

Towards a healthy procurement environment

Recommendations submitted by TILAC to the Third Summit of the Americas & the Americas Business Forum on the Free Trade Agreement of the Americas (FTAA) in April 2001

Transparency International Latin American national chapters have identified in the procurement issue the single most important factor in curbing corruption, in the continent and elsewhere.

Accordingly, the region's chapters have launched a joint program to draw and advocate institutional and social participation guidelines concerning procurement to be advocated in all LA countries which need reform in their procurement laws and practices.

We are also aware of the fact that in many countries, despite the presence of good laws, there is also a propensity not to obey them. Thus, our efforts are also directed to strengthening civil society's ability to exert effective social control over the public administration and to work together with the private sector in order to adequately address its responsibility.

Almost all public expenditures excepting payroll and debt servicing are made through procurement – and, where they aren't, they should be. Bringing together public administrators and private providers in a relationship directly involving money, procurement furnish the ideal environment for the development of corrupt practices.

Those practices can take many forms, but all boil down to the same pattern: In the absence of regulations and effective mechanisms of social control, and in exchange for money or favours offered by dishonest firms, public administrators allow these firms to gain undeserved advantages over their competitors in order to win biddings. In other cases, dishonest public officials take advantage of their position to “sell” their power to decide. By-products are overpricing, substandard goods and services, unfinished projects, unnecessary works and many other waste-generating effects.

This is immediately harmful to public interest, but not only to it. An environment where procurement is not fair is also harmful to the private sector. Healthful competition among firms is replaced by a stratified system of cartelised groups arranged by size and specialties. Partitioning of markets and price-fixing become the rule. Firms become prisoners of a pecking order and forced to play a game in which big players hold all the trumps. In other words, corruption in procurement constitutes a crime against the market and the economic order.

Sectors subjected to such market distortions cannot evolve healthfully. Innovation and personnel training are stifled, because cost-saving efforts cannot compete with unfair advantages given to others. Concentration limits job creation. Thus, corruption in procurement causes profound and long-lasting harm to economic development.

The best way to control corruption in procurement is to frame the process as an equal information market regulation. This is because, contrary to a free market, public providers in principle operate under the influence of a very visible hand: the public administrator's. His function is to guarantee that all participants have equal opportunity, and, in so doing, providing for maximum system efficiency – which translates into cost-effectiveness and the best use of public resources.

However, this model of behaviour does not obtain wherever procurement laws are weak and practices are lax. In those cases, public institutions are, to different degrees, being “captured” by networks of people who interchange favours and

influence, and use governments to foster their interests, thereby in effect “buying decisions” that civil society cannot afford to pay, or is unable to track transparently – with consequent misallocation of resources for public benefit.

Procurement arrangements for the Latin American region have to be tailored to an environment where public institutions are weak and there are limited checks and balances. Incentive structures are such that sensible expectations not explicitly written down are usually left unfulfilled.

Procurement follows a set pattern: there is a decision to buy something, usually by government organisms; there is an announcement calling for bids and stating the contest’s rules; proposals by bidders are examined; a decision is reached, adjudicating the contract to the bidder who offered the best conditions; the contract is signed and the good or service is provided according to a set timetable; payments are made.

Combating corruption in procurement means, among other factors:

- Preserving the public interest, i.e., guaranteeing that public money is spent in the most efficient and transparent way. Resources should be used with due diligence and attention to considerations of economy and efficiency and without regard to political or other non-economic influences and considerations.
- Guaranteeing that all public purchases above a certain value are done by bidding, with a very limited set of exceptions (catastrophes etc.). When in such cases bidding is not the most economic and efficient method of procurement, other methods of procurement must be clearly specified ex ante, describing the circumstances under which their application would be more appropriate.
- Avoiding discretionary selection when purchasing goods and services whose prices fall below limits that require public procurement.
- Guaranteeing that procurement rules are uniform across all public organisms. Different rules for different organisms harms the equal information principle, erecting entry barriers and stimulating cartels.
- Making sure that the public has a saying in all big purchases: What is being purchased, why is being purchased and what are the procurement’s specifications are important decisions that can only benefit from public scrutiny.
- Guaranteeing that all procurement are widely announced and ample time is given to interested participants to prepare, so as to avoid favouring some firms over others.
- Making sure that the announcement exhaustively specifies the object to be purchased, in order to avoid arbitrary decisions later on, adjudicating contracts to firms that offered characteristics not previously specified. As the procurement process must not depart from the equal information principle, such uninvited peculiarities cannot be considered in the decision.
- Making sure that formal requirements to participate (that is, requirements not involving the procurement’s nature) do not depart from reasonable factors; these are capital requirements, compliance to national laws concerning taxes and other obligations, and not being blacklisted by reason of previous offences.

- Introducing electronic bidding of standard goods and services.
- Guaranteeing that the decision process is always explicitly stated in the announcement and is based exclusively on objectively measurable factors.
- Guaranteeing that refusals by winners to sign contracts are stiffly punished.
- Providing for open mechanisms for the administration and the public to follow up the procurement process and the contract execution, with internet-accessible interlinked databases permitting price comparisons and other mechanisms that guarantee accountability and the exercise of public control.
- Guaranteeing that payments are made according to strict chronological order, so as to avoid the need for firms to “buy” from dishonest officials the right to be paid.
- Guaranteeing that contract amendments are strictly limited and, when they happen, that they don’t affect the structural elements of the contract. Also, that they are publicly informed.
- Guaranteeing that non-performance is heavily punished.
- Providing for blacklisting of non-performers and corruptors. Firms should be declared ineligible to be awarded contracts during a defined period, if they don’t observe the country’s laws on fraud and corruption. Where such laws do not exist or are not sufficiently defined, procurement laws, regulations and such other mechanisms as may exist should define corrupt practices and fraudulent behaviours and provide concrete means for enforcement.
- Criminalising corrupt behaviour both from public administrators and corruptor firms.

Whereas procurement cannot be transparent in the absence of enforceable legal regulations, this condition is not sufficient. Civil society participation is also essential, as the best possible oversight always comes from the public. So, countries must provide for complete transparency in procurement, including all documents, decisions, and historical and comparative data. It is necessary to generate spaces and mechanisms that allow for social control over public expenditures. All decisions concerning procurement and contracts must be open to public scrutiny and officials must be accountable for their actions. Integrity pacts should be stimulated wherever deemed appropriate.

The public servant is the key figure in procurement, and he must be adequately trained not only regarding compliance to administrative rules but, also, in ethics. He who governs the procurement process and manages all the information pertaining to it must be a true defender of public interest.

The private sector also needs re-education and incentives. Firms reared in a business environment accustomed to corruption must learn how to compete in a freer market. It is our conviction that the best possible incentive to change comes from enhanced opportunities to participate in open biddings impervious to manipulation.

Businesspersons have a central responsibility in all matters involving procurement. Not to mince words, corruption happens because some individual firms are active corruptors. Therefore, a healthy environment for procurement involves not only changes in the public sphere and enhancement of civil society participation, but also

a shift in attitudes from the private sector itself. Providing for ethics in business is also the responsibility of the business community.

Latin American Transparency International chapters know that grafting those principles into existing procurement rules and practices demands a concerted effort of convincing public officials, legislators, private enterprises, professional associations, the law community, the press and significant segments of the public at large.

Also, multilateral agencies play an important role in the matter, and not always in the right direction. The experience in the region shows that these agencies' rules and practices are not uniformly followed across national frontiers and, moreover, they often clash perversely with local rules, sometimes making procurement involving their money more prone to corruption than other procurement. Governments should address this issue in a concerted way, because consequences are harmful to all societies.

Those who hold higher office are in a privileged position to give impulse to reform in all fields mentioned in the present statement. By the strength of their leadership, they can push forward needed changes that will show their merit in practical application.

The Steering Committee for the Latin American Regional Procurement Project
(Argentina, Brasil, Colombia and Ecuador)