

Briefing note Public Procurement and Budget Transparency

UN Convention against Corruption (UNCAC)

Article 9 (1.). Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Governments spend approximately one third of their budgets on public procurement, the overall procurement spending exceeds USD 13 trillion per year, but key information on 97%

of this spending is not made public.¹ Public procurement accounts for 12% of GDP in OECD countries.² At the same time, public procurement is a central corruption risk in government: 57% of all prosecuted foreign bribery cases prosecuted under the OECD Anti-Bribery Convention were found to be related to bribes being paid to obtain government contracts.³

The World Bank estimates that transparent digital procurement systems can generate between 10 and 20% savings of the whole procurement value.⁴

Civil society groups in many countries have observed that countries fail to promote and ensure the transparency of public contracts required by the UNCAC (Article 9). In responding to the COVID-19 crisis, governments have often used emergency procurement procedures without ensuring an adequate level of oversight and transparency, resulting in high risks for funds being misused or stolen through fraud and corruption.⁵

The 2019 Open Budget Survey found modest improvements in budget transparency globally but also found that three-quarters of the 117 governments surveyed have insufficient levels of budget transparency, often compounded by gaps in independent oversight.⁶

Achievements and good practices

- The so-called Open Contracting Data Standard⁷ (OCDS), developed by the Open Contracting Partnership (OCP), is the only international open data standard for public contracting. It covers the entire project cycle, from planning, procurement to implementation of public contracts. The OCDS has been endorsed by several international organisations, including the OECD, the G20 through its Anti-Corruption Open Data Principles⁸ and the G7 through the Biarritz Declaration on Transparency in Public Procurement and the Common Fight Against Corruption.⁹ It is already being implemented by more than 30 governments globally.

¹ Open Contracting Partnership, Spend Network (2020): How governments spend: Opening up the value of global public procurement, <https://www.open-contracting.org/what-is-open-contracting/global-procurement-spend/>.

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

³ OECD (2014): OECD Foreign Bribery Report, <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>.

⁴ World Bank (2016): Benchmarking Public Procurement 2017, p. 28, <http://documents1.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>.

⁵ See: Open Contracting Partnership, Spend Network (2020).

⁶ Open Budget Survey (2019), <https://www.internationalbudget.org/open-budget-survey/>.

⁷ Open Contracting Partnership: The Open Contracting Data Standard, <https://www.open-contracting.org/data-standard/>.

⁸ G20 Turkey (2015): Introductory Note to the G20 Anti-Corruption Open Data Principles, <http://www.g20.utoronto.ca/2015/G20-Anti-Corruption-Open-Data-Principles.pdf>.

⁹ G7 Biarritz (2019): Transparency in Public Procurement and the Common Fight Against Corruption, <https://www.elysee.fr/admin/upload/default/0001/05/4cc3ad52f529ccc54483768425e61bef8ed4ac9c.pdf>.

Three interesting country examples that have established a high level of transparency in public procurement are Ukraine, Georgia and Slovakia:

- In Ukraine, the online Prozorro public procurement portal, which resulted from consultations with government, business and civil society, allows for tracking of and therefore increased transparency in public procurement processes.¹⁰ This e-procurement system has already saved the government significant sums of money and has largely increased competition.¹¹
- For a decade, Georgia has been publishing all procurement contracts, supporting documents and receipts of state bodies online in an effort coined as radical transparency.¹² According to the World Bank, Georgia saved more than USD 400 million within five years due to the introduction of the transparent digital procurement system.¹³
- Slovakia was the first country to require that State contracts – including on public procurement, but also on grants, licenses, leases, permits, and privatisations – be published in full text online in order for these contracts to enter into force, ensuring a high level of compliance with transparency provisions.¹⁴ Within four years of the mandatory contract publication being introduced, the average number of companies bidding on a government contract more than doubled, and the share of tenders without competitive procedures dropped from 21% to 4%.¹⁵ Several other countries have since replicated the Slovak approach.

Moving forward

- Building upon the UNCAC, which requires the development of public procurement systems that are transparent, competitive and objective, Member States should commit to implementing (or maintaining) open contracting approaches and ensure full public access to information and to all documents and agreements throughout the

¹⁰ Prozorro. Public Procurement, <https://prozorro.gov.ua/en>.

¹¹ See: Vasyl Zadovnyy (2020): How open contracting approaches help Ukraine to tackle COVID-19, <https://www.open-contracting.org/2020/04/16/how-open-contracting-approaches-help-ukraine-to-tackle-covid-19/>.

¹² Mathias Huter, Giorgi Chanturia (2014): How Georgia is handling procurement transparency, https://www.open-contracting.org/2014/02/03/how_georgia_is_handling_procurement_transparency/; Georgia's State Procurement Agency's Procurement Portal, <https://tenders.procurement.gov.ge/login.php?lang=en>.

¹³ World Bank (2016): Benchmarking Public Procurement 2017, p. 28, <http://documents1.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>.

¹⁴ See: Summary of the UNCAC Coalition side event with the Ministry of Justice of Slovakia at the 8th UNCAC Conference of States Parties, <https://uncaccoalition.org/cosp8-special-event-making-transparency-work-technology-driven-approaches-to-facilitate-public-access-to-information/>.

¹⁵ TI Slovakia (2015): Not in Force Until Published Online – What the Radical Transparency Regime of Public Contracted Achieved in Slovakia, <https://www.transparency.sk/wp-content/uploads/2015/05/Open-Contracts.pdf>.

lifetime of a contract, from planning to implementation.¹⁶ Member States should publish all state contracts online, in line with best practice.

- To facilitate further use and analysis, including the identification of corruption red flags, Member States should strive to make contracting information easily accessible to the public in standardised open formats, such as the Open Contracting Data Standard, ideally through a centralised data portal.
- Member States should introduce and strengthen conflict of interest provisions in public procurement and establish independent complaint and audit mechanisms, as well as inclusive and collaborative feedback and access to information mechanisms throughout the procurement process, enabling public participation and monitoring of public contracting. Citizens should be made aware of the possibility to participate in procurement processes. An independent complaint mechanism that investigates citizens' complaints quickly should also be instituted.
- Member States should commit to ensuring adequate oversight and transparency of public budgets and budget implementation by publishing budget information at all stages of the budget process (including formulation, approval, execution, auditing and legislative evaluation) in a timely, detailed and accessible manner, by encouraging citizen participation in all phases of the budget cycle, and by strengthening oversight institutions.
- Especially in times of crisis, Member States should ensure full transparency and adequate oversight regarding the use of financial and non-financial aid, including by actively disclosing the names and identities of companies and entities that receive emergency assistance or funding, whether in the form of grants or low-interest loans, as well as details of the support provided and any conditions linked to this aid.

Further reads

- ARTICLE 19 and UNCAC Coalition (2017): Public procurement requires public information, <https://www.article19.org/resources/public-procurement-requires-public-information/>.
- Open Contracting Partnership: Open Contracting Global Principles, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>.
- Resources and reports released by the Open Government Partnership: <http://www.opengovpartnership.org/>.
- The World Bank: Benchmarking Public Procurement (BPP) Data, <https://bpp.worldbank.org/en/BPP-data>.

¹⁶ See: Open Contracting Partnership: Global Principles, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>.