

## Summary

### Workshop #2 of Tuesday, October 12, 1999: **Strengthening the Integrity of Public Procurement through Greater Transparency**

#### **Summary:**

Public procurement is big business. Governments annually procure goods and services estimated to value of over US\$ 1 trillion, or up to 15% of global GDP. It is consequently a major playground for corruption.

The workshop reviewed recent developments to strengthen public procurement at both the international and local levels.

At the international level, the World Trade Organisation (WTO) is completing preparation of a new international convention on transparency in procurement. The Workshop participants urged its early negotiation and adoption. International financial institutions (IFIs) like the World Bank have recently strengthened their procurement rules, especially sanctions against fraud and corruption. The Integrity Pact (IP) concept developed by Transparency International (TI) is being tested. And the private sector is seeking to establish industry-wide codes of conduct in several industrial countries.

At the local level, where corruption is often pervasive, the Workshop participants urged action to

- (a) strengthen capacity of government agencies and non-governmental organisations (NGOs) to manage and oversee procurement;
- (b) simplify procurement rules and regulations;
- (c) use the power of information technology to enhance transparency of public procurement; and
- (d) promote transparency throughout the procurement and implementation process, from feasibility study through project execution.

A summary of the major recommendations of the Workshop is attached as an Annex to these Proceedings.

#### **Introduction**

1. In opening Workshop #2 of October 12, 1999, the co-chair Michael Wiehen of TI stressed the importance of enhancing transparency and integrity in public procurement. He noted that government procurement was a multi-billion dollar business, in excess of US\$ 1 trillion per year, or up to 15% of global GDP. Little wonder that it was a major source of corruption and fraud.

2. Improving the integrity of public procurement required, above all, open competition and transparency in implementation. It also required: (i) a good appeals process within government, (ii) the active involvement of the civil society in monitoring,

(iii) scrutiny of the process throughout the procurement cycle, from the initial design of the feasibility study of a project through its implementation, where major abuse occurs.

3. He hoped that the Workshop would come up with pragmatic proposals to feed to groups such as the WTO, World Bank and other IFIs working on improvements in the transparency of public procurement.

4. His co-chair, Bernard Faranoff, Chief Executive of Safety and Security of South Africa, stressed the importance of improving transparency in national and local procurement, where corruption was often pervasive. The key issue was how to translate pragmatically the principal of greater transparency into day-to-day procurement work. He cited the South African experience where procurement rules were designed to cover every possibility and loop hole. Consequently, the process was too complex, too time consuming, channelled through a central body unable to cope with the demand and too reliant on “experts” who varied in quality and integrity. He hoped the Workshop would focus also on how to build local capacity, simplify processes and enhance transparency in very practical ways.

5. With this agenda, the Workshop focussed on two principal challenges: (a) how to further strengthen the transparency of procurement through international action, and (b) how to improve the integrity and transparency of procurement at the national and local level.

## **I. Developments at the International Level**

6. The Workshop heard from several speakers representing international organisations and multi-national private sector firms engaged in efforts to enhance transparency in procurement.

(a) WTO: Vesile Kulacoglu of the WTO reported on efforts to conclude a new international convention on transparency in procurement. Since 1996 a WTO working group had been engaged in studying ways to improve national procurement and harmonise rules and procedures among countries. The effort was designed to lead shortly to the negotiations and signature of a new international convention on transparency in procurement. She noted that most governments have similar provisions governing access to information on procurement, but there was still reticence to enter into a legally-binding international agreement which might limit a country’s discretion and flexibility. Other issues under discussion included coverage (sub-national procurement?), openness ( what to do about limited tendering?) and due process (super-national procedures for dispute resolution?)

The Workshop participants expressed the hope that the WTO would now move forward from study and discussion to negotiation and conclusion of the new international agreement, and use the forthcoming WTO Ministerial Conference in Seattle to initiate this process.

(b) The World Bank and other IFIs: Michael Stevens of the World Bank described recent changes in procurement rules for the IFIs to strengthen transparency and sanctions

against fraud and corruption, including (a) stronger penalties for corruption such as debarment of contractors, (b) publication of disqualified firms on the Internet, (c) suspension and/or cancellation of loan components or entire loans for government malfeasance, and (d) the right of the lenders to audit the accounts of suppliers and contractors.

(c) The Multi-national Private Sector. Dr. Busso Poes, Member of the Executive Board of Hochtief AG, Germany stressed the importance serious contractors such as his organisation placed on open and honest procurement. Bidders who wanted to compete on quality and experience and honest prices were often disadvantaged by unscrupulous bidders who deliberately underbid and subsequently increased their costs during implementation, or those who provided bribes to officials to manipulate the bidding, evaluation or contract award process. He outlined his company's efforts to strengthen internal controls against corruption: a code of conduct, compliance program, monitoring and a confidential hotline. He also described efforts by the major contractors in Germany to draft a uniform code of conduct for the industry.

(d) NGOs and Transparency International. Charles Morse, procurement advisor to TI, outlined the concept of an Integrity Pact (IP), a procurement mechanism developed by TI and now being tested out in several countries including Argentina, Colombia and elsewhere. (The Workshop heard subsequently from Christian Gruenberg of TI-Argentina on its efforts to promote public review of the new subway line for Buenos Aires). The IP concept is centred on an agreement between bidders and owners not to ask for or offer bribes during the procurement and implementation processes. The civil society is actively involved in the review of tender processes, bidding documents, evaluation decisions and major changes during implementation. Sanctions are clear, heavy and implementable.

(e) Other Developments at the International Level. Other speakers reported on recent conferences and research dealing with transparency in procurement. Wayne Wittig of the International Trade Centre (ITC) reported on the recent Abidjan Conference on procurement attended by representatives of 30 African countries aimed at harmonising rules among African states. Ariane Lambert-Mogiliansky of the Ecole Nationale des Ponts et Chaussees reported on her research on procurement experience that general rules and regulations are no safeguard against corruption when exceptions are routinely granted to open competition or where specifications are so general that it leaves room for significant discretion in evaluation.

### General Discussion

7. The general discussion of this topic focussed on three questions: (i) the practice of granting "exceptions" to the general rule of open competition and transparent processes, (ii) the appropriate rules for procurement by para-statal organisations, and (iii) the treatment of "facilitation payments" in procurement arrangements such as the IP.

(i) Exceptions to open competition are often made by governments on the grounds of emergency, urgency, sensitivity, national security or other reasons. While acknowledging that there are times when exceptions are appropriate, they should be very

limited rather than normal practice and the reasons for the exception should be explained publicly.

(ii) Para-statals account for a significant share of public procurement. While they are expected to behave like commercial organisations, they also use public funds for their procurement of goods and services. Their procurement procedures should follow the transparency rules of public procurement.

(iii) “Facilitation payments” are illegal payments made to officials to speed up processes but not to influence contract decisions. They are not covered by the sanctions under the US Foreign Corrupt Practices Act, the OECD Convention or the Integrity Pact concept. While they do constitute corrupt practice, they are not included for practical and pragmatic reasons. They are too hard to detect, too numerous and would not warrant the very severe penalties specified in these conventions for corrupt actions to gain or retain contracts not otherwise justified.

## **II. Local Procurement**

8. The second major focus of the Workshop was on strengthening transparency in local procurement.

(a) South Africa’s approach to transparency in procurement was described by Mr. Mlamla, Office of the Director General of State Expenditure. He indicated that transparency in public procurement in South Africa was a constitutional obligation. He described the processes which govern public procurement, including arrangements for including social objectives as well as efficiency considerations in procurement decisions. His review was supplemented by Dean Letchmiah, procurement consultant to the South African government, who indicated that social objectives such as promotion of small and medium enterprises are included in procurement provided the overall process meets the standards of fairness and competition, sound and defensible decision-making and clarity. In any event, social factors are no more than 10% of the weight in procurement criteria.

(b) The power of the Internet in procurement transparency was demonstrated by Mr. Garcia from the Secretariat of Comptrollership and Administrative Development of Mexico. He presented Mexico’s public information system called “Compranet” which provides public information through the Internet on the status of public procurement by the Federal Government. Citizens can check on pending procurement, contract awards, implementation changes. They can download standard bidding documents. They can submit bids electronically. It has proven very popular, with over 2.5 million “hits” in the past year. The transparency reduces opportunities for corruption and enhances citizen oversight. Mr. Wiehen also referred to the OPEN on-line processing system in the city of Seoul, Korea which tracks 27 major activities of the city administration. The system allows citizens easy real-time access to check the status of administrative action. It has received 1500 “hits” per day in its first six months of operation. (The OPEN system was presented outside the workshop in a special booth by the Mayor of Seoul).

## General Discussion

9. Several Workshop participants offered suggestions and posed questions for enhancing the transparency and integrity of local procurement. They included commentators from Tanzania, Kenya, Zambia, the UK, Mali and elsewhere. The discussion centred on four issues: (i) capacity building, (ii) protection against “bait-and-switch practices” where bidders deliberately underbid and then change prices and quantities during implementation, (iii) simplification of rules, and (iv) broadening the transparency to cover all aspects of the procurement cycle.

(i) Capacity of governments and the civil society to manage the procurement process was recognised to be very limited. Rules were too complex, processes dragged on and governments were increasingly dependent on experts who may or may not be professional. Training by WTO, the IFIs and others was felt to be a very high priority for enhancing the quality, efficiency and integrity of local procurement.

(ii) Governments were very vulnerable to unscrupulous bidders who deliberately underbid projects and then resorted to devices to increase contract prices during implementation. Participants suggested that capacity building efforts should also include training in contract management to protect the public against such practices.

(iii) Simplification of procedures was also cited by participants as an essential means to root out corruption and speed decisions. Complexity breeds corruption. A recent UK report indicated that public procurement can take up to 50% longer than procurement of similar goods and services in the private sector. Suggestions were made for making procurement more output-oriented and performance driven rather than input-oriented.

(iv) Broadening the scope of transparency was also cited as a priority. The outcome of a procurement process can often be determined at the earliest stage of a project development process through discriminatory specifications for the feasibility study, criteria for selection of design consultants and other processes which proceed the drafting of tender documents. These processes should not only be totally non-discriminatory, but also no less transparent than the bidding, evaluation and award processes. Similarly during project implementation, major changes in contract prices should be subject to public review.

Annex

**Recommendations for Enhancing Integrity in  
Public Procurement through Greater Transparency**

**At the International Level**

1. International Convention. The World Trade Organisation was urged to move forward with its efforts to negotiate and conclude a new international convention on public procurement, and to use the forthcoming WTO Ministerial Conference in Seattle at the end of November 1999 to initiate the process.
2. Strengthening Procurement Rules. International financial institutions (IFIs) such as the World Bank and the Regional Development Banks were encouraged to continue to strengthen their procurement regulations, especially on sanctions against corrupt practices and independent examination of financial records of suppliers and contractors.
3. The Integrity Pact concept developed by Transparency International which provides for anti-corruption agreements between bidders and owners, monitoring by the civil society and appropriate sanctions for non-compliance, should be tested out in a variety of environments.
4. Capacity Building. The WTO, IFIs and other organisations should undertake as a matter of priority the training of local government officials and non-governmental organisation representatives in procurement procedures and processes.

**At the National Level**

5. Simplification of Procurement Rules. National governments should review current procurement rules and regulations with an objective of simplifying procedures while maintaining clarity and transparency. Too many rules invite corruption.
6. Use the Power of Technology to Strengthen Transparency. Local governments were encouraged to follow the examples of Mexico and the city of Seoul, Korea in using the Internet to promote openness in public procurement. The Federal Government in Mexico has developed “Compranet” and Seoul the “OPEN” system which provide public information through the Web on the status of public procurement and on applications for permits or approvals respectively.
7. Broadening the Scope for Transparency. In reviewing its procurement regulations, governments were encouraged to ensure transparency and competition were incorporated at every stage of a procurement process or project development, from the design of a feasibility study through project implementation, and not only at the time of contract award.