

RECOMMENDATIONS ON OPEN CONTRACTING FOR OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLANS

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SUMMARY

Procurement is one of governments' most economically significant activities, but it also poses one of the greatest public sector corruption risks.

Governments are tackling this problem by implementing open contracting – a suite of complementary policies that improve transparency, public participation and accountability in procurement.

The benefits of open contracting extend beyond combating corruption. Governments can use data to understand and improve their own financial positions, create fairer and more accessible markets, and collaborate with civil society to monitor public services more effectively.

The net result is greater value for money, improved quality of public services, increased public trust and a better environment for doing business.

In 2015, the government of Ukraine, working closely with civil society and the private sector, replaced its corrupt and opaque procurement system with an online platform. The system uses the Open Contracting Data Standard to publish data about the whole procurement cycle. Three years later, government savings have topped US\$1 billion.¹

To achieve results like this, governments must make transformational commitments on open contracting.

This briefing discusses:

- fighting corruption in public procurement in the context of the Open Government Partnership (OGP)
- trends and examples of good practice in open contracting
- existing and model national action plan commitments

Transparency International recommends that governments:

- use the Open Contracting Data Standard to publish machine-readable data about the whole procurement cycle
- make all contracts “open by default” to foster a culture of social innovation and market competition in procurement
- develop and implement mechanisms for consultation and independent monitoring by citizens and civil society

¹ “Ukraine's coffers save almost \$1 bln using ProZorro”, *Interfax-Ukraine* (web), 23 May 2017.

WHY IS OPEN CONTRACTING RELEVANT FOR FIGHTING CORRUPTION?

Fifty-seven per cent of cases concluded under the Organisation for Economic Co-operation and Development (OECD)'s Anti-Bribery Convention relate to bribes paid for public contracts.² This is not surprising given that goods and services obtained through procurement can account for between 30 per cent³ and 50 per cent⁴ of government expenditure.

Estimating the direct financial losses caused by corruption, an inherently secretive activity that must be first discovered and proven, is difficult. Yet according to estimates cited by the United Nations Office on Drugs and Crime⁵ and OECD⁶, corruption may reduce the value of a public contract by between 10 and 25 per cent. Research by the International Monetary Fund shows that, on average, 30 per cent of public infrastructure investment was lost to inefficiencies of various kinds.⁷

Procurement corruption may seem abstract but it shapes the lives of citizens in ways great and small. For example, price-fixing can lead to shortages of essential medicines. Embezzlement may mean that fewer schools are built and children cannot get an education. The construction of roads that do not meet technical specifications can reduce trade flows and opportunities for commerce.

While such losses are difficult to calculate, joint monitoring by government and civil society helps to prevent them from taking place. A randomised controlled study of local government procurement in Peru showed that “districts that received anti-corruption monitoring spent 51 per cent less in the execution of public works than comparable districts that were less scrutinised.”⁸

Open contracting initiatives like this not only save government money and time, they can contribute to rebuilding citizen trust.⁹

Open contracting also creates a fairer playing field for businesses and fosters entrepreneurship by making the tendering process more accessible and competitive. Stronger markets deliver better results for governments.

THE ANTI-CORRUPTION SUMMIT AND OPEN CONTRACTING

In May 2016, governments from 43 countries – including 34 OGP participating countries – gathered in London at the [Anti-Corruption Summit](#) to agree on a package of actions to tackle corruption. As a result, governments signed the Global Declaration Against Corruption and made more than 600 commitments on a range of issues, including at least 39 commitments related to open contracting and public procurement.

These and other commitments made at the Anti-Corruption Summit can be embedded in national action plans in OGP participating countries.

² “Scale of international bribery laid bare by new OECD report”, OECD (web), 2 December 2014.

³ OECD, *Government at a glance 2015*, 2015.

⁴ “Many developing countries can improve public services through fair and open procurement practices, says WBG report”, *World Bank* (web), 18 November 2015.

⁵ UNODC, *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, 2013.

⁶ OECD, *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, available at: www.keepeek.com/Digital-Asset-Management/oecd/governance/implementing-the-oecd-principles-for-integrity-in-public-procurement_9789264201385-en#page23 [accessed 08/04/18]

⁷ International Monetary Fund, *Making public investment more efficient*, June 2015.

⁸ “Guardians of accountability: A field experiment on corruption and inefficiency in Peru's local public works”, *International Growth Centre* (web), 8 December 2017.

⁹ Open Contracting Partnership, *Why open contracting is essential to open government*, available at: https://www.open-contracting.org/wp-content/uploads/2016/01/OCP2015_Brief-OpenContracting-OGP.pdf [accessed 06/07/18].

WHY IS IT IMPORTANT TO INCLUDE OPEN CONTRACTING COMMITMENTS IN OGP NATIONAL ACTION PLANS?

The founding principles of the [Open Government Declaration](#) are well aligned with the open contracting process.

Principle one: increase government transparency

The open contracting process begins when government publishes timely, accessible and re-usable information that relates to all stages of the procurement process.

Principle two: support civic participation

Publishing data catalyses the participation of non-government stakeholders – civil society organisations (CSOs), journalists, academics and businesses – who use data for a range of applications. These include, for example, civic monitoring of service delivery, investigative journalism in the public interest and market research to identify new commercial opportunities.

To achieve value for money in the medium and longer term, governments must design engagement mechanisms that ensure the outcomes of civic participation result in appropriate action. This may mean opening an inquiry into contractor performance, prosecuting corrupt officials or amending policy to make the market fairer. Civic actors must participate on how to integrate feedback into policy and decision-making processes.

Principle three: promote integrity and accountability across the public sector

Open contracting data helps government agencies with their integrity building. By making data accessible to a wider group of government stakeholders, including policy-makers, administrators and regulators, the quality of functions such as auditing and budgeting improves.

Principle four: achieve these goals using new technologies

Technology, when deployed correctly, helps to cut through the complexity of procurement and present large volumes of technical information in an accessible and useful way. Opaque procurement information thus becomes actionable data, which unlocks its real social and economic value, and can help to break up cartels or oligopolies and drive reform.¹⁰

By including open contracting commitments in national action plans, countries can benefit from the OGP's formal timelines and accountability mechanisms, as well as the peer learning and technical support that the OGP community provides.

¹⁰ M. Fazekas, "Red tape, bribery and government favouritism: evidence from Europe", *Crime, Law and Social Change*, November 2017, Volume 68, Issue 4, pp 403-429.

TRENDS AND EXAMPLES OF GOOD PRACTICE IN OPEN CONTRACTING

Open contracting begins with transparency

Governments now use “e-procurement” systems to manage the procurement process and capture data for publication and analysis. However, the transparency and technical quality of e-procurement systems, and their usage by public bodies, varies greatly. Good practice includes:

- implementing the Open Contracting Data Standard (OCDS), which ensures the transparency and data quality of e-procurement systems meet a globally recognised benchmark at each stage of the procurement cycle
- making it mandatory for all departments and agencies to use e-procurement systems, which scales up savings, allows for data gathering and gives laggard organisations a push toward reform
- making all contracts open by default, which increases competition for contracts and builds a civil society culture focused on using data

In 2010, Georgia implemented a transparent and mandatory e-procurement system, which later became the inspiration for Ukraine’s ProZorro. By 2011, the total number of competitive tenders run in the country had risen from 1,933 to 33,000, which greatly increased market competition. Within five years the country had saved US\$400 million, according to the World Bank.¹¹

Slovakian law deems that public contracts only come into effect after they are published in a single, online public registry. This transparency made the contracting process accessible and increased the average number of bids per tender from 2.3 to 3.6 within two years of the introduction of the reform. It also boosted engagement from civil society and “fundamentally reshaped the civil sector and media oversight ecosystem”, according to the Open Contracting Partnership.¹²

Fostering civic participation is essential

Working with civil society, business and affected communities is the key to unlocking the social innovation and market competition benefits of open contracting. Good practice includes:

- consulting data users before, during and after the publication of data and responding to feedback. Non-government stakeholders are often best placed to identify valuable data and flag mistakes or oversights
- generating mechanisms for independent monitoring by granting civil society the rights to access documents and data, monitor processes and report on outcomes. The World Bank cites Integrity Pacts and Procurement Monitoring¹³ among the policy options
- engaging communities, social groups and professional associations most affected by public procurement in all stages of the process, including the planning and pre-tendering phases, to ensure greater alignment between public procurement processes and the public interest

The mobile app Development Check helps citizens affected by procurement access information and report on problems in real time. In Afghanistan, a rural civic monitor reported that a construction contractor’s road was not as straight, wide or thick as the tender specifications. Following complaints to local and then provincial government offices, the contractor amended the road to meet the technical brief.¹⁴

In Paraguay, journalists at ABC Color analysed open contracting data to reveal that the police had purchased 10 office chairs for US\$8,000 – 10 times their market value. The police claimed that an extra zero had been added to the invoice in error, however, tendering documents revealed that the price was indeed set at the inflated level. The

¹¹ World Bank, *Benchmarking Public Procurement 2017*, 2016.

¹² “Case Study: Open Contracting in the Slovak Republic”, *Open Contracting Partnership* (web), 14 August 2013.

¹³ World Bank, *Social Accountability E-Guide: A Step-by-Step Approach to Integrating Social Accountability into Projects*.

¹⁴ Development Check, *Where we work*, available at: www.developmentcheck.org/stories?story=1 [accessed 08/04/18].

contract was cancelled before any payments were made. A flurry of stories such as this one has led to new regulations which mandate the use of more accurate pricing information. The regulations have been a driver of the government increase in year on year savings (8.3 per cent in 2016 and 8.7 per cent as of July 2017, compared to 6.8 per cent in 2015).¹⁵

Accountability to drive reform

Closing feedback loops is essential to locking progressive change into the system.

Governments act on the results from data and citizen participation by taking appropriate action at policy, prosecutor and regulatory levels. Good practice includes:

- using open contracting data as an evidence base to make new policy and achieve greater value for money
- referring cases of graft, fraud or bribery to the public prosecutor, ensuring that cases proceed to trial and that information on outcomes is publicly accessible
- resolving disputes between contractors and communities after civic monitoring identifies problems with contract delivery

A group of public hospitals in the UK National Health Service pooled manufacturer and price data for generic medical products such as exam gloves and aprons. The hospitals used the data to aggregate demand and leveraged their collective purchasing power to achieve prices that were 15 to 50 per cent better than the benchmarked best prices.¹⁶

Journalists discovered an overpricing scam in a contract to supply medical devices after a CSO algorithm raised a red flag in Indonesia. The government responded by convicting two men who were involved and continues to look at a case against a high-ranking public official (currently in jail on other charges).¹⁷

¹⁵ "Paraguay's transparency alchemists: How citizens are using open contracting to improve public spending", *Open Contracting Partnership* (web), 2 October 2017.

¹⁶ Lord Carter of Coles, *Operational productivity and performance in English NHS acute hospitals: Unwarranted variations, An independent report for the Department of Health*, 2016.

¹⁷ L. Amin, *Making the Case for Open Contracting in Healthcare Procurement* (Transparency International, 2017).

EXISTING COMMITMENTS

Forty-two OGP countries reviewed by the [Independent Reporting Mechanism](#) (IRM)¹⁸ have now made commitments to reform public procurement in their national action plans, according to data from the IRM Commitment Database. These countries are:

Albania, Argentina, Armenia, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Dominican Republic, El Salvador, Estonia, France, Georgia, Ghana, Greece, Guatemala, Honduras, Hungary, Indonesia, Israel, Jordan, Macedonia, Malta, Mexico, Moldova, Mongolia, Montenegro, Netherlands, Panama, Paraguay, Peru, Philippines, Romania, Serbia, Slovakia, Tunisia, Turkey, UK, Ukraine and Uruguay.

Open contracting and procurement reform is becoming a core pillar of the worldwide open government agenda. However, there are some problematic trends within action plans:

- Pledges tend to lack ambition – 37 per cent of commitments were rated minor and another 37 per cent as moderate while only 12 per cent were considered transformative by the IRM.
- Twenty-three per cent of commitments are “complete” while “substantial progress” is recorded on an additional 29 per cent. There has, however, been zero or limited progress on 44 per cent of commitments, a seven per cent increase from 2017.
- Most of the 101 reviewed commitments place emphasis on transparency (70 per cent) but focus less on participation (14 per cent), accountability (40 per cent) or technology (39 per cent).

OGP PARIS DECLARATION AND OPEN CONTRACTING

The Paris Declaration is a set of collective actions where governments and CSOs can join forces and work together on to push open government forward, and advance reform at the global, national and subnational levels.

Open Public Procurement is one collective action within the Paris Declaration. Countries and CSOs committing to open public procurement seek to make the public contracting process open by default, by publishing contract and contracting information, according to open-data standards, to help tackle corruption, increase competitiveness and improve service delivery.

In addition, partners will engage with civil society and business throughout the public procurement chain. To see what collective actions have been proposed on open contracting and to include your own, visit: <https://paris-declaration.ogpsummit.org/>.

¹⁸ (according to IRM data as of 22 February 2018).

WHAT ELEMENTS SHOULD A COMMITMENT ON OPEN CONTRACTING INCLUDE?

To transform public contracting systems, governments need to make ambitious commitments that simultaneously address the four core values of the OGP.

Transparency International recommends that governments make the following three commitments:

Implement the Open Contracting Data Standard (OCDS) for the full public procurement process, including the planning, tender, award, contract and implementation phases

Implementing the OCDS is the simplest and surest way of disclosing timely, accessible and usable data on the whole procurement cycle. The Open Contracting Partnership provides step-by-step guidance,¹⁹ including a resource library and a technical helpdesk, to assist governments through the process. Colombia, Mexico, Moldova, Nepal, Paraguay, Ukraine and the UK are now publishing OCDS data in real time while Canada and Nigeria are publishing some historical OCDS data. There have also been subnational innovations leading to OCDS publication by Mexico City, Montreal and the state of New South Wales, Australia.

Make all contracts open by default and publish them in a single, online registry

Publishing contracts promotes fairer competition, encourages civic oversight and helps governments learn from previous successes and failures. Redactions may be necessary in limited circumstances (such as national security, collusion or commercial secrets) but research suggests these instances are minimal.²⁰ Governments should make transparency their default position and publish simple, universal and evidence-based guidelines on what cannot be disclosed.

Develop and implement mechanisms for consultation and independent monitoring by citizens and civil society to ensure affected communities are consulted throughout the full public procurement process

Open contracting reforms cannot succeed without the participation of stakeholders from outside government. Creating clear and useful channels for communication between governments and social groups, professional associations and communities affected by a specific procurement process helps to ensure that civic participation is translated into good government action. Engaging civil society in the design, governance and public monitoring of such programmes promotes public confidence and participation and ultimately better outcomes.

¹⁹ Open Contracting Partnership, *Open Contracting Journey in 7 Steps*, 2017.

²⁰ Center for Global Development, *Publishing Government Contracts: Addressing Concerns and Easing Implementation*, 2014.

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