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**By electronic mail to:  
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**Re: Comments on World Bank's Procurement Reform Phase II**

To the Members of the Procurement Reform Team:

Please consider these comments and recommendations regarding the World Bank procurement reform initiative, which is in its second phase of the consultative process. These comments specifically address the World Bank's *Framework Paper for Consultation* (July 8, 2014), and the accompanying materials.<sup>1</sup> The comments address:

**A. Capacity Building:** The comments suggest that the World Bank may wish to describe, in greater detail, how procurement professionals in the affected borrower nations will be trained, and to draw upon the World Bank's extensive experience in capacity building for developing nations.

**B. Open Contracting:** The World Bank's proposal does not appear to address explicitly "open contracting," which is an initiative, at the World Bank and elsewhere, to make procurement information more broadly accessible for use and review by agencies, vendors, citizens and stakeholders. These comments suggest that the World Bank may wish to integrate "open contracting" into its procurement reforms, to promote the development of sophisticated tools to manage risk and fight corruption.

We submit these as joint authors, and in our personal capacities. Christopher Yukins is the Lynn David Research Professor in Government Procurement Law and Co-Director of the Government Procurement Law Program at the George Washington University Law School. Ruairi Macdonald has an LL.B. from Queens University Belfast and is a student in the Masters in Government Procurement Law (LL.M.) program at the George Washington University Law School. We should stress again that these comments reflect our personal views only, and not the views of any other person, firm or institution.

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<sup>1</sup> See <https://consultations.worldbank.org/consultation/procurement-policy-review-consultations>

## **A. Capacity Building**

The World Bank's procurement reform initiative builds on decades of experience, and suggests that those developing nations that use Bank financing for projects should, to a much greater extent, be allowed to use their own procurement rules, and should be allowed to use more progressive contracting methods which are focused on achieving best value. The Bank's willingness to address these issues is quite laudable, as these are the problems in procurement -- and the solutions -- which will help ease poverty and disease around the world, for many decades to come.

We offer specific comments on capacity building in procurement because of our expertise in this area. Professor Yukins has trained hundreds of procurement professionals in dozens of countries in Africa, Asia, South and North America, and Europe; his classes have included senior political representatives and legislators, procurement officials, investigators, compliance chiefs, attorneys, and undergraduate and graduate students. He coordinates regularly with procurement law professors, professionals and trainers from institutions around the world, including the World Bank, the Inter-American Development Bank (IDB), the European Bank for Reconstruction and Development (EBRD), UN ILO-ITC, UNOPS, UNCITRAL, the International Anti-Corruption Academy (IACA), the University of Rome-Tor Vergata, Corvinus University (Budapest), the Central University of Finance and Economics (Beijing), Tsinghua University (Beijing), the University of Nottingham, the University of Birmingham, the University of Leicester, the University of Hull, LMU Munich, Stellenbosch University (South Africa), the University of Lagos (Nigeria), and the University of Turin, among many others. At the George Washington University, he and his colleagues teach a wide array of classes on public procurement law, including seminars on corruption in public procurement, and on comparative and international procurement law.

This experience bears directly on the Bank's proposed reforms, which would bring a greater focus on capacity building and institutional strengthening of borrower's procurement systems. The draft framework highlights a need for "more support for capacity building, especially in lower-income countries, and across all actors, private business, NGOs, civil society, and public institutions."

The Bank's draft policy addresses capacity development in the vision statement, when it notes that the Bank "may support country capacity building at the level of the project or as part of the country dialogue, using a range of measures, funding, technical support, and hands on implementation support depending on the specific context of the country, sector, agency, or project." In the draft directives, capability comes up in the context of the *Procurement Strategy for Development* tool (Section II.A. and Annex 3 to the draft Directives). This is a borrower-developed strategy with two levels: (1) strategic thinking and planning to meet the broad development objectives for the borrower defined at the project level, and (2) work at the operational level, when dealing with individual acquisitions. At the higher level, this strategy is required to cover project objectives, borrower context, risk management, the market, and key procurement activities. (*Id.* Fig A3-1.)

Under the Bank's proposed new procurement procedures, the borrower country is to prepare a *Procurement Strategy for Development*, which must include "Borrower Context." This refers to the "institutional capacity and capability to implement," for example the "established legal and regulatory framework, procurement operations market practices and a sufficient number of skilled and experienced people to implement the project." (Annex 3 to the draft Directives, Fig A3-1.) The Bank's plan notes that "the effort, detail and documentation supporting each of these steps must be proportionate to the scale, scope, risk, and complexity of the proposed project, its associated procurements and the strategic importance to the Borrower and the Bank."

The Bank has thus quite properly incorporated capacity building into the proposed framework for reform.<sup>2</sup> The Bank's proposed plan does not, however, address three critical elements for capacity building in procurement:

- *The quality of the trainers* -- how prospective trainers are to be assessed and retained, and how their training is to be evaluated.
- *The curriculum to be used* -- shaped to meet the professional needs of the students, and typically taught from procurement laws, regulations, and local procedures, with an eye to international best practices, and with special emphases on critical thinking and anti-corruption.
- *How to assess* the trained professionals.

Addressing these issues in capacity building is critical, if authority and responsibilities are to be shifted to procurement professionals in borrower nations, and those professionals are to use more advanced procurement methods to achieve value for money. As the UNCITRAL model law's *Guide to Enactment* noted, implementing sophisticated procurement methods is based on an "assumption that the enacting State has in place, or will put into place, the proper institutional and administrative structures and human resources necessary to operate and administer the type of procurement procedures provided for in the Model Law." *Id.* ¶ 66.

None of this training should be done in a vacuum, however. There are already many institutions, some of which are named above, which are actively involved in relevant training, both in procurement and anti-corruption strategies. The World Bank

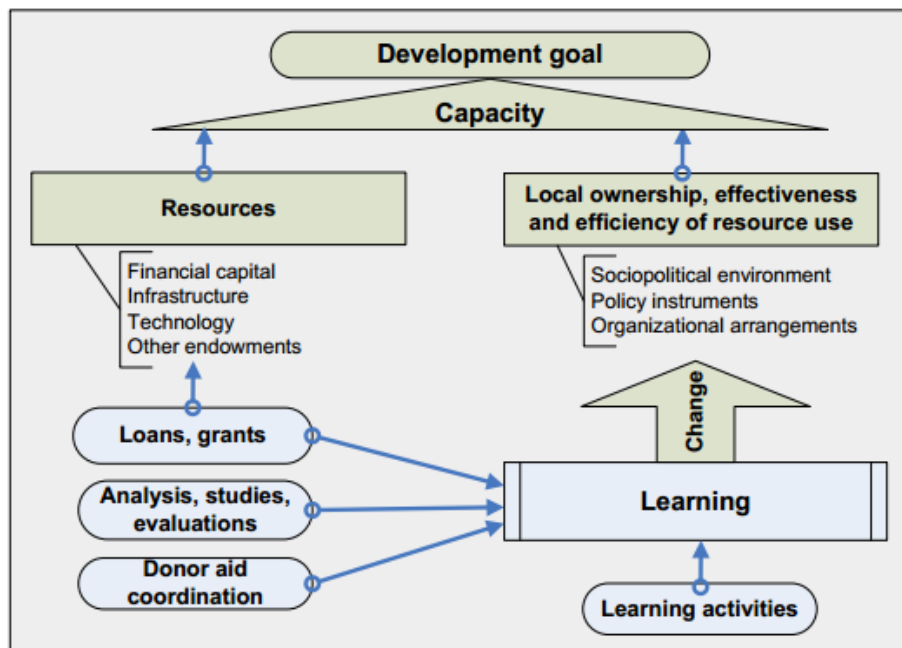
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<sup>2</sup> The *Guide to Enactment* to the UN Commission on Trade Law (UNCITRAL) Model Law on Public Procurement ([www.uncitral.org](http://www.uncitral.org)) highlights the important link between capacity of a procurement system overall and capacity development of individual roles within that system:

A key feature of an effective procurement system based on the Model Law is the establishment of a cadre of procurement officials with a high degree of professionalism, especially at upper levels within procuring entities, where critical decisions are taken. *Id.* ¶ 71(d). The UNCITRAL guide to enactment also notes that "the advantages of considering procurement as a professional, rather than an administrative function, with its officials being on a par with other professionals in the civil service (engineers, lawyers and so forth and the members of tender committees) are well-documented at the regional and international level, both in terms of avoidance of corruption and in achieving economy or value for money." *Id.* ¶ 71(d).

has, moreover, already developed a highly useful strategy for capacity building of this kind, the *Capacity Development Results Framework*. That framework, published in 2009 by the World Bank Institute, recommends the following steps to effective capacity development:

Figure 1.1 Capacity development as a part of the development process



World Bank Institute, *Capacity Development Results Framework*, at 4 (2009), available at <http://wbi.worldbank.org/wbi/document/capacity-development-results-framework-cdrf>.

As the chart reflects, learning activities are a necessary catalyst for change, but they must be coordinated with other initiatives -- such as ensuring a sound regulatory infrastructure, and facilitating local “ownership” of reform -- for the development goal (here, improved procurement) to be achieved.<sup>3</sup> To move forward on this initiative, we would recommend the following steps:

- On a global basis, the World Bank could identify those training providers that have the requisite skills and dedication to provide sophisticated procurement and anti-corruption training. One possible model to identify those potential trainers would be the Procurement Law Academic Network (PLAN), which is maintained by the University of Nottingham, <http://www.planpublicprocurement.org/main/>. One possible approach would be to ask academics and professionals to expand upon a

<sup>3</sup> One important focus of this coordinated development effort is to ensure that, as procurement professionals are trained, they not be frustrated or at risk in their careers for exercising best practices (a point emphasized by the Organization for Economic Co-operation and Development (OECD)’s *Principles for Integrity in Public Procurement*). In addition to supporting training, therefore, the World Bank may want to encourage mechanisms for shielding procurement professionals from undue influence, through, for example, bid remedies systems and whistleblower protections.

database such as that maintained by PLAN, to note specific skills and training that they could provide in procurement.

- As the World Bank's planning progressed for a specific country, the World Bank could ask trainers and professionals with the appropriate experience to express interest in supporting that effort.
- Any such training should, of course, be closely coordinated with the other elements identified by the *Capacity Development Results Framework*, such as ensuring political support for reform, a stable law/regulatory framework, etc. Our practical experience is that this process can last several years, and requires dedicated coordination at the country level.

As a first step in sorting through these issues in capacity development, the World Bank may wish to host a modest conference on capacity building in procurement, perhaps at the Bank's headquarters.<sup>4</sup> This would draw international attention to this initiative, and would prompt trainers and professionals to focus on potential assistance to the Bank.

## **B. Open Contracting**

Open contracting is defined as follows by the Open Contracting Partnership, [www.open-contracting.org/](http://www.open-contracting.org/):

Open contracting refers to norms and practices for increased disclosure and participation in public contracting including tendering, performance and completion. It includes the variety of contract types, from more basic contracts for the procurement of goods, to complex contracts, joint venture agreements, licenses and production sharing agreements. Open contracting encompasses all public contracting, including contracts funded by combinations of public, private and donor sources.

Transparency, technology, and e-procurement, which are related to open contracting, are featured in the World Bank's proposed procurement reforms. But the concept of open data and open contracting, while an important part of other World Bank initiatives in procurement, are apparently not called out explicitly by the World Bank's planning documents.

A growing number of countries (currently 64) participate in the Open Government Partnership (OGP). The Open Government Declaration endorsed by participating

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<sup>4</sup> Another option would be to confer with experts in conjunction with the broader procurement conference to be held at the University of Nottingham on June 15-16, 2015, <http://www.nottingham.ac.uk/conference/fac-socsci/pprg-global-revolution-conference-vii/index.aspx>. Professor Peter Trepte, a leading authority on capacity building in procurement, *see, e.g.*, Peter Trepte, *Building Sustainable Capacity in Public Procurement*, in *The WTO Regime on Government Procurement: Challenge and Reform* (Sue Arrowsmith & Robert D. Anderson, eds., WTO 2011), is helping to coordinate the Nottingham conference.

countries states acknowledges that “countries are at different stages in their efforts to promote openness in government, and that each of us pursues an approach consistent with our national priorities and circumstances and the aspirations of our citizens.” Nevertheless, the participating countries have committed to “increasing our efforts to systematically collect and publish data on government spending and performance for essential public services and activities,” and to “pro-actively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and *in formats that facilitate reuse*” (emphasis added).<sup>5</sup>

Procurement data standards and formats are important, to allow users to aggregate and analyze data from disparate sources, to understand budgets, build risk models, or focus in on patterns that indicate problems and potential corruption. At the very least, data should be available in machine-readable formats rather than static images of pages.

The World Bank has been closely involved with these initiatives, and has been a leader in promoting open government. For example, the Open Contracting Partnership has released an Open Contracting Data Standard, developed by the World Wide Web Foundation through a project supported by Omidyar Network and World Bank funding, and Bank staff members have been deeply involved in the Open Contracting Partnership.

The World Bank has also supported individual open government projects, such as an initiative to increase transparency in Indian public procurement.<sup>6</sup> The World Bank maintains a Bank-wide open data web page, with an open data tool kit and open data training modules, at <http://data.worldbank.org/>. Although the datasets available there do not yet contain comprehensive World Bank finance or spending information, some contract award data is already included.

In the proposed procurement reform plan, the World Bank may wish to consider requiring that borrowers, where possible, discuss how procurement data will be made openly available. For example, borrowers might note whether they intend to aggregate procurement data in accordance with a specific standard, or even in a specific machine-readable format. Borrowers might be asked to address this point in the *Procurement Strategy for Development* plan (Annex 3 to the draft Directives) or elsewhere. At best, the borrower’s *Procurement Strategy* could refer to specific data formats, open data platforms, and a plan for analyzing open data from other sources (so that prices, procedures, and performance could be analyzed nationally, internationally, regionally, and/or globally).

As a complement to the *Procurement Strategy for Development*, the World Bank may wish to maintain a regularly updated annex on open contracting standards and data

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<sup>5</sup> See <http://www.opengovpartnership.org/about/open-government-declaration>

<sup>6</sup> See [www.opencontracts.govinini.com](http://www.opencontracts.govinini.com); <http://fedscoop.com/world-bank-govini-open-contracts-open-government/>.

formats, and to provide borrowers with a supplemental template plan or self-assessment tool. These could be developed in collaboration with the Open Government Partnership.<sup>7</sup>

Finally, the World Bank may wish to consider offering borrower countries a common open data e-procurement platform covering the entire procurement life cycle, including planning (budgets) and contract administration – not simply tenders and awards. Advances in cloud computing mean users in borrower nations could enter and store data from around the world on virtual servers, which could be copied and/or deleted according to demand. This rapid scalability means that the World Bank would not need to maintain the maximum system capacity at all times, which would allow efficiencies and lower costs. The Bank could maintain the software, while system users could enter and download information online via the Internet. There would be no software to install on borrower's computers. This business model is known as Software as a Service (SaaS). Each borrower country could maintain its own front-end web portal, which could be “branded” to the borrower. Where countries chose to use their own open data systems, the World Bank could import national data into the World Bank-managed platform.

#### **Summary of Recommendations:**

- A.1. The World Bank may wish to address, in greater detail, how capacity building in procurement should proceed under the proposed reforms; this could mean focusing on (i) how qualified trainers should be selected, (ii) what the basis for the training should be, and (iii) how the trained professionals should be evaluated.
- A.2. In framing its goals for capacity building in procurement, the World Bank may wish to draw on the extensive work already done by the World Bank on capacity development, including the *Capacity Development Results Framework*, which was published by the World Bank Institute in 2009.
- A.3. The World Bank may wish to consider how to identify competent trainers worldwide, and how to coordinate their assistance with the capacity building contemplated by the procurement reforms. The Bank may wish to hold a conference of procurement trainers worldwide, to launch this broader effort in capacity building and to discuss strategies.
- A.4. As part of this effort to professionalize procurement officials, the World Bank may wish to support protections or mechanisms for shielding procurement professionals from undue influence, including remedies systems and whistleblower protections.

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<sup>7</sup> Along these same lines, the World Bank may wish to consider benchmarking individual borrowers' *Procurement Strategies for Development* to the Methodology for Assessing Procurement Systems (MAPS), published by the Organization for Economic Co-operation and Development (OECD) (which was prepared with the World Bank's assistance), <http://www.oecd.org/development/effectiveness/45181522.pdf>, or perhaps to the Global Partnership for Development Effectiveness (<http://effectivecooperation.org/>) monitoring framework, which focuses on the use of public financial and procurement systems.

- B.1. The World Bank may wish to integrate the work of the Open Government Partnership in its procurement reform; the members of that initiative have committed to publishing data “in formats that facilitate reuse.” This would allow for greater transparency in government procurement, and would reduce corruption risk.
- B.2. The World Bank may wish to urge that business information and reports regarding borrower projects be shared according to current standards or formats.
- B.3. There World Bank may wish to integrate the procurement reforms with other with other World Bank initiatives, such as the World Bank’s open data platform, tool kit, and training modules at [data.worldbank.org](http://data.worldbank.org).
- B.4. The World Bank may wish to urge that the collection, maintenance, analysis, and distribution of procurement data, including data standards, formats, and platforms, be addressed in each borrower’s *Procurement Strategy for Development* plan or elsewhere.
- B.5. The World Bank may wish to maintain a regularly updated annex supporting a sophisticated open data self-assessment, and may wish to be prepared to assist borrowers with this planning if they lack the capacity.
- B.6. The World Bank may wish to consider offering borrower countries a common open data platform for e-procurement, using a “Software as a Service” (SaaS) business model. Borrowers could have their own webpages for uploading and publishing information, but the information would be open source and could be analyzed by the public in aggregate. Where borrowers chose to use their own open data systems, the Bank could seek to import national data into the World Bank-managed platform.

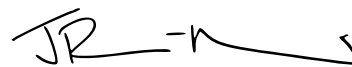
The authors would be glad to address any questions you may have regarding these comments and recommendations. Thank you for the opportunity to contribute to this important initiative.

Respectfully submitted,



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