

Expert meeting on preventing corruption in the Tsunami relief efforts

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# **Facilitating Effective and Transparent Procurement and Implementation: Needs Assessment, Contracting and Execution**

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## Introduction

Following a major disaster (such as a tsunami, earthquake, volcanic eruption or war), the affected people and their governments, on the one hand, and aid donors, on the other, move through several phases of activity. For the purposes of this paper, a distinction is made between the **relief** phase (which covers the immediate aftermath of the disaster, when the priority is to save people's lives and restore basic services) and the medium- to long-term **reconstruction** phase (which usually consists of several sub-phases, from restoring livelihoods and communities to long-term new development).

Different concerns and priorities exist for these relief and reconstruction phases, and thus different rules should apply. The entire process should, however, be people-centred and participative.

One overriding objective for all post-disaster activities should be to minimise damage from corruption. The procurement of goods and services is highly vulnerable to corruption even under normal circumstances. These risks increase significantly in post-disaster situations for a variety of reasons as elaborated further below. Major efforts are necessary to ensure that the goods and funds made available internationally (including by countless private donors) actually reach the intended beneficiaries and are not siphoned-off via criminal activities.

Full transparency of the entire process (including full financial transparency of all inflows and outflows) is an important precondition for keeping corruption at bay. As has been shown in many past disaster situations, opaque processes are quickly abused by criminal elements. Internet-based transparency can be complete, and is inexpensive and easy to provide. Transparent and accountable management of the financial flows may require that a central trust fund be established which is used as a conduit at least for all external assistance funds. It might make sense to also channel all domestic budget funds spent on post-disaster activities through such a trust fund. Alternatively, a government may decide to channel all domestic and external assistance funds through the national budget. In this case, budget rules must be adapted to allow for the rapid decision-making required in post-disaster situations. In either case, the affected country's government should arrange for uniform tracking and monitoring procedures, irrespective of the source of funds.

An important companion to transparency must be full accountability. This refers to the ability of governments and donors to fully account to their own institutions, to any external control bodies and to the ultimate beneficiaries of aid, for the proper utilisation of resources, the quality of the end product and its effective delivery. An important element of accountability is that any shortcomings are appropriately sanctioned. The chosen governance structures to manage relief and reconstruction efforts, including financial flows, must give voice to the governments of affected countries, the affected communities and ultimate beneficiaries, as well as to the donors whose resources are at stake.

As in any other situation, effective and transparent project implementation and related procurement in post-disaster situations requires a reliable assessment of actual needs before contracting for the supply of goods, construction and other services can take place, followed by the execution or implementation of the

contracts. One important aspect of post-disaster situations is that, usually in parallel to structured government activities, massive relief and early reconstruction efforts are already taking place in the affected communities, often with direct external help from domestic and international non-governmental organisations (NGOs). This calls for intensive and complex efforts at effective coordination. All such activities are vulnerable to corruption, and it is very helpful to identify the steps in the process where corruption is most likely to occur, so as to be able to guard against it (i.e. via risk mapping).

## **Risk Mapping**

In any project involving a multitude of donors and beneficiaries, there is the regular risk of routine corrupt action by:

- government officials;
- representatives of the affected people (the ultimate beneficiaries);
- construction and other service contractors (including consultants providing engineering, management or any other services), suppliers and their agents or intermediaries;
- NGOs acting as contractors/suppliers;
- representatives of donors and other funders (including private charitable organisations); and
- civil society actors such as external independent observers or monitors (NGOs, commercial monitors).

Providing assistance in a post-disaster situation carries additional corruption risks caused by one or several of the following factors:

- the extreme urgency of the relief phase (the overriding priority is to save lives);
- the logistical and physical difficulty of getting assistance to the people in need;
- the massive inflow of funds (from a multitude of donors) and the difficulty or even inability of the recipient government to manage them properly;
- the absence or disruption of administrative infrastructure at the local, regional and/or federal levels;
- the insistence of some donors - in certain circumstances fully understandable and justified - to manage the distribution and delivery of assistance themselves (lack of coordination and absence of local controls);
- the absence or disruption of normal (local and regional) markets for the purchase of needed goods and services;
- the existence of special rules or incentives of donors/funders for post-disaster assistance; and
- the inexperience of donors and especially private charities with local conditions.

Providing post-disaster assistance in an area where civil conflict has existed, possibly for an extended period of time, carries additional special corruption and other risks due to:

- the logistical problems of communication (disruption of the communication and transport infrastructure and distrust among local inhabitants);
- possible local resistance to involvement by central government personnel;

- the physical danger when moving around (i.e. the presence of armed people or landmines); and
- the absence of a culture of information-sharing, accountability and mutual trust.

In all such situations, the temptation to abuse a position of power or influence to gain an unwarranted personal benefit is ever-present. It is important to recognise that, even if a bribe is paid by a well-meaning assistance provider to carry out an assistance activity (e.g. bribing an official to allow safe-passage of an aid convoy), it may still involve a “personal” gain.

## **Needs Assessment**

In all circumstances, the decision to procure goods or services must be preceded by an objective assessment of actual needs, so as to ensure the optimal use of resources.

Procurement for the relief phase is obviously governed by the urgency of getting basic supplies to the people in need and maximum economic efficiency may be difficult to achieve at this stage. Here, the urgent task is to identify and quantify the goods and services needed immediately (involving government administrators as well as the affected people through their representatives and possibly local NGOs), as well as the logistical requirements to assure rapid distribution.

Post-disaster restoration and reconstruction activities should, however, be based on a careful, comprehensive and transparent needs assessment, carried out by the affected country’s administration with the full involvement of the ultimate beneficiaries and their elected representatives. To start with, one should not assume that everything should simply be replaced as it was prior to the disaster. Damage may have occurred to housing or infrastructure because they were located in especially endangered locations (too close to the coastline, on a flood plain, or in the lava flow of a volcano etc.). It makes good sense to avoid repetition of such damage by rebuilding in a safer location and keeping endangered areas clear of construction. Of course, this may entail difficult decisions about how to deal with “acquired rights” (e.g. shanty towns along the coastline, or rich home owners being prevented from rebuilding in a “choice” but endangered location). Many such decisions are particularly prone to corruption.

First of all, the government of the affected country should determine the administrative responsibility for decision making during the needs assessment phase, identifying the appropriate federal, regional or local level authorities. It should assure adequate personnel and the logistical and financial strength of responsible offices. A central coordinating office is likely to be required for coordination among national offices and international donors/funders including charitable organisations. A central trust fund may also be desirable especially for channelling international assistance resources.

Those responsible should then carry out a systematic and comprehensive damage assessment and determine the needs for goods and services required in the disaster area, for removal of debris, for repair or reconstruction of pre-disaster housing and infrastructure, and for totally new construction. Part of the needs assessment may be

the determination that certain houses, villages or infrastructure should be relocated to safer zones. The administration also needs to determine the quantity and quality of construction, as well as the cost of goods, construction and other services, including the assistance and services needed to manage the implementation of the reconstruction phase. Very importantly, the administration also needs to assure that building codes are practical and that they are enforced (especially in earthquake zones). In the past, and particularly in relation to earthquakes, it has often emerged that many lives could have been saved if existing building codes had been properly enforced.

It is critical to the effective implementation of post-disaster projects that the affected people are fully integrated into the assessment and decision-making process, especially when it comes to relocating housing units or whole villages. It is also part of the government's task to match the actual, identified needs against assistance offers, and to coordinate and negotiate with donors/funders to ensure an optimal match.

## **Contracting the Supply of Goods, Construction and other Services**

During the relief phase, affected country governments must:

- assess and sort all the in-kind assistance delivered and offered (to the extent it has not yet been delivered directly to the beneficiaries);
- match the available assistance with the assessed need and deliver goods and services to the appropriate people;
- negotiate with donors/funders for additional assistance towards meeting the remaining needs;
- use the available and committed financial assistance and its own resources (if any) to acquire and deliver the necessary goods and services to meet remaining needs; and
- purchase goods and distribution services on a competitive basis: for most goods and services in this phase, full international competitive bidding (normally the most corruption-proof method) would take too much time, but seeking three or four competitive offers before awarding a contract (unless market prices are fully and transparently competitive), and making the process transparent, should be a useful minimum safeguard against manipulated deals.

During the reconstruction phase, affected country governments should:

- publish the results of the needs assessment;
- assess and sort the in-kind assistance delivered and offered, match it with the needs assessment, and negotiate with donors for additional assistance meeting all established needs (or as much of it as is possible);
- in case of financial assistance, urge donors/funders to provide only untied aid (to avoid the potentially higher cost of goods and services procured in a non-competitive situation, and the potentially higher transport costs);
- use financial assistance and, to the extent necessary, its own resources to contract the remainder of the identified needs; and
- assure the clear definition of goods and services, and the full design of the civil works to be contracted.

Considering the multitude of procurement rules applied by various donors/funders, and the high risk that complex and perhaps unclear or conflicting procurement procedures will invite corruption and manipulation, it is highly desirable that affected country governments seek to negotiate uniform procurement standards with all its donors. The World Bank or ADB could take the lead in this regard, starting with their own procurement guidelines, suitably adapted to a post-disaster situation.

Irrespective of whose procurement guidelines are used to build a common approach, the affected country governments should procure and contract the needed goods and services on a fully competitive basis (i.e. via international competitive bidding or ICB), except for smaller contracts (up to, say, the equivalent of US\$ 100,000) where three to five competitive offers should be sought on a direct basis, or where local competitive bidding may be suitable on the grounds that local providers are, or can become, competitive. Whenever ICB is used, the response times should be shortened by using internet-based procedures.

Especially when selection processes other than ICB are utilised, the government should assure transparency of the invitation to tender, provide a clear and unequivocal list of goods and services to be procured, state the expected quality assurance and the available legal recourse. In addition, the government should make the entire contracting process fully transparent (including the process steps and the reasons for selecting the “winner”).

In order to safeguard against corruption, the government should install effective internal and external controls of the contracting process, and should, in particular, arrange for external independent monitoring of the contracting phase (by civil society representatives, one or several NGOs, or through a commercial consultant).

Especially for large contracts, the government would be well advised to apply the TI Integrity Pact concept under which the principal and all bidders re-commit to a no-bribery policy, including external independent monitoring and sanctions in case of violations. In all other cases, the government should require a simple integrity pledge from all bidders and their subcontractors.

Based on global experience, the use of agents, representatives and other middlemen by contractors or suppliers in the contracting process should alert the government to the increased possibility that manipulation or corruption are intended, and should lead to enhanced caution and transparency.

Finally, the government must keep full records of all activities to allow proper monitoring and evaluation.

Like the government, donors/funders, NGOs (whether they act as donors or service providers) and affected people (the ultimate beneficiaries) should make all appropriate efforts to minimise corruption during the contracting process. Donors/funders can do this particularly by assuring that their standard operational and financial control functions operate effectively, and that the procurement process is made as simple and predictable as possible, through the use of uniform procurement rules. They should cooperate fully and constructively with the central national management structure in the affected country. The donors/funders should

also provide adequate channels for whistle-blowers (wishing to offer information about corrupt behaviour of any of the actors).

NGOs must, in particular, cooperate fully with government and assure that they have adequate operational and financial control functions in place, that they introduce full transparency, and that they encourage whistle-blowing.

The affected people also have a major responsibility to help avoid or minimise corruption in a post-disaster environment. Acting through their elected representatives (if any) and/or civil society organisations, they should do their part in assuring that needs assessments and contracting processes are as transparent and free of corruption as is feasible. Once they have been integrated into these processes, they should act constructively and responsibly.

## **Implementation of Contracts**

Next to the contracting phase, the implementation or contract execution phase is highly vulnerable to corruption. The contract winner may indeed have submitted the most economical bid, but may, for example, only have been able to do so via collusion with the principal's supervisory engineer who agreed to ignore sub-specification work (e.g. lower quality cement or lesser quantities of concrete or steel) or allow unjustified "change" or "variation orders" to reduce the actual costs or increase prices.

First of all, affected country governments should apply the standard general provisions against corruption, such as the "four eyes principle", frequent rotation of staff in sensitive positions, ensuring adequate internal and external controls, and assigning major decisions not to individuals, but to a committee. In addition, the government should closely monitor full compliance with the signed contract and, in particular, carefully assess the justification for each "change" or "variation order".

Again, the government should maintain full transparency during the execution phase and should involve civil society representatives in the control structures and processes.

Indeed, civil society has a particularly important function at this stage: It should create awareness about the process and its risks among all stakeholders, it should monitor implementation, track all funds and provide feedback to stakeholders on progress of the implementation and any problems encountered.

During both the relief and reconstruction phases, the government should carefully monitor (internally and through external independent observers) the scrupulous implementation of all contracts as signed (with regard to cost, quality, timeliness of delivery), and should publicise (e.g. through the internet) all reports of the monitors.

During the reconstruction phase in particular, the government should be especially careful to monitor all "change" (or "variation") orders for signs of manipulation. Where such orders cumulatively exceed a threshold of, say, 15% of the original contract price, high level review and approval of the order should be required. In addition, the government must assure the post-completion evaluation of contract performance and

a comparison of the originally estimated price against actual final cost. The government should make sure that the external independent monitor has the power to go public if violations of the process identified by him/her or others are not corrected by the principal in a timely manner. Again, full records of all activities are to be kept, to allow effective post-evaluation.

## **Recommendations for Various Stakeholder Groups**

In order to minimise the risk of corruption in post-disaster relief and reconstruction processes, the several stakeholder groups should do the following:

**Multilateral/Bilateral Donors and Funders (including funding charitable organisations)** should form (in each affected country) a local government/donor coordination group (LCG) which should:

- elect from its members a “manager” who would set up a secretariat (possibly within a government department or in the local office of a multilateral or bilateral donor), with costs to be shared among the donors;
- review and “endorse” the needs established by the government;
- work out and publish a common “needs list” for a recipient country against which all donors etc. will provide financial or in-kind assistance;
- verify and confirm all offers of assistance;
- coordinate carefully with bilateral “assistance adoption schemes” (where civic organisations or administrative sub-units in donor countries have “adopted” a particular group of beneficiaries and have established a direct support scheme);
- agree on who does what (identified by region and/or content);
- agree as far as possible on uniform procurement rules for all assistance;
- allow generous flexibility for the employment of local contractors, suppliers and other service providers;
- maintain clear books and records on all assistance pledged, delivered and utilised (including all assistance pledged by private donors);
- maintain full transparency of such books and records, and on the allocation of responsibilities among donors and among government departments;
- pledge assistance against the needs identified and agreed in the LCG;
- maximise “budget support” assistance as the form of aid leaving the recipient government the greatest flexibility in its use;
- avoid tied aid;
- require a standard “integrity pledge” from each contractor/supplier/other service provider bidding for contracts supported by donor funds; and
- assure full control of fund flows and other activities via effective internal and external controls.

The **Affected Country Government** should:

- cooperate fully with the donors/funders via the Local Coordination Group (LCG);
- involve local beneficiary communities and civil society fully in needs assessments and reconstruction decisions;
- where appropriate, hold public hearings to obtain stakeholder input into needs assessments and reconstruction decision-making;

- maintain full transparency of all information related to needs assessments, assistance pledged, delivered and utilised, procurement rules and procedures, contracts awarded and progress in execution (the latter through regular public reports);
- denounce corrupt behaviour, point to rules and sanctions, and apply sanctions strictly, swiftly and transparently;
- require an integrity pledge from its officials involved in post-disaster administration;
- require an integrity pledge from all bidders;
- apply the TI Integrity Pact for larger contracts;
- appoint a senior official in charge of fighting corruption:
  - who should be attached to a very high-level government office or even outside government (such as the auditor general);
  - who would monitor the entire reconstruction process with a view to minimising corruption;
  - who would act as recipient of (confidential and anonymous) information about corruption in needs assessments, procurement and implementation; and
  - who would monitor the application of sanctions by government against contractors, suppliers and other service providers found guilty of corruption;
- provide effective mechanisms for encouraging whistle-blowers to deliver their knowledge about corrupt activity to the appropriate government authorities; and
- provide effective whistleblower protection.

**Civil Society Organisations (national and international)** active in post-disaster relief or reconstruction activities either as donors or as direct service providers or supporters in the field should:

- commit to the highest degree of transparency in their activities;
- submit a comprehensive integrity pledge;
- coordinate their activities with the government (at all levels) and other NGOs, commit to playing their part in assuring maximum efficiency of the multi-actor relief and reconstruction process, and submit to the agreed rules;
- accept and implement full accountability for their activities;
- allow and encourage whistle-blowing;
- assist the affected government in facilitating maximum stakeholder participation and information exchange, including any public hearings;
- provide full transparency as to sources of their funding;
- report any suspicion of corruption among their own or other organizations to the authorities;
- monitor the relief and reconstruction process and publish results (monitoring to be coordinated and subdivided);
- hold government to task of providing full transparency of relief and reconstruction activities;
- make sure all groups of beneficiaries are adequately informed and involved;
- bring ultimate beneficiaries into the public decision making process on needs assessment, procurement and implementation; and
- involve beneficiaries in priority setting and decision making (especially regarding location and type of reconstruction or resettlement).

**Businesses operating in the disaster area (contractors, suppliers, consultants etc) should:**

- submit an integrity pledge to government before accepting any government/donor contracts for relief and/or reconstruction;
- behave with high ethical standards, and refuse to participate in corrupt deals and activities;
- report to the appropriate authorities any suspicion of corruption among any of the other actors; and
- agree to enter into, and comply with, the TI Integrity Pact where required by government.

**Media (domestic and international) should:**

- monitor the relief and reconstruction process, and facilitate the flow of information to the public at large (both in recipient and donor countries);
- report to the appropriate authorities any suspicion of corruption;
- report to the public any confirmed incidents of corruption, and;
- hold government(s), donors and civil society accountable.

**Mwiehen/31.3.05**