

Procurement

A guide to best practice in transparency, accountability
and civic engagement across the public sector

The Transparency and Accountability Initiative is a donor collaborative that includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations, the Revenue Watch Institute, the United Kingdom Department for International Development (DFID) and the William and Flora Hewlett Foundation.

The collaborative aims to expand the impact, scale and coordination of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

The views expressed in the illustrative commitments are attributable to contributing experts and not to the Transparency and Accountability Initiative. The Transparency and Accountability Initiative members do not officially endorse the open government recommendations mentioned in this publication.

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Procurement

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Governments spend between 15% and 30% of gross domestic product on procurement, notably for essential public services, such as clean water, education and health care. The global procurement market is estimated to exceed \$14 trillion. With corruption adding an estimated 20% or more to the cost of procurement, failure to address this problem means a staggering potential financial loss, a disastrous impact on citizens denied adequate public services and distorted competition penalising ethical companies.

Reducing corruption in government procurement requires government, the private sector and civil society action to improve transparency, accountability and integrity. This proposal focuses on essential preventive measures by each stakeholder, including:

1. **Government:** Transparency of government procurement rules and procedures and growing use of technology for information

dissemination; accountability through asset disclosure and conflict of interest requirements;

2. **Private sector:** Integrity through requirements for private sector suppliers that prohibit bribery, collusion and fraud; and
3. **Civil society:** Accountability through civil society engagement and oversight.

These proposals draw upon commitments made by the more than 140 parties to the United Nations Convention against Corruption (UNCAC) and to other agreements, including APEC Procurement Transparency Standards, Inter-American Convention against Corruption and the OECD Foreign Bribery Convention. Securing implementation of these recommendations will require a mechanism for regular and public reporting, with input from civil society. This proposal suggests, where possible, drawing on existing mechanisms for reporting progress on the accords enumerated above.

Procurement transparency and participation

Initial steps

Goal

Full implementation into domestic law and regulation of procurement transparency, access to information, asset disclosure and conflict of interest provisions (based on UNCAC, APEC Procurement Transparency Standards and other multilateral accords).

Justification

Transparency in government procurement helps reduce corruption by permitting public oversight of the use of public funds. It increases the likelihood that public institutions will function fairly, openly and efficiently and according to a clear set of predictable rules and conditions necessary for economic development and fair competition. This will foster economic development and increased foreign direct investment (FDI).

Recommendations

1. Information relating to procurement procedures and contracts that have been awarded should be made publicly available.
2. Conditions for participation, such as selection and award criteria, should be established and published in advance.
3. Except in cases of national security and law enforcement, information should be made publicly available on the governmental organisation and the functioning and decision-making processes of its public administration.
4. Information should be made publicly available on the revenues and expenditures of each governmental organisation.
5. Officials should abide by conflict of interest policies regarding matters before them and should certify that neither they nor any family member or close associate have any direct or indirect

financial interest in that procurement. These certificates should be made available to the public on a central website.

6. Transparency should extend to asset disclosure by high-level officials, such as elected members of the legislature, the top tier of personnel of the executive branch and government ministries and locally elected officials (governors, mayors etc.), as well as those involved at any stage in procurement decision-making.
7. Asset disclosure information should be made publicly available on a timely basis, with investigations of unexplained enrichment.
8. Governments should require bidders to certify as part of the bidding process:
 - a. Compliance with all applicable laws and regulations, from bidding through contract execution;
 - b. Maintenance of a code of conduct prohibiting fraud, collusion and bribery and protecting whistleblowing by employees, sub-contractors and other third parties;
 - c. Adoption of a code of conduct and implementation of ethics training for employees;
 - d. Adoption of internal controls for prevention, detection, remediation and sanctions.

Country examples

In 2007, APEC economies reported on their legal and regulatory implementation of the APEC Transparency Standards, including those relating to government procurement. The APEC Anti-Corruption and Transparency Group has called for reporting of APEC leaders' and ministers' commitments on anti-corruption and transparency. Mexico has instituted an online asset disclosure system.

More substantial steps

Goal

Creation of single, countrywide, public, online database providing information about government procurement.

Justification

For citizens to truly monitor how government resources are spent and for suppliers to have fair competition, a wide range of information regarding public procurement should be easily available in a timely manner.

Recommendations

1. Each country should post on a single website available to the public (and not just to suppliers) a searchable database that includes notices of planned procurements, the procurement method used (and the justification for that method), the value of procurements, contracts awarded, names of contractors and, for major projects, sub-contractors, number of procurement challenges, appeals and decisions on procurement challenges and debarred contractors.

2. Given the growing decentralisation of procurement, data on regional and local governments should be included.
3. The self-certification requirement can be instituted progressively, starting with procurements subject to open bidding procedures and then eventually reaching smaller procurements subject to sole sourcing or other procurement processes. For those governments with such requirements in place, an additional step would be to require publication on corporate websites of codes, compliance programmes, reporting hotlines, etc.

Country examples

Many governments, including Mexico, Chile and Korea have posted extensive procurement information online. The United States website, <http://www.usaspending.gov>, provides comprehensive information on all federal procurements and is searchable by date, type of procurement, name of procuring entity and contractor, type of goods or services procured, etc. The World Bank maintains a website of debarred suppliers¹ and, in cooperation with regional development banks, has agreed to cross-debar suppliers found to have engaged in illicit practices.

Most ambitious steps

Goal

Participation of civil society in monitoring government procurement.

Justification

Civil society can play a significant role in promoting accountability in government procurement, and can contribute an independent and impartial voice to the procurement process. Using civil society to verify that procurement procedures have been followed and to review the application of evaluation criteria and contract awards validates the procurement and lessens the risk of corruption in the process. It also heightens public awareness and trust in the process.

Recommendations

1. All countries should permit independent experts selected by civil society organisations (CSOs) to participate in all stages of government procurements above a certain threshold (which could differ from country to country based on the level of development), including procurement funded by international financial institutions such as the World Bank, and to publish their findings no later than ten working days after the award of the contract.
2. Governments should be responsive to civil society requests for information and resources necessary to perform meaningful oversight and should take corrective action on findings.

Country example

The Government of Mexico has permitted 'social witnesses', appointed by civil society, to participate in procurement proceedings since 2004. Since 2009, participation of a social witness has been mandatory in procurements valued at more than about \$23 million. The social witness is required to issue an alert if he/she detects any irregularities in the course of the procurement. At the conclusion of the procurement proceedings, the social witness issues a publicly available statement including observations and, as appropriate, recommendations. The statement is posted on the website of the procuring entity, as well as on the government's central procurement website and in the file of the tender. In the Philippines, civil society is invited to participate in procurements and has done so in many cases. In addition, the Philippines' procurement law allows any citizen to file complaints with the local ombudsman if irregularities are detected in a specific public procurement.

¹ <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

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