that GPA accession would necessitate contracting entities weigh environmental impact when defining technical specifications (including process and production methods), selection, and award criteria. Such a development would allow FIEs to compete more effectively.

**Barriers**

There are several potential problems with any GPP management system. On a practical level, China does not have a single designated agency charged with managing green procurement. Rather, several agencies and ministries are involved in GPP procurement management, including the MEP, MOF and the NDRC as well as the various procurement centres at provincial and local levels.

On a macroeconomic level, the declared China green revolution embedded in the 12th five year plan presents a threat to stakeholders who would be affected by the asymmetric losses from a transition towards greener practices.

**E-procurement**

China’s scattered and fragmented procurement market means that bidders often must be physically present to tender bids. Moreover the tender announcement systems are demonstrably ineffective. E-procurement systems utilising internet technologies to allow bid submissions online would radically streamline bid processes. This would standardise the existing currently conflicting regional administrative disparities. It would reduce costs to both the bidder and the tendering authority whilst improving transparency.

Currently e-procurement is only used on an ad hoc basis, mainly under the BL in the automotive and software industries. However, even where it has been implemented, there are still avoidance and technology dependence issues.
E-procurement will be critical if China is to accede to the GPA. A national e-procurement system would eliminate many of the barriers that currently make China’s GPA offer unacceptable. However Chinese agencies’ recent refusals to use e-procurement systems based on Microsoft’s Windows 8 operating system, citing security concerns, is indicative that any e-procurement adoption will occur on Chinese terms. The possibility for domestically developed Chinese software solutions present yet another opportunity for domestic sourcing in China’s PP market.

Currently, the central NDRC has little direct oversight over local tendering processes. A national e-procurement system would improve central authority over the process. Such transparency would benefit individual bidders as well as central authorities.

Public Private Partnerships

Every indication is that China has dismissed outright the possibility of PPP with foreign capital. It is expressly against the Chinese industrial development model and plays in to historical fears of foreign ownership of Chinese fixed capital.

The Agent-Construction System is still an obstacle to the development of Public Private Partnerships (PPP). This ad hoc state-owned enterprise (SOE) arrangement effectively creates project-defined companies. It is the principal means by which public construction projects are procured, it effectively rules out PPP development. FIEs are again systematically excluded with little hope of policy relief.

It is unlikely that SOEs as contracting authorities would provide a vehicle into the Chinese PP market. The Agent-Construction System means major construction projects under the BL are awarded to custom SOE vehicles which are instituted solely for the purpose of the construction project. The Beijing Metro extension and Three Gorges Dam projects are clear examples.

Life Cycle Costing (LCC)

While Green PP and sustainable PP practices are increasingly important to China as it seriously tackles its environmental problems, LCC PP practices are essentially a progressive European framework for matured PP markets.

China’s PP market is not mature enough to be considering the integration of such measures.

China’s use of national catalogue systems to administer Green PP products to the implementation levels of governance at the provincial and PP centre level are a different institutional response to the same problem that LCC seeks to address.
Considering China’s current use of international standards being minimal amid its continued emergence from state directed economics, implementation of standards such as ISO 15686-5 on life cycle costing are unlikely to be raised in Chinese policy circles.

Policy Recommendations
The development of more open PP markets at the national, provincial and municipal levels in China would present real opportunities for existing and future FIEs. However, weak incentives at all levels means that China is unlikely to open its PP markets in the foreseeable future.

Chinese Policy Directions

The expansion of the BL to become an umbrella law for all PP markets in China
This would eliminate the GPL and expand a simpler, more consistent legal framework, which would greatly enhance market access for FIEs. This is extremely unlikely in the face of continued Chinese protection of core government organs under the GPL.

The consolidation of the various disparate provincial, municipal and local government PP markets into a unified system
A nationwide system governed by simple statutes, open to FIEs, with united tendering and provision procedures and functional appeals processes is extremely unlikely.

The creation of a united appeals process
Tenders under the BL currently have no appeals process. However, the adoption of an appeals process based on the current GPL appeals process would not satisfy many actors. There remains little incentive for Chinese agencies to improve appeals processes simply to improve FIEs market access.

The creation of standardised directives on which level of government to approach
This would greatly facilitate market access for FIEs. In the absence of a standardising reform and the persistence of disparate systems, such a directive would be both useful and achievable.
**Increased transparency and equal access to information**

Through the use of e-procurement technologies, a central information platform could be established which links GPL and BL tenders, announces bid winners and provides feedback on both failed and successful bids. Such developments would enhance central administrative agencies’ control of PP market processes. However, concerted opposition to adoption of Windows 8 technologies can already be seen as a barrier to e-procurement. Entrenched rent-seeking and local patronage networks are also barriers.

**Ending the use of indigenous product catalogues and ending the indigenous innovation policy directive from all levels of PP**

Removing the protections afforded under the indigenous innovation policy would allow FIEs both to compete in previously protected markets and also free them from coerced technology transfers. However, it is unlikely that entrenched local suppliers, SOE practices and provincial or municipal practices would change even if policy implementation were to direct an end to local protectionism.

**European Policy Recommendations**

**Realistically negotiate GPA and WTO frameworks**

China’s updated GPA offer later this year is not expected to result in GPA accession. Rather than wait for an unlikely GPA accession scenario, EU actors should instead utilise other areas of the WTO framework to limit China’s access to European markets.

**Strategise green PP**

FIEs can expect progress in green public procurement policy and implementation as China is serious about its struggles with environmental pollution and challenges it faces in implementing its green revolution.