



**Transparency International**  
**Comments on the World Bank Policy as contained in the document**  
**"Increasing the Use of Country Systems in Procurement" dated March 2005**

**Berlin, July 27<sup>th</sup> 2005**

Founded in 1993, Transparency International (TI) is an international non-governmental organization based in Berlin, Germany, with National Chapters in more than 90 countries worldwide. TI has its roots in the concern felt by people throughout the developed and the developing worlds that corruption impedes development, increases poverty and obstructs productive business. TI's mission is to work to create change towards a world free of corruption. As the leading international NGO dedicated specifically to the fight against corruption, TI's purpose is achieved by mobilizing coalitions to promote and strengthen national and international integrity systems. Within these coalitions we work with the governments and the private sector and in particular with industry sectors which are frequent participants, or would be participants, in countries receiving bank funding. We have been honoured to be a trusted advisor to the Bank on such issues over the past number of years. The leadership of the Bank has underscored the importance of the anti-corruption agenda to its duty to ensure it fulfils its mandate that funds are used for the purpose intended. Nowhere is this more important than in procurement. Moreover the Bank has historically been viewed as the standard-setter for procurement. It is therefore imperative that the Bank retain this leadership role.

As Bank procurement guidelines continue to provide important benchmarks for assessing local procurement rules we encourage the Bank to continue introducing improvements in its own rules and to strive for actual changes in practices in light of the recommendations given by Transparency International to the Bank in the last years.

Transparency International is honoured to provide the following comments on the proposed policy "Increasing the Use of Country Systems in Procurement" as explained in the document dated March 2005. This should complement the different efforts and areas where the Bank and Transparency International are already cooperating constructively.

**A. General Comments**

Transparency International welcomes the initiative of the Bank to improve its Procurement policies and practices in light of fostering the development of local capacities and promoting transparency in public contracting. We believe it is correct as a long-run policy to increase the use of country procurement systems in World Bank projects. However, it should be given careful thought and consideration, and should be informed with an exchange of views with the stakeholders beyond this opportunity for written submissions prior to moving forward.

In particular, we think that two elements that are critical to its implementation are that:

- It should be selective and restricted to those cases where the country system offers assurance of transparency and effectiveness. The process to select the countries where it will be piloted should be transparent, avoid subjectivity and influence, and offer assurance that the countries selected do provide guarantees of transparency and effectiveness. A long list of countries should be subject to consultation with multiple stakeholders and included thereafter in the final version of the document to be signed off by the bank's Board.
- It should translate into increased transparency and accountability of the project concerned and the actions of the parties involved in it.

Furthermore, the policy seems to run in the opposite direction of the Bank's stated goal of increasing its involvement in large infrastructure projects, and further clarification of how the two policies would interact is considered necessary.

## **B. On the policy's key elements:**

### **On Equivalence and acceptability, and addressing gaps**

1. Wherever a country's procurement rules prescribe a larger degree of transparency and public disclosure than the Bank's Guidelines, the Bank should not impose its own level of disclosure and block the country's farther-reaching transparency. This should apply also in cases where country systems will not be used.
2. The Bank's is the best and most advanced procurement manual at the international level. However, there are still areas where it can be improved. This is especially important if the Bank's guidelines and operational policies will be used as a benchmark to assess a country's procurement systems and their use in Bank funded projects. Areas of particular improvement of the existing Guidelines are the following:
  - a) The Bank should require its borrowers to provide **public disclosure of project features and project justification**, adequate to the project character, well before the final decision making on the project itself, so as to give all stakeholders and the public at large the opportunity to inform themselves and to contribute ideas and suggestions to the project proposal. On very large civil works projects, the best instrument for such involvement of the public could well be public hearings. Access to complete information on project features and the opportunity to react in time is a proven corruption-prevention instrument.

#### **b) Bid evaluation**

- We are concerned, based on bad experience, that the judgment to be made by the borrower and to be reviewed by the Bank to the effect that a bid is "substantially responsive" (§2.48) allows much room for discretion and potentially for corruption. While we agree that some discretion here is often necessary, we believe that the exercise of discretion of even a minor degree must be recorded, justified and disclosed prior to the award of the contract.
- Bidding documents should be published also containing the detailed sub-criteria all and not just the broad evaluation criteria.

#### **c) Access to information and confidentiality**

- Since the bid evaluation process is to be confidential, any “clarification” sought from or allowed to one or several bidders must be assured “not to change the substance” of the bid (§ 2.46); if there is the slightest chance that a change of bid is allowed, the other bidders must be informed. In view of the fact that such “hidden changes” are not uncommon, we feel that this is something the Bank should review carefully as part of its supervision of projects. Furthermore, clarifications that affect the competitiveness among bidders should be communicated to all.

d) **Award Publication and Disclosure of Award Grounds**

- Requirement of publication of awards and the grounds thereof should under no circumstances be exempted.
  - The Bank should ensure that borrowers will truly publish the “reasons for the recommendation” for award in sufficient detail, thus closing one of the most common loopholes for manipulation among those who carry out the evaluation of the competing bids.
  - In publishing the “final point rankings” among consultants (§ 2.28 of the Consultant Selection Guidelines), only publication of the detailed rankings (disaggregated for the various elements of the evaluation) will provide the information that could prevent manipulation.
  - As is practiced in industrial countries, there should be a grace period (say two weeks) between the “publication of the award” and the actual contract signing, considering that any legitimate complaints are much more difficult to take into account after the contract has been signed. In fact, only in the presence of such a grace period, the “confidentiality” imposed on the process (by § 2.47) “until the publication of the contract award” can be justified. Moreover, the period should be in practice the same for services and works contracts.
- e) **Private Sector standards.** It is now standard practice of the Bank on all larger infrastructure projects to require bidders to certify that they have prohibited direct and indirect bribe payments in connection with the project being financed by the Bank. Good practice would extend this practice to all infrastructure projects. For such a certificate to have credibility it must be supported by an appropriate Code of Conduct which prohibits bribes. There are models now available such as the TI Business Principles for Countering Bribery, the ICC Rules of Conduct and the OECD Guidelines for Multinational Enterprises. The key is not only to follow a set of standards but also to implement an effective anti-bribery programme within the enterprise and the TI tool referred to above provides a suite of instruments to enable companies to implement, monitor and evaluate such an anti-bribery system.
- f) Considering that an apparently growing share of total procurement financed by the Bank is not being awarded after open international competition (primarily ICB), we would suggest that every decision on the part of Bank staff to allow **something less than ICB ( § 1.4) must be justified and the decision be recorded**, so as to allow later review.

- g) The very common practice of corruption during project implementation through improper **contract change orders** has led the Bank to introduce the excellent rule

(Sec.3 of Appendix 1 to the Guidelines), that in the case of contracts subject to prior review the Bank's "no objection" has to be obtained if the cumulative effect of the change orders exceeds 15% of the original contract price. In addition, we believe the Bank should require its borrowers to introduce a similar domestic review by senior staff (or tender committees or boards) of change orders when the 15% threshold is passed, so as to avoid that the site engineer can collude with bidders and approve a string of relatively small change orders which in the aggregate can lead to major cost increases. Considering that the threshold for "prior review" cases is being raised, we would recommend that decisions by borrowers on change orders breaching the 15% threshold on all contracts above a much smaller value be submitted to the Bank.

- h) On the Consultant Selection Guidelines (the Conflict of Interest and the Unfair Competitive Advantage provisions, §§ 1.9 and 1.10), we would recommend that consultants be required to state, in their application for a contract, that no **conflict of interest** as defined in § 1.9 exists. Furthermore, it is advisable not to restrict the number of consultants to be short-listed.

Finally, we believe the Bank should be highly restrained in recommending consultants for short lists. Most borrowers by now are capable to make up their own list. The Bank should limit this service to the few cases where consultants with rare, highly technical expertise are needed and the borrower is inexperienced, and this option should be eliminated in total in the cases where the country systems will be used.

### **On Bank Supervision**

3. We support and encourage the proposal to continue to perform supervision as post reviews and procurement audits, as well as the prior reviews. The decision to raise the threshold for prior review to US\$25 million should be deferred at least until the end of the pilot phase. This would enable prior control into different types of contracts (and still sensitive ones) during this test phase.
4. In addition to rigorous pre-qualification review, it is essential that there be a sustained dialogue with the government as issues arise and an ongoing system of regular evaluations to ensure systems are not degraded. Moving to country systems as proposed would increase the burden on bank staff since each country would have qualified under different circumstances.

### **On Bank Anti-corruption Policies and Bank Responsibility**

5. The increased use of country procurement systems may require adjustments to some of the Anti-Corruption policies, in particular, to avoid Bank staff to relay responsibility, to facilitate information channels and to impose sanctions even-handedly between countries where their own procurement systems are being used and countries where they are not. The Bank needs to remain engaged in enabling the use of anonymous channels of information or attending reports of corrupt activities regarding the projects financed with World Bank funds.
6. Thought needs to be given to the role and responsibility of the Bank's country offices within procurement processes that will be run under local guidelines and by the borrowers' staff. In encouraging full local transparency and accountability, the Bank's approach needs to be exemplary.

7. The increased use of country procurement systems requires also active disclosure practices on the side of the Bank's country offices as to enable the maximum possible accountability and civil society monitoring of the projects.
8. The Bank itself estimates that \$1.5 trillion in public procurement is tainted by corruption. Its Institutional Integrity Unit (INT) has clear evidence that public procurement is particularly problematic and yet its findings have not yet been analyzed to ensure that "lessons learned" are integrated into operations. This is an essential next step that will enhance prevention, reducing the burden on INT. Moving precipitously to country systems before this occurs would be premature.

### **C. On the Benchmarking Framework**

9. The system of indicators used to assess the country contracting institutional capacity should be made public. This will also enable feedback from other sectors not involved in the analysis, thus ensuring the quality of the assessment, accountability and the appropriate targeting of policy changes should they be needed. This should help to minimize the risks indicated in the document if information is offered clearly and in a complete manner.
10. There is currently a number of sets of indicators for example: the OECD indicators; the EPG-MDB indicators; the CPAR instructions, attachments and annexes; and, the current proposed "country system" indicators. Furthermore, given GPA, APEC and numerous other procurement transparency standards it is important to further contribute to harmonization of international standards if along with this initiative an effort to provide coherence and reduce potential for confusion is invested.
11. Before being put into practice, the indicators need to be revisited based on particular conditions and lessons learned from applying them in practice. As noted in Attachment 1 to the CPAR: "Elements that Constitute a Well Functioning Public Procurement System," "the issues listed above are, however, not exhaustive and any assessment and analysis will need to be customized to the issues present in each specific country. In particular, it will be important to also assess the manner in which all the above actually work in practice."
12. It is not clear how the application of these indicators would intersect with the CPAR process and whether it would not be more productive to improve that process so that CPAR recommendations are addressed through country projects.
13. Transparency International has developed a set of indicators to monitor the transparency and corruption prevention features of country contracting systems. It includes both institutional and performance indicators. The set of indicators is being currently tested in 9 countries in Latin America in the framework of assessing country compliance to the OAS Anti-Corruption Convention. This tool will produce information that could be useful to complement the Bank's assessments and benchmarking.

### **D. Administration of the benchmarking Indicators**

14. Judgment on whether a country meets the indicators is subjective and open to political influence. This will place a burden on staff to resist pressure from governments which might not otherwise meet the standard. It is essential that there be clear rules to ensure consistency of application and review of decisions by an independent expert.
15. As currently conceived, the 70% rule would permit governments to be considered equivalent to Bank rules without having to meet all the benchmarks, including some that are critical to

ensure corruption is avoided. These include an independent complaint system, an independent administrative review body, mechanisms to report fraud and corruption, codes of conduct etc. Exemptions based on essential elements should be avoided and the grounds for the final selection of countries should be clear about the exemptions made.

16. It is problematic that remediation is not required and is left primarily to the discretion of the government. The borrower is responsible for maintaining acceptable practices and the Bank does not retain the right to require remediation.

#### **E. Other comments**

17. Transparency International has demonstrated around the world the benefits of independent Civil Society monitoring and control of contracting procedures, especially through the implementation of Integrity Pacts. The current Procurement and Consultant Guidelines of the Bank enable the use of independently monitored Integrity Pacts in World Bank projects. We encourage the Bank to actually use this instrument in their projects and use the pilot phase of this initiative to also increase the use of Integrity Pacts.
18. The policies adopted by the Bank for big infrastructure projects should also apply to other projects as well. In particular, the anti-bribery certificate now called for by the Bank from bidders should become a requirement of country procurement systems if this important element of the Bank's systems is not to be lost.
19. Finally, we would also hope that this effort will also push forward the harmonization effort with other MDBs and donor agencies. Progress toward harmonized rules, procedures and documents is essential to alleviate the burden on LDCs of having to comply with diverse requirements of donors. A common standard ensures the highest level of integrity and required adherence to it can provide a safe harbour for government reformers. It is also an important means to alleviate the burden on bidders of securing information on a country by country basis. Consistency promotes cost-effective and competitive bidding in national as well as international competitive bidding. This is important not only for major multinationals but for small and medium size enterprises as well.

Transparency International remains ready to continue collaborating with the World Bank in developing strategies to increase transparency and accountability in public contracting as well as in other fields. Please do not hesitate to contact us should you require more detail on the present comments.

TI welcomes the initiative of the Bank to improve its Procurement policies and practices in light of fostering the development of local capacities and promoting transparency in public contracting. We believe however, that in considering the proposal to increase the use of country procurement systems in World Bank projects it is imperative to undertake further consultations among stakeholders. TI therefore recommends that the World Bank convenes a multi-stakeholder meeting to exchange views on a way forward. It would provide a timely forum for taking up broader concerns about the effectiveness of the Bank's efforts to reform procurement systems.

Best regards,



Chairman  
Transparency International