RECOMMENDATIONS ON OPEN CONTRACTING FOR OGP ACTION PLANS

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

SUMMARY

Procurement is one of government's most significant activities, and one of its greatest corruption risks. A huge range of outcomes in vital sectors, including health, education, security and development, hinge on clean, efficient procurement.

Open contracting is a suite of complementary policies that improve transparency, participation and accountability in the procurement process. It helps governments to combat corruption and increase integrity.

Open contracting also helps governments to understand and improve their financial positions as buyers, 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, better public services, an improved business environment and increased public trust.

In 2015, the government of Ukraine, working closely with civil society and the private sector, replaced its corrupt, opaque procurement system with an online platform. The new system uses the Open Contracting Data Standard (OCDS) to publish data about the entire procurement cycle. The published data powers a citizen monitoring platform, a business intelligence tool and a tool for identifying corruption risks, which has transformed the country's oversight framework.[i] Four years later, government savings are reported at more than US$3 billion.[ii]

More than two thirds of Open Government Partnership (OGP) government members have made commitments on open contracting while 20 countries, 17 of them OGP members, are publishing OCDS data.

However, to achieve results like Ukraine's, governments must do more than simply publish data. They must also transform mechanisms for citizen engagement and public accountability.

This briefing discusses:

- fighting corruption in public procurement in the context of the Open Government Partnership
- trends and examples of good practice in open contracting
- existing commitments and recommendations for inclusion in action plans

Transparency International recommends that governments:

- use the Open Contracting Data Standard to publish machine-readable data about the entire 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

WHY IS OPEN CONTRACTING RELEVANT FOR FIGHTING CORRUPTION?

Fifty-seven per cent of cases concluded under the OECD Anti-Bribery Convention relate to bribes paid for public contracts.[iii] This is not surprising, given that goods and services obtained through procurement can account for between 30[iv] and 50 per cent[v] of government expenditure.

It is difficult to estimate the direct financial losses caused by corruption, an inherently secretive activity that must first be discovered and proven. Yet according to estimates given by the United Nations Office on Drugs and Crime[vi] and the OECD,[vii] 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 is lost to inefficiencies of various kinds.[viii]

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% less in the execution of public works than comparable districts that were less scrutinised."[ix]

Civil society initiatives like this save government money and time, and can contribute to rebuilding citizen trust.[x]

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 on 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.

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, reusable information on all stages of the procurement process.

Principle two: support civic participation

The publication of data catalyses the participation of non-government stakeholders, such as civil society organisations, journalists, academics and businesses. Stakeholders use the data for various purposes, including 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 to ensure that civic participation results 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 in government decision-making processes about how to close feedback loops.

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 policymakers, administrators and regulators, the quality of functions such as auditing and budgeting improves.

Principle four: achieve these goals using new technologies

When deployed correctly, technology helps to cut through the complexity of procurement and make obtuse, technical information more accessible and useful. Opaque procurement records become actionable data, which unlocks extra social and economic value. This can help to break up cartels or oligopolies and drive reform.[xi]

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.

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 meets 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

Open contracting in practice: Georgia

In 2010, Georgia implemented a transparent, 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.[xii]

Open contracting in practice: Slovakia

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 reform. It also boosted civil society engagement and "fundamentally reshaped the civil sector and media oversight ecosystem," according to the Open Contracting Partnership.[xiii]

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 right to access documents and data, monitor processes and report on outcomes. The World Bank cites integrity pacts and procurement monitoring[xiv] among the policy options.
- Engaging the communities, social groups and professional associations that are 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.

Open contracting in practice: Afghanistan

The mobile app Development Check helps citizens affected by procurement to 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.[xv]

Open contracting in practice: Paraguay

In Paraguay, journalists at ABC Color analysed open contracting data to reveal that the police had purchased 10 office chairs for US$8,000 – ten 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 contract was cancelled before any payments were made. A flurry of stories such as this one has led to new regulations that 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).[xvi]

Accountability to drive reform

The closure of feedback loops is essential to lock progressive change into the system. Governments act on results 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

Open contracting in practice: United Kingdom

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

Open contracting in practice: Indonesia

Journalists discovered an overpricing scam in a contract to supply medical devices after a civil society organisation's 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).[xviii]

EXISTING COMMITMENTS

Fifty-three Open Government Partnership members have made commitments on open contracting and procurement in their national action plans, which have been reviewed by the Independent Reporting Mechanism (IRM).[xix] These countries are:

Albania, Argentina, Armenia, Australia, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Dominican Republic, El Salvador, Estonia, Finland, France, Georgia, Ghana, Greece, Guatemala, Honduras, Hungary, Indonesia, Ireland, Israel, Italy, Jordan, Kenya, Liberia, Malawi, Mexico, Moldova, Mongolia, Montenegro, Netherlands, North Macedonia, Panama, Paraguay, Peru, Philippines, Romania, Serbia, Sierra Leone, Slovak Republic, South Africa, Sri Lanka, Tunisia, Ukraine, United Kingdom and Uruguay.

Open contracting has rapidly become a pillar of OGP members' agendas, yet there is room for improvement within action plans:

- Pledges focus heavily on transparency, but not so much on participation and accountability. Eighty-one per cent of the 166 IRM-reviewed commitments dealt with transparency yet less than a third focused on participation or accountability, respectively. Forty-three per cent relate to technology (pledges can deal with more than one OGP core value).

- This suggests there is a broad misperception that open contracting is simply a technical transparency fix. As this brief and numerous other resources demonstrate, open contracting reforms must apply to the entire procurement cycle and success depends on civic participation and effective accountability mechanisms.

- Pledges tend to lack ambition: the IRM found that only 13 per cent of pledges were considered to have a transformative impact. The potential impact of 36 per cent of commitments was considered minor and another 44 per cent as moderate.

- Most pledges were unfinished by their specified end dates. IRM data shows that 32 per cent of commitments were complete by the end of the national action plan cycle. Substantial progress was recorded in an additional 39 per cent of pledges, which means one third of commitments saw zero or limited progress.

OGP PARIS DECLARATION AND OPEN CONTRACTING

On 7 December 2016, the Steering Committee of the Open Government Partnership endorsed the "Paris Declaration on Open Government". The Paris Declaration is a set of collective actions where governments and civil society organisations can work together to push open government forward, and advance reform at global, national and subnational levels.

Open public procurement is one collective action within the Paris Declaration. Countries and civil society organisations committing to open public procurement seek to make the public contracting process open by default. This is achieved by publishing contract and contracting information according to open data standards to help tackle corruption, increase competitiveness and improve service delivery. In addition, partners can engage with civil society and business throughout the public procurement cycle.

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

Implementation of the Open Contracting Data Standard (OCDS) is the simplest and surest way of disclosing timely, accessible, reusable data on the entire procurement cycle. The Open Contracting Partnership provides step-by-step guidance,[xx] including a resource library and a technical helpdesk, to assist governments through the process. Twenty countries now publish OCDS data (Afghanistan, Argentina, Armenia, Australia, Canada, Chile, Colombia, Georgia, Honduras, Indonesia, Mexico, Moldova, Nepal, Nigeria, Paraguay, Uganda, Ukraine, United Kingdom, Uruguay and Zambia).

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

The publication of 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.[xxi] Governments should make transparency their default position and publish simple, universal, 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 of government. The creation of clear, 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 leads to better outcomes.

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ii https://bi.prozorro.org [accessed 3 October 2019] Note: ProZorro's savings estimate is calculated by deducting the actual cost of a contract from the pre-tender estimate.

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xiii www.open-contracting.org/2013/08/14/case_study_open_contracting_in_the_slovak_republic/ [accessed 3 October 2019]

xiv http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1233946247437/21SAToolsSourcebook.pdf [accessed 3 October 2019]

xv http://historical.developmentcheck.org/countries/af [accessed 3 October 2019]

xvi https://medium.com/open-contracting-stories/paraguays-transparency-alchemists-623c8e3c538f [accessed 3 October 2019]

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