

PUBLIC PROCUREMENT TRANSPARENCY AND OPEN CONTRACTING

The Problem – Corruption risks in Public Procurement

Public procurement refers to the purchase by governments and state-owned enterprises of goods, services and works. Governments globally spend trillions of dollars on public contracts with private companies each year – approximately US\$9.5 trillion.¹ Along with the vast sums of money spent on public contracts, public procurement also involves government discretion and levels of obscurity. According to the Organisation for Economic Co-Operation and Development (OECD), this combination makes public procurement governments' greatest corruption risk.² Money lost through corruption amounts to between 20-25 per cent of the global procurement budget, which is around US\$2 trillion annually.

Aside from the financial loss, corruption in public procurement can be particularly dangerous as it compromises the quality of the products and services that the contract promises to deliver. For example, in 2016 a company selling sanitisers to over 150 Romanian hospitals was found to have watered down the substances by up to 90 per cent, rendering them medically useless.³ Public contracts provide a range of essential goods and services such as healthcare services, the construction of new houses and bridges and sewage management- the sub-standard delivery of any of these could have fatal consequences.

Corruption in public procurement could take the following forms:

- Kickbacks and bribes to government officials
- Tender fixing
- Collusive bidding
- False accounting
- Duplicate invoicing
- Poor quality products and services⁴

The Solution - Public Procurement Transparency

Public procurement transparency means that the public and stakeholders can keep governments, bidders and contractors accountable for their actions. The increased disclosure of procurement information aims to increase civic participation, increase competition in procurement systems and overall, reduce corruption. Public procurement transparency and proper public procurement management can be implemented in many ways, a selection are outlined below.

Open Contracting in Public Procurement

Open contracting is the practice of publishing and using accessible information throughout the procurement cycle to ensure that the vast sums of public money are spent honestly, fairly, and effectively.

¹ <http://www.worldbank.org/en/news/press-release/2015/11/18/many-developing-countries-can-improve-public-services-through-fair-and-open-procurement-practices-says-wbg-report>

² <http://www.oecd.org/gov/public-procurement/>

³ <https://www.theguardian.com/world/2016/may/26/romania-great-antiseptic-dilution-scam-spreads-fury-and-infection>

⁴ <https://www.oecd.org/governance/procurement/toolbox/search/corruption-risks-associated-different-phases-procurement-cycle.pdf>

The Open Contracting approach uses government transparency to foster participation between public bodies, business and civil society with the collaborative aim to boost the integrity, fairness and efficiency of public contracting.

- Governments can use open contracting to obtain relevant information on contract performance; the use of open contracting can also encourage value-based procurement decisions, and mitigates the risk of awards being reversed, or projects being terminated, due to faulty processes.
- For businesses, open contracting data can unlock a better understanding of opportunities in markets, which in turn may support small and medium enterprises in deciding whether or not to compete for public contracts.
- For civil society, open contracting can support more targeted, informed engagement and tracking of project delivery.

In short, open contracting can deliver better value for money and offers a range of benefits to different stakeholders.⁵

Open Contracting Data Standard

The Open Contracting Data Standard (OCDS) is a best practice guide for governments who want to publish public procurement data online. The OCDS is designed to be usable by any government, globally, but it also allows local extensions that supports individual country contexts. It requires publishers to release data under an open license- has to be fully downloadable and reusable. It also provides a model for proactive disclosure, so public bodies can start by publishing the data that they easily have access to and then they can improve disclosure step-by-step. The full Open Contracting Data Standard approach can be found [here](#). At the Anti-Corruption Summit, in total, 15 countries committed to implementing the OCDS and four more agreed to explore it further.⁶

Open Contracting for Health

Corruption and procurement related issues in global health has led to the loss of 10% to 25% of global spending on public medicine procurement⁷ and meant that 20-40% of health financing is doing “little to improve the health of everyday people”.⁸

However, healthcare providers, community organisations and the private sector have, through open contracting, the ability to drive significant changes to the structure of public health financing, facilitating its stabilisation, improving its efficiency and ultimately saving lives. Open contracting generates a greater understanding of what is working and what is not working in the health sector. Open contracting can:

- Verify whether results are being delivered on the ground in health facilities
- Enable CSOs to collect data in areas where government does not have the resources to do so
- Uncover patterns of ineffective procurement processes
- Map trends and therefore develop strategies for long term and systematic improvements
- Facilitate the monitoring of contracts, meaning a reduced chance of unfulfilled promises

Corrupt Bidders and Debarment Databases.

Debarment and debarment databases are a tool to prevent corrupt bidders from gaining public contracts. If a company is ‘debarred’, this means that, based on pre-established grounds, a company

⁵ https://www.open-contracting.org/wp-content/uploads/2016/01/OCP2015_Brief-OpenContracting-OGP.pdf

⁶ Afghanistan, Argentina, Bulgaria, Canada, Colombia, France, Georgia, Ghana, Italy, Malta, Mexico, Nigeria, Romania, Tunisia, Ukraine, United Kingdom, United States. Canada and Ukraine did not explicitly mention the OCDS in their country statements, but both are already adopters of the standard and publishing open data on some contracts. Australia, Germany, Norway and Switzerland committed to exploring it further.

⁷ http://apps.who.int/iris/bitstream/handle/10665/44371/9789241564021_eng.pdf;jsessionid=D48E26B7711A55371662377B63F399DC?sequence=1

⁸ http://www.who.int/whr/2010/10_summary_en.pdf

is prevented from bidding and thus winning public contracts for a specified period. A company is often debarred because there has been a court prosecution or strong evidence that the company has conducted unethical or unlawful behaviour.

Debarment from future public contracts can be an effective deterrent against corruption as it can mean a damaged reputation and future losses from foregone contracts with government. Research on what motivates companies to decide to tackle corruption shows that the “risk of losing business opportunities such as through debarment from public contracts ranks equally to individual executives facing imprisonment”.⁹

However, information about debarred bidders is often not communicated across countries- companies and individuals known to be involved with corruption all too easily slip through the global net unnoticed. A debarment database is a central database of regulatory and enforcement actions that have been taken against companies, including whether or not they have been excluded by any authorities for wrongdoing. Debarment databases can be an effective tool for public bodies and foreign governments to have access to information about corrupt bidders and thus assess the risk that a bidder might engage in corruption.

⁹ <https://www.cw-uk.org/single-post/2017/05/12/An-exercise-in-underachievement-the-UK%E2%80%99s-implementation-of-the-2016-UK-Anti-Corruption-Summit-commitment-on-excluding-corrupt-bidders-from-procurement>; https://www.governance-platform.org/wp-content/uploads/2016/11/HVSG_ACIS_Survey_20140211.pdf

COMMITMENTS ON PUBLIC PROCUREMENT AT ANTI-CORRUPTION SUMMIT

Overview	Country	Commitment	Status
Open Contracting Data Standard	Afghanistan	Working towards phased implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority	Ongoing
	Ghana	Ghana will work towards making government public procurement 'open by default' – beginning with Open Contracting Data Standards for high value contracts and contracts in the oil, gas and mining sector	Overdue
	Mexico	We will work towards the implementation of the Open Contracting Data Standard on public procurement starting with major infrastructure projects as an early priority, including the new Mexico City International Airport, in accordance to Mexican regulations.	Complete
	Nigeria	We will work towards full implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority. We will apply the Open Contracting Data Standard to the following major projects – (i) Development of Refineries in the oil Sector; (ii) Building of Health Centres and Improvement of Health Services; (iii) Building of Roads and other Infrastructures; (iv) Building of Schools and Improving Transparency in the Management of Education Funds and (v) Investment in the Power Sector.	Ongoing
	UK	The UK Crown Commercial Service will implement the Open Contracting Data Standard by October 2016. The UK is trialling the principles of this Standard in High Speed Two (HS2). The UK will join the new Contracting 5 group to promote open contracting globally.	Complete
Corrupt Bidders	Afghanistan	Exploring ways of sharing information on corrupt bidders across borders	Ongoing
	Jordan	Jordan commit to exploring ways of sharing information on corrupt bidders across borders	Not Included
	UK	The UK will introduce a conviction check process to prevent corrupt bidders with relevant convictions from winning public contracts, and is committed to exploring ways of sharing such information across borders.	Overdue
Debarment (databases)	Afghanistan	Establishing accessible central databases of companies with final convictions	Ongoing

Debarment (databases)	Kenya	Kenya commits to establishing accessible central databases of companies and individuals convicted of bribery and corrupt practices and to exploring ways of sharing information on corrupt bidders across borders.	Inactive
	Mexico	We commit to establishing accessible databases of companies with final convictions.	Underway
OC4H	Mexico	Recognizing the financial, economic and developmental importance of health and pharmaceutical procurement, we commit to explore the implementation open contracting in this sector, according to our national legislation, and with the support from international partners in implementing this commitment.	Underway
	Nigeria	We will apply the Open Contracting Data Standard to the following major projects – (ii) Building of Health Centres and Improvement of Health Services;	Inactive
Open Contracting	Mexico	As a founding member of the Contracting 5 (C5), we support the implementation of Open Contracting as an effective monitoring tool to promote accountability and increase transparency worldwide by releasing structured, interoperable and reusable data around procurement's whole lifecycle, including planning, tendering, award, implementation and evaluation stages.	Ongoing
	Mexico	We will propose reforms to the federal regulatory framework related to public procurement in responsibility of the executive in order to promote the principles of Open Contracting to include the planning and execution stages.	Underway
Transparency and Integrity	Mexico	We will include the Principles for Integrity in Public Procurement into our national standard procedure	Complete