

TRANSPARENCY IN PUBLIC PROCUREMENT

Worldwide, procurement spending averages between 13 per cent and 20 per cent of gross domestic product.¹ With such vast sums of money at stake, few government activities create greater temptations or offer more opportunities for corruption than public sector procurement. According to OECD estimates, corruption drains between 20 per cent and 25 per cent of national public procurement budgets.² The UN Office on Drugs and Crime states that “a procurement system that lacks transparency and competition is the ideal breeding ground for corrupt behaviour”.³

TRANSPARENCY THROUGHOUT THE PROCUREMENT CYCLE

Transparency provisions enable processes and decisions to be monitored and reviewed, helps ensure that decision-makers can be held accountable and also helps open public procurement to more competition. Transparency needs to pervade all steps in the procurement cycle, from the earliest decisions on needs assessments, to the development of procurement plans and budget allocations, to bid evaluations, to implementing the contracts (and any contract amendments) and auditing performance.

We recommend that the G20 Principles on Promoting Integrity in Public Procurement include the following commitments:

- 1. Governments should publish selection criteria and details of the method of award in a timely manner before the procurement process commences. Upon award, governments should publish a clear justification against the agreed criteria.**

Enhanced transparency is crucial before the bidding stage to enable decision-makers and stakeholders to make informed judgements about the cost, quality and socio-economic and environmental impact of the projects planned. To avoid manipulation or obfuscation of the decision-making process, governments must publish the selection criteria and the details of the method of award in full and in a timely manner before the procurement process begins, as per UN Convention against Corruption Article 9. If an open, competitive tendering process is not used, governments should explain their rationale publicly. A fair and open bidding process also will help smaller business bid for and win government contracts, boosting competition in procurement and encouraging economic growth.

- 2. Governments should collect and disclose the identity and beneficial ownership of all bidders.**

Competitive bids can lose out on public procurement contracts because corrupt officials award themselves, family, friends or associates the contract. They can do this by disguising their identity or that of their family members or associates behind a front or shell company or other entity that has no physical presence, employees or commercial activity in the jurisdiction in which it is created. In addition, collusive bidders can bid with shell companies to give an appearance of competition. It is easier to shed light on corruption, cronyism and collusion (including between bidders) if the people who ultimately own, control or benefit from the bidding companies are publicly disclosed. Governments must require this information from all bidders, and publish this information at the time of the award.

- 3. Governments should disclose awarded contracts, including any annexes, schedules or reference documents. Governments should publish information on the execution, performance,**

¹ OECD, “Fighting Corruption in the Public Sector”: www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublicprocurement.htm, 2013

² OECD, “Implementing the OECD Principles for Integrity in Public Procurement”: www.oecd-ilibrary.org/governance/implementing-the-oecd-principles-for-integrity-in-public-procurement/why-clean-public-procurement-matters_9789264201385-3-en;jsessionid=95lfbj6h46u4a.x-oecd-live-01, 2013

³ UNODC, “Guidebook on anti-corruption in public procurement and the management of public finances”, https://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf, 2013

and completion of the contract in a timely and routine manner. Any contract alterations or sanctions, including debarment from future tenders must be disclosed.

Governments need to be accountable for their decisions on how to spend public resources. Public availability of the contracts themselves allows for processes to monitor and evaluate delivery of goods and services offered in order to identify corruption, mismanagement, fraud, inefficiencies or contract violations. Availability of existing contracts also helps inform future procurement processes saving governments money and time and also lowers the barriers to entry for smaller businesses.

The process for terminating a contract should be clear and made public in advance of the start of the procurement process. Sanctions should be effective, proportionate and dissuasive, and include debarment from tendering for a particular period of time. At a minimum, governments should respect the debarment lists prepared by appropriate international financial institutions. Information about sanctions that have been imposed should be publicly available.

4. Governments should ensure independent monitoring of all stages of the procurement process and a robust, independent and effective appeals processes should be available and accessible for aggrieved bidders.

Independent monitors play a key role in overseeing the procurement processes from the needs assessment to the evaluation. This can include witnessing meetings, presentations of bids and awards, providing expertise and acting as an independent voice to raise issues and difficult questions.

Corrupt or unfair practices are often exposed by businesses who feel they have lost out. Appeals processes should not be overly complex, time-consuming or expensive and should be capable of suspending the procurement until a judgement is made.

5. Governments should urgently implement the Los Cabos High Level Principles on Asset Disclosure by Public Officials. In particular, governments must require disclosure of assets by officials involved in procurement processes.

In addition to procurement-specific laws and regulations, other legal instruments are essential for ensuring transparency and accountability. Laws prohibiting conflicts of interest and mandating asset disclosure are essential. Officials involved in procurement should disclose the amount and source of any non-government income, the amount and source of income of close family members and any outside activities in which an official has a leadership role. Governments should implement and provide training on a code of conduct that commits the contracting authority and its employees to a strict anti-corruption policy which includes provisions on asset disclosure.

6. Information on public procurement should be made available for free in widely used open and structured formats that are non-proprietary, searchable, sortable, platform-independent, and machine-readable.

Project information should be made progressively available as open data in widely used formats that are non-proprietary, searchable, sortable, platform-independent and machine-readable, such as the Open Contracting Data Standard.⁴ This is to ensure that the data is interoperable, easy for stakeholders to access, assess and analyse, and thus improve its effectiveness in identifying suspicious activity at different times in the process. Open data will also help businesses identify up and coming contracting opportunities. Where possible, this should be through an open web portal that is centralised at each level of government. If a web portal is not available or little used, the information should be widely disseminated through alternative media.

Also see: Transparency International's "Curbing Corruption in Public Procurement, A Practical Guide"⁵ and the Open Contracting Partnership's Open Contracting Global Principles.⁶

⁴ Open Contracting Partnership, Open Data Standard: <http://standard.open-contracting.org/>

⁵ Transparency International, "Curbing corruption in public procurement: A practical guide", http://www.transparency.org/whatwedo/pub/curbing_corruption_in_public_procurement_a_practical_guide, 2014

⁶ Open Contracting Partnership's Open Contracting Global Principles http://www.open-contracting.org/global_principles