

Transparency International’s Comment on Proposed Reforms to the World Bank’s Procurement Policies and Procedures

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Background

The World Bank launched the first phase of its review of its procurement policies and procedures in March of 2012 and conducted consultations through the fall of 2012. Transparency International was an active participant in this initial round of consultations, participating in various fora organized by the Bank as well as submitting written comments. The Bank began the second phase of its review in August 2014 and consultations are expected to run through the end of the year. The Transparency International movement, working in more than 100 countries, has again been an active participant in these consultations, attending various consultation meetings organized by the Bank around the world. We sincerely thank the Bank for organizing such an open and inclusive consultations process. This paper represents a synthesis of Transparency International’s recommendations to the Bank on how to improve its procurement policies and procedures.

Introduction

We begin by noting that public procurement is particularly vulnerable to corruption. An estimated 20% of the worldwide public procurement spend, or approximately US\$2 trillion, is lost to corruption annually.¹ These vast sums of stolen money fuel money-laundering, illicit financial flows, arms purchases, insecurity in fragile and conflict-afflicted states², and the culture of impunity that surrounds government officials in many highly corrupt states. It is a drain on public resources that are critical for funding the type of quality and accessible public services – including education, healthcare, transport, water, sanitation, power, and infrastructures – that underpin the Bank’s development goals of ending extreme poverty and increasing shared prosperity.

¹ See, *Implementing the OECD Principles for Integrity in Public Procurement*, p. 22, OECD, available at www.oecd-ilibrary.org/governance/implementing-the-oecd-principles-for-integrity-in-public-procurement/why-clean-public-procurement-matters_9789264201385-3-en;jsessionid=951fbj6h46u4a.x-oecd-live-01

² See, *Corruption: The Unrecognized Threat to International Discussion*, Carnegie Endowment for International Peace, available at http://carnegieendowment.org/files/corruption_and_security.pdf

For this reason, any reform of the Bank’s procurement policies and procedures should seek to protect and strengthen anti-corruption controls and safeguards. The Bank’s desire to update and modernize its procurement policies and procedures is an admirable one; indeed, Bank-financed projects should be procured using the same innovative procurement methods now used in many countries around the world. However, we strongly believe that this needed modernization of Bank procurement policies and procedures must not come at the expense of relaxed controls against corruption.

Essentially, the Bank is proposing to move to what it refers to as “value for money decision making” in which the consideration of criteria other than price will be permitted. Additionally, the Bank proposes to begin utilizing innovative procurement methods such as competitive negotiations in place of the traditional invitation to bid. These reforms would inject greater flexibility into the Bank’s procurement policies and procedures. With greater flexibility of course comes the increased risk of corruption, as the increased subjectivity of these procurement methods will allow more opportunity for bribery during the tender and award phases of the procurement process.

Parallel to these reforms, the Bank is also suggesting that it drastically reduce its supervisory role during the tender and award phases of procurement. The Bank proposes to reduce prior reviews by 80% and to only do prior reviews on high risk and/or high value contracts.

Taken together, these reforms would simultaneously increase the opportunities for corruption and reduce Bank oversight of the tender and award phases of procurement. As such, we believe that the Bank must accompany these reforms, both of which are laudatory in and of themselves (improving the economic efficiency of Bank procurement procedures; targeting resources on high risk, high value procurements), with additional reforms that will reduce the risk of corruption. Such reforms include **improving transparency, involving civil society, and strengthening borrower country capacity and systems**, all of which would make Bank procurements less vulnerable to corruption.

I. Bank-Financed Procurements Should Become More Transparent

Over the last several years, the Bank has made admirable strides in improving the transparency of projects it funds. On its website, the Bank publishes financial, procurement, and planning data and documents for many projects it finances. Most recently, the Bank has developed a smartphone application that allows users to access data on projects subject to prior review. We

believe, however, that the Bank could do much more to improve the transparency of the procurements it finances.

Many countries and subnational jurisdictions have created e-procurement platforms over the last decade. Indeed, the Bank itself has been active in encouraging countries to develop and use such platforms as they drastically improve the efficiency of public procurement. The amount of data and information published on these platforms varies, but at a minimum, the initial advertisement, the invitation to tender, the notice of award, payment data, and audit reports are typically published.

We believe that the Bank should develop a similar platform that would publish relevant data and documents on all active procurements. While we recognize that Bank-financed procurements are executed by borrower countries, there is no reason why relevant procurement data and documents could not be published in real time on a central website run by the Bank. Indeed, The Open Contracting Partnership, on whose steering group sits the World Bank Institute, has released a set of open contracting global principles, number six of which states that “international financial institutions shall support disclosure in future contracting by precluding confidentiality clauses, drafting confidentiality narrowly to cover only permissible limited exceptions, or including provisions within the contractual terms and conditions to allow for the contract and related information to be published.³ Such a centralized website would have several advantages over the current system. It would be comprehensive, listing all Bank procurements. It would provide access to data and documents in a timely manner. And it would be organized by procurement rather than by project as is the Bank’s current practice.⁴ Such a platform would greatly enhance the ability of civil society to meaningfully monitor Bank-financed procurements (to be discussed in Section II).

Consistent with TI’s “[Curbing Corruption in Public Procurement](#)” guide and with the Open Contracting Partnership’s [Open Contracting Global Principles](#), we would urge that any centralized procurement website that the Bank might develop include the following:

- Documents relating to activities carried out prior to initiating the contracting process such as needs assessment reports and procurement planning documents
- Announcements of and summaries of input received at public hearings
- Procurement budgets
- Tender announcements
- Bidding documents including technical specifications and selection criteria

³ See, http://www.open-contracting.org/global_principles

⁴ A Bank-financed project may include multiple different procurements.

- The key elements of all bids received including bidder identity, beneficial ownership information for corporate bidders, and all information responsive to the evaluation criteria
- The key elements of the bid evaluation process
- The award decision and its justification
- The issuing authority
- The contract and any amendments (including annexes and any significant change orders)
- Subcontracting information including subcontracts and beneficial ownership information for corporate subcontractors
- Implementation, evaluation, oversight, and auditors' reports
- Checkbook level payment information

To the extent possible, data contained in the above documents should also be published in an open and structured format that is searchable and user-friendly. The Open Contracting data standard⁵ provides one way that the Bank could make its procurement data more transparent and useful.

The publication of information regarding the beneficial ownership of corporate bidders and subcontractors is of particular importance. As the World Bank's own research has found, anonymous shell companies play an outsized role in corruption schemes,⁶ and requiring that all companies that bid on or subcontract on Bank-financed procurements provide their beneficial ownership information and that such information be published would be a powerful tool against corruption. The impact of such publication would be felt far beyond Bank-financed projects.

Disclosure and publication of the above information should very much be the Bank's default position. While we recognize that in certain rare circumstances, the contents of a bid or proposal may contain trade secrets and/or intellectual property which may warrant protection, this will certainly not be the case for the vast majority of procurements. Publication should therefore be the norm, and the Bank should be very skeptical about claims that bids or proposals for non-unique items such as consulting services, medical equipment, and transportation equipment contain information worthy of protection. It has been claimed that requiring the publication of all bids or their key elements would reduce competition as some potential bidders would drop out, but we have been able to find no empirical evidence to support this hypothesis. We recommend that the Bank therefore establish publication as its default position and draw up clear, concise rules governing when an exception to this default rule will be allowed. Should a

⁵ For more information on the Open Contracting data standard, see, <http://standard.open-contracting.org/>

⁶ See, <http://star.worldbank.org/star/publication/puppet-masters>

document be found to fall into such an exception, rather than simply not publishing it, the Bank should instead redact only the portions of the document that qualify it for the exception to default publication.

We also emphasize that transparency must start upstream of the tender phase of the public procurement process. The Bank should ensure that the public is informed and is given the opportunity to be heard during initial needs assessment and project planning work. While TI considers needs assessment and project planning to be part of the public procurement process, we realize that the Bank covers much of this work under its Safeguards standards. As such, we will provide a separate submission on the need for transparency and public participation in needs assessment and project planning work in conjunction with the ongoing Safeguards consultations. We do think it is useful to point out, however, the clear connection between Safeguards and procurement, particularly with respect to the issue of transparency.

II. The Bank Should Involve Civil Society as Outside Procurement Monitors

As discussed in the introductory section of this document, the Bank is proposing reforms that would have the effect of simultaneously introducing more subjectivity into its procurement procedures while reducing oversight by prior review. In this context, it is imperative that the Bank develop new anti-corruption controls to guard against the increased risk of corruption that these reforms will engender.

Greater civil society involvement in public procurement is one idea that is gaining traction as a way to simultaneously reduce corruption, improve transparency, and increase public participation.⁷ In countries as diverse as Kenya, Cameroon, Slovakia, Mexico, the Philippines, and Rwanda, civil society is taking a greater role in monitoring public procurements for corruption, fraud, and other abuses. In some countries, such as Mexico⁸ and the Philippines⁹, the law specifically provides for civil society monitors or observers. In other countries, civil society has begun to monitor procurements on an *ad hoc* basis, using information that is publically available or obtained after having signed integrity pacts or other agreements with specific procuring agencies.

⁷ For a detailed discussion of this subject, see, *A New Role for Citizens in Public Procurement*, Transparencia Mexicana, available at <http://www.cmi.no/publications/file/4868-civil-society-procurement-monitoring.pdf>

⁸ See, *Integrity in Public Procurement: Good Practice From A to Z*, p. 118, OECD, available at <http://books.google.com/books?id=DbXVAgAAQBAJ&pg=PA118&dq=mexico+procurement+social+witness&hl=en&sa=X&ei=BNIPVMG4KsjbsATDk4G4Dg&ved=0CB8Q6AEwAA#v=onepage&q=mexico%20procurement%20social%20witness&f=false>

⁹ See, *APEC Procurement Transparency Standards in the Philippines*, p. 11, Transparency International – USA, available at <http://www.transparency-usa.org/documents/PhilippinesAPECProcurementStandardsFinal.pdf>

Civil society procurement monitoring, while still fairly new, is already producing impressive results. The Mexican government reported that the use of civil society monitors, or social witnesses as they are also known, by one Mexican agency saved US \$26 million and increased competition by over 50%.¹⁰

We urge the Bank to consider civil society procurement monitoring as an innovative mechanism to both fight corruption and fraud in Bank-financed projects as well as strengthen the capacity of civil society organizations in borrower countries. The Bank could establish a budget for civil society procurement monitoring; the amount of money needed to fund such an initiative would be quite small, certainly far less than 1% of the budget for a large procurement. This budget would support the work of the civil society monitors themselves as well as those of any outside technical experts who may be needed to assess more complex documents related to highly technical procurements. As civil society procurement monitoring should ideally include monitoring of not just the tender and award phases of procurement but also of the implementation phase¹¹, the budget should take account of this fact as well.

Given the large number of Bank procurements, we would not expect that the budget would cover civil society monitoring of all or even a majority of Bank procurements. The Bank and relevant local civil society organizations would develop a method for selecting Bank-financed procurements for monitoring. These procurements should be chosen as a function of their risk profile (presumably among the subset of procurements that will no longer be prior-reviewed under the new procedures), with preference going to procurements that present higher risk profiles.¹²

Prior to a chosen procurement being advertised for tender, the relevant country team should select one or several civil society organizations who will be responsible for procurement monitoring. The selection process should be competitive, and should take into account the relative experiences and competencies of local civil society organizations. Clear procedures should be established governing how the civil society monitors will be selected and work with the country team as well as the procurement agency and the bidders. Protocols should also be

¹⁰ See, *Integrity in Public Procurement: Good Practice From A to Z*, p. 118, OECD, available at <http://books.google.com/books?id=DbXVAgAAQBAJ&pg=PA118&dq=mexico+procurement+social+witness&hl=en&sa=X&ei=BNIPVMG4KsjbsATDk4G4Dg&ved=0CB8Q6AEwAA#v=onepage&q=mexico%20procurement%20social%20witness&f=false>

¹¹ As a separate matter, TI would encourage the Bank to consider beefing up its oversight of the implementation phase of high risk procurements. Currently, most of the Bank's oversight is focused on the tender and award phases through the prior review mechanism. Yet many opportunities for corruption present themselves during the implementation phase. Bank country teams should be trained on how to monitor the implementation phases of high risk procurements for corruption and fraud in order to better palliate these risks.

¹² Of course, those procurements with the very highest risk profiles will continue to be prior reviewed.

established governing when the civil society monitors should report potential wrongdoing to the country team, local authorities, Bank procurement officials, and/or the Integrity Vice Presidency.

As stated above, we would not expect that the Bank would be able to provide monies to finance civil society monitoring of all Bank-financed procurements. However, were the Bank to implement our transparency recommendations in Part I. of this paper, any interested individual or civil society organization with adequate resources would be able to engage in constructive procurement monitoring on its own without Bank financing. To this end, we would also urge the Bank to develop and promote procurement monitoring tools to facilitate such projects.

We would also note that civil society procurement monitoring dovetails with several Bank initiatives including the Global Partnership for Social Accountability and the new Global Governance practice.

III. The Bank Should Work to Strengthen Borrower Country Capacity and Systems

Transparency International welcomes the emphasis on capacity building in the Bank's July 8, 2014 Framework Paper for Consultation. It is refreshing to see procurement treated as not just a means to an end, but as a critical component of the Bank's governance agenda. As the Bank correctly recognizes, its developmental interest in procurement extends far beyond merely the procurements that it finances. Procurement systems which are modern, fair, efficient, and corruption free can serve as powerful vectors of development. The Bank finances a very small part of borrower countries' procurement spends. Improving the capacity of borrower countries' procurement systems would therefore have a significant multiplier effect as it would have a positive impact on projects financed by other donors as well as by domestic resources.

The Bank indicates that in addition to undertaking capacity building in the procurement sector, it is also interested in greater use of country procurement systems for bank-financed procurements. We believe that these two goals are inherently linked. As the Bank helps to improve country procurement systems through capacity building, it is only logical that the Bank itself begins to utilize these improved procurement systems for Bank-financed procurements. However, there are legitimate concerns that greater use of country procurement systems may reduce transparency and increase corruption risks. The Bank must therefore ensure that its capacity building efforts focus (among other things) on building the integrity, accountability, and transparency of country procurement systems. The Bank must also develop a rigorous evaluation methodology to use in determining whether or not a given country procurement system has the requisite integrity and transparency safeguards in order to qualify for use in Bank-financed procurements.

It is worth pausing for a moment to think about what a capacity building program might look like. A capacity building program should have as its primary goal the improvement of the country procurement system in question to the point where it meets certain minimum standards, the same minimum standards upon which it will later be evaluated to see if it may be used for Bank-financed procurements. These minimum standards should include standards with respect to **integrity, transparency, accountability, fairness and efficiency, and professionalism**. Therefore, capacity building should focus on building country procurement systems that meet minimum standards in these domains.¹³

With respect to **integrity**, there should be clear rules against **conflicts of interest** and in favor of **asset disclosure** by procurement officials. There should also be anonymous and safe mechanisms for **whistleblowers** to report suspected wrongdoing. These whistleblower mechanisms should be well-advertised, and should allow whistleblowers to report wrongdoing both in-country as well as to Bank headquarters. Key decisions during the procurement process should be made by committees rather than by individuals.

Transparency should include the development of a centralized website which will publish all of the data and documents discussed in Part I of this comment paper. It is worth restating that the beneficial ownership information of all corporate bidders must also be made public given the large role that shell companies play in corruption. Given that not all people have internet access, countries should also provide for alternative mechanisms whereby citizens can easily obtain procurement-related data and documents. Transparency should also extend to the pre-tender planning phase of a procurement. Individuals and organizations should be given ample opportunity to comment on proposed procurements through **public hearings**, thereby helping to ensure that projects that go forward correspond to public needs.

Accountability mechanisms to develop and strengthen include a robust, independent, and efficient **appeals process** to hear disputes, an independent decision-making body charged with imposing proportionate **sanctions** in cases of corruption, fraud, or collusion, internal and external **auditing bodies**, and the participation of civil society organizations as **procurement monitors**.

With respect to **fairness and efficiency**, country procurement regulations should require that all procurements above a certain low value threshold be subject to **open competitive bidding**. To the extent possible, **standard bidding documents** should be developed for use. These bidding documents should use internationally accepted product standards.

¹³ For a more complete discussion of these minimum standards, see, *Curbing Corruption in Public Procurement*, pgs. 12 – 17, Transparency International, available at http://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide

Lastly, the Bank's capacity building efforts should focus on developing human resources within the procurement function so as to increase **professionalism**. Those public employees working on procurements should be **well paid** so as to attract well-qualified individuals and reduce the temptation to accept bribes. They should benefit from frequent **training programs**. Procurement staff should also be hired and promoted based on **merit** and not based upon political or family connections.

In developing its capacity building program, the Bank will also want ensure that adequate resources are devoted to the task. Capacity building can be a resource-intensive endeavor, and we urge the Bank to allocate adequate resources to ensure that it is able to develop a comprehensive capacity building program capable of working in numerous borrower countries. We also urge the Bank to make sure that it has adequate human resources necessary to staff capacity building programs around the globe. Bank staff working on capacity building should have the right mix of technical backgrounds in order to be able to collectively provide sound advice on all of the different areas of procurement reform.

Conclusion

The Bank is proposing an ambitious reform of its procurement policies and procedures. The proposed reforms would introduce new, more subjective methods of evaluation, would restrict prior reviews to only the highest value and/or highest risk procurements, and would greatly expand the Bank's capacity building efforts in the procurement sphere while slowly moving towards a greater use of country procurement systems. The proposed reforms, while positive in many respects, would potentially increase the vulnerability of Bank-financed procurements to corruption, collusion, and fraud. For this reason, Transparency International urges the Bank to accompany these reforms with additional, complimentary reforms that would serve to counteract this increased risk. Among these additional reforms, we urge the Bank to dramatically increase the transparency of Bank-financed procurements, to involve civil society organizations as outside monitors of certain Bank-financed procurements, and to ensure that capacity building programs focus on enhancing the integrity, transparency, accountability, fairness and efficiency, and professionalism of country procurement systems.